

Notes on the Law of Landlords and Tenant

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NOTES ON THE LAW OF LANDLORD AND TENANT¹

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I. WHEN RELATION EXISTS

The relation exists when the person in possession of lands occupies them in subordination of the title of another and with his express or implied assent.² It always arises by contract³ express or implied, such as a lease which sets out the terms of the letting; or by operation of law as the result of the acts of the parties, as when one co-tenant moves and the remaining co-tenant takes another in possession, in which case, if the landlord accepts rent from those in possession, there is sufficient evidence of surrender and the acceptance of the new occupant as tenant.⁴ A primary test is whether there is an obligation to pay rent. While a valid demise may exist even though no rent is paid,⁵ for practical purposes it may be assumed that unless rent is paid or reserved, there is no tenancy. The rent must issue for the use or occupancy of land or a structure or a part of a structure on the land. The furnishing of services, such as housework, of an equivalent value to rent may create a tenancy when the occupant has exclusive possession and control of the quarters occupied.⁶ A provision in the lease of a farm for payment to the owner of a percentage of the net profits does not affect the landlord-tenant status, nor create a partnership.⁷

¹ Citations to Alexander's British Statutes are to the Second Edition, published by Coe in 1912, which is hereinafter cited "ALEXANDER".

Certain texts are frequently cited throughout this Article by the names of the authors only. The full title of each such text, and the edition thereof, together with the method of citation is as follows:

MCADAM, LANDLORD AND TENANT (1910), hereinafter cited "MCADAM".

POE, PLEADING AND PRACTICE (5th ed., 1925), hereinafter cited "POE".

TIFFANY, LANDLORD AND TENANT (1910), hereinafter cited "TIFFANY".

VENABLE, REAL PROPERTY (undated compilation), hereinafter cited "VENABLE".

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² 1 MCADAM, n. 1, 127.

³ *Ibid.*, § 23.

⁴ Kinsey v. Minnick, 43 Md. 112 (1875).

⁵ 1 TIFFANY, n. 1, 25, 1009.

⁶ Green v. Shoemaker, 111 Md. 69, 73 A. 688 (1909).

⁷ 6 MD. CODE (1957), Art. 73A, § 7(4); Tomlinson v. Dille, 147 Md. 161, 127 A. 746 (1925).

II. WHEN RELATION DOES NOT EXIST

Husband and wife. Husband and wife, holding as tenants by the entirety, cannot lease the property so held to the wife or the husband⁸ since that in effect is a rental from a landlord to himself as a tenant.

Sub-tenants. There is no privity of estate or contract between the landlord and a sub-lessee.⁹ An unrecorded permissible assignment by the tenant in a recorded lease for a term in excess of seven years merely constitutes the assignee a sub-lessee.¹⁰ An occupant of premises who does not hold an assignment from the lessee and who therefore has assumed none of the obligations of a tenant, is not entitled to assert against the landlord provisions in the lease granting options to the tenant.¹¹

Receivers. A court appointed receiver who takes possession of leased premises does not thereby become the assignee of the lease and is not liable as tenant for use and occupation.¹² However, such receiver has the right to adopt the lease, in which event he becomes liable on its covenants; and he has a reasonable time within which to make such determination.¹³

Lodgers and boarders. There are occupancies where money is paid which do not amount to a landlord-tenant relation. A lodger is not a tenant when (although having exclusive use of the room) the landlord or his servant looks after the house and furniture; likewise a boarder who receives meals as well as lodging is not a tenant even though the living quarters occupied by him are for his exclusive use,¹⁴ nor is a servant of the owner.¹⁵ A lodger is a person whose occupancy is of a part of a house and subordinate to and in some degree under the control of the owner.¹⁶ Distinguishing between lodger and tenant, the rule seems to be that a tenant has an exclusive possession whereas the lodger has merely the use without actual or exclusive possession.¹⁷ The occupant of a room in an office building is a tenant, even though the owner provides ser-

⁸ Tizer v. Tizer, 162 Md. 489, 160 A. 163, 161 A. 510 (1932).

⁹ VENABLE, n. 1, 59.

¹⁰ Rubin v. Leosatis, 165 Md. 36, 166 A. 428 (1933).

¹¹ Jay Dee Shoes v. Goldsmith, The Daily Record, January 11, 1950 (Cir. Ct. of Baltimore City).

¹² Gaither v. Stockbridge, 67 Md. 222, 9 A. 632, 10 A. 309 (1887).

¹³ Dietrich v. O'Brien, 122 Md. 482, 89 A. 717 (1914).

¹⁴ 1 TIFFANY, n. 1, 34.

¹⁵ 1 MCADAM, n. 1, 131.

¹⁶ 43 C.J.S. 1137, Innkeepers.

¹⁷ Green v. Shoemaker, 111 Md. 69, 73 A. 688 (1909), 43 C.J.S. 1138-1139, Innkeepers. For a discussion of the distinction between tenant and lodger, see *Tenant, Lodger and Guest*, 64 Yale L. J. 391 (1955).

vices, such as cleaning and maintenance. The fact that the accommodations are in a hotel does not necessarily mean that the occupant is a lodger.

Remedies against lodgers and boarders. As to these, the owner is not entitled to summary ejectment for non-payment of rent, as the relationship is not that of landlord and tenant. Practically speaking it would appear that if the owner orders the boarder or lodger out of the premises and the latter refuses to go, the owner may call on public authority and have the police eject the erstwhile boarder as a trespasser. The owner has rights under the Code: Article 71, Section 5:¹⁸

“Any person taking boarders or lodgers into his house and renting to them a room or furnishing them with board or both shall have a lien upon any personal effects, goods or furniture brought upon the premises in pursuance of such contracting for room or board,”

It has been made a misdemeanor to fail to pay for lodging, food or credit at any hotel, boarding house, inn, hospital, or sanitarium.¹⁹ Hotels, rooming houses and lodging houses are defined as buildings containing five or more beds which are offered to the public for rental or hire.²⁰

Illustrative rules to determine existence of tenancy. To determine whether a tenancy exists: (1) The occupancy must be for a fixed period. (2) It must be accepted by the parties that the occupant proposes to use the premises with some degree of permanence. (3) The right of occupancy must be exclusive with no right in others to use them except on the occupant's permission. (4) The occupant's rights are restricted to occupancy. Although services relating to occupancy, such as furnishing of cleaning services, linens, etc., may not change his status away from that of tenant, if he is entitled to other services such as food, nursing, etc., then ordinarily he is not a tenant.

III. CATEGORIES OF LETTINGS

All lettings fall into one of two categories: (1) leases for years, which are for a fixed term and (2) leases at will, which include both written and oral leases which run from year to year, and parole lettings from week to week, or month to month, as well as lettings at sufferance.

¹⁸ 6 M.D. CODE (1957).

¹⁹ M.D. CODE (1957), Art. 27, §§ 161-162.

²⁰ Baltimore City Code (1950), Art. 12, § 63.

A. Leases for Years and From Year to Year.

The titles may be misleading. A lease for years simply means a lease for a fixed term, which may be for any particular period. A lease from year to year, or periodic tenancy, is a lease or letting which automatically renews itself; leases from week to week, month to month, or year to year, are included in this category. The fundamental difference between a tenancy for years and from year to year is that the first is for a definite period of time and terminates by lapse of that time, without notice, although for the exercise of the right to the summary remedy for the recovery of possession of the land a statutory notice must be given,²¹ and the second is for the first period of time with an indefinite succession of periodic renewals unless determined by a notice to quit to the other by either the landlord or the tenant, since the right of a notice to quit is reciprocal so that either landlord or tenant has the right to terminate a letting from year to year.²²

Statute of frauds. Under 29 Charles 2, Ch. 3, §§1, 2, and 4,²³ an oral lease may be for a period not exceeding three years.²⁴ Leases for more than three years must be in writing. Leases for more than seven years must be signed, sealed, witnessed, acknowledged and recorded.²⁵

Construction of written lease. The principle that a lease must be construed most strongly against a lessor and in favor of a lessee is resorted to only when the words of the instrument are doubtful in their meaning or susceptible to more than one construction.²⁶

Even though a document may not constitute a valid lease, as for example, a lease for more than seven years which has not been acknowledged, yet in a proper case it can be treated as an agreement to lease and may be specifically enforced.²⁷ A lease from year to year containing a provision for automatic renewal, but which is terminable by either party at the end of the original or a succeeding term, does not create an estate for more than seven years.²⁸

²¹ 5 MD. CODE (1957), Art. 53, §§ 1-8.

²² *Smith v. Pritchett*, 168 Md. 347, 178 A. 113, 98 A.L.R. 212 (1935).

²³ 2 ALEX. BRIT. STAT., n. 1, 509.

²⁴ *Union Banking Co. v. Gittings*, 45 Md. 181 (1876).

²⁵ 2 MD. CODE (1957), Art. 21, § 1.

²⁶ *Standard Garments Co. v. Hoffman*, 199 Md. 42, 85 A. 2d 456, 30 A.L.R. 2d 485 (1952).

²⁷ *Thompson v. Thomas & Thompson Co.*, 132 Md. 483, 104 A. 49 (1918). *Saul v. McIntyre*, 190 Md. 31, 57 A. 2d 272 (1948). See *infra*, p. 8, Void Lease.

²⁸ *Canary v. Wagner*, 191 Md. 413, 62 A. 2d 257 (1948); 2 MD. CODE (1957), Art. 21, § 1.

B. Leases for Years or for a Fixed Term.

A lease for years is one for a fixed term and not necessarily one for a certain number of years.²⁹ At common law there is no restriction upon the length of the term that may be created.³⁰ There is some statutory limitation on this common law rule. A lease for more than seven years must be executed, acknowledged and recorded; provisions for renewal, optional with either landlord or tenant, do not necessarily make a lease for more than seven years; and even a lease for more than seven years which has not been executed and recorded according to the statute, is binding between the original parties to such lease.³¹ A lease for more than fifteen years sets up in the tenant a right of redemption,³² unless the premises are leased exclusively for business purposes and the term, including all renewals provided for in the lease does not exceed ninety-nine years.³³ In the instance of a ground rent, when it is shown that the ground rent has been neither demanded nor paid for more than twenty consecutive years, the effect is to bar not only the rent already due but also the reversionary interest of the owner of the fee. It has been held that the mailing of a bill for ground rent by the owner of the fee within the twenty year period creates a presumption of demand, thus preserving his title.³⁴ If the lease contains no provision for automatic renewal, then the relationship of landlord and tenant ceases to exist on the termination of the lease. If the tenant fails to move on the terminal date, then the landlord has the election (1) to treat the tenant as a trespasser in the sense that he is a tenant holding over; or (2) to treat the lessee as a tenant from year to year.³⁵

C. Leases from Year to Year or Periodic Leases.

Agreement. Such a letting may be created by express agreement of the parties, in which the terms and conditions of the letting, as well as the mode of termination are explicitly set forth.

Implication of law. Such a letting is created when the occupant goes into possession as tenant, without any understanding or agreement as to the term of the letting.

²⁹ 1 TIFFANY, n. 1, 45.

³⁰ *Op. cit. ibid*, 55.

³¹ 2 MD. CODE (1957), Art. 21, § 1.

³² 2 MD. CODE (1957), Art. 21, §§ 103-104.

³³ *Ibid*, § 108.

³⁴ *Kolker v. Biggs*, 203 Md. 137, 99 A. 2d 743 (1953).

³⁵ *Hall v. Myers*, 43 Md. 446 (1876); *Fetting Etc. Co. v. Waltz*, 160 Md. 50, 152 A. 434, 71 A.L.R. 1443 (1930).

"[W]here there is no evidence as to the terms of the letting, . . . the monthly payment of rent would show a letting at a monthly rent, thereby creating a tenancy from month to month. . . ."³⁶ Such a lease renews itself from term to term, but is terminable by the giving of a notice to quit by the landlord or a notice of termination by the tenant. When payments of rent are made weekly this creates a presumption of a tenancy from week to week.³⁷

Void lease. When a tenant enters upon land under a void or defective lease, the periodical payment of a yearly rent creates a tenancy from year to year.³⁸ Prior to June 1, 1951, a lease for more than seven years which had not been executed and recorded in accordance with Article 21, Section 1,³⁹ was invalid; if the tenant entered into possession and rent was accepted then a tenancy from month to month or from year to year was created⁴⁰ and all of the provisions of the lease applied excepting those as to its duration.⁴¹ However, Chapter 565 of the Acts of 1951⁴² modified this rule to provide that an unrecorded lease for more than seven years shall be valid and binding between the original parties to such lease.

A lease invalid at law may be enforced in equity as a contract to lease although otherwise the tenancy would be one from year to year by implication of law.⁴³

Tenant holding over. When a tenant for years holds over after the expiration of his term, he becomes a tenant from year to year by implication of law as when a tenant after termination remains in possession with the landlord's consent and without further contract,⁴⁴ the election is in the landlord and not in the tenant. Any act of the landlord which recognizes an existing tenancy after the terminal date, such as acceptance of the rent, will be a binding election upon him of the existence of a lease from year to year.⁴⁵ A landlord is not required to make a prompt election. When a tenant sends a check for one month's rent, proposing that it be accepted as an amendment of the ten-

³⁶ 1 TIFFANY, n. 1, 133.

³⁷ McKenzie v. Egge, 207 Md. 1, 7, 113 A. 2d 95 (1955).

³⁸ Falck v. Barlow, 110 Md. 159, 72 A. 678 (1909); Darling Shops v. Balto. Center, 191 Md. 289, 60 A. 2d 669, 6 A.L.R. 2d 677 (1948), noted 9 Md. L. Rev. 362 (1948).

³⁹ 2 MD. CODE (1957).

⁴⁰ Cook v. Boehl, 188 Md. 581, 53 A. 2d 555 (1947); Schultz v. Kaplan, 189 Md. 402, 56 A. 2d 17 (1947).

⁴¹ Hyatt v. Romero, 190 Md. 500, 58 A. 2d 899 (1948).

⁴² Now MD. CODE (1957), Art. 21, § 1.

⁴³ Saul v. McIntyre, 190 Md. 31, 57 A. 2d 272 (1948).

⁴⁴ Smith v. Pritchett, 168 Md. 347, 178 A. 113, 98 A.L.R. 212 (1935).

⁴⁵ Vrooman v. McKaig, 4 Md. 450 (1853).

ancy to a month-to-month one, acceptance and use of the check by landlord does not alter or reduce a landlord's rights because the amount of the check is what the landlord is entitled to if he elects to treat the tenant as one holding over and, consequently, liable as tenant for another year.⁴⁶ Once made such an election creates a tenancy upon the same terms and conditions as the original lease⁴⁷ except that the subsequent letting is from year to year.⁴⁸ If the landlord demands and receives an increased rent from the tenant, the new lease from year to year will be on the same terms as the former lease but at the higher rent.⁴⁹ Provisions for premature termination of a tenancy are as applicable in a lease from year to year thus created as they were to the original lease for years.⁵⁰ While a lease from year to year thus created contains all of the covenants in the original lease applicable to the new situation,⁵¹ so that an option in a tenant to purchase contained in the lease for years carries over into the subsequent tenancy,⁵² it is possible to so word an option contained in a lease for years that it will not carry over into the subsequent lease.⁵³ Similarly, in a lease from year to year an option to purchase in the lessee may be so expressed as to be effective only during the original term and not during a succeeding term.⁵⁴ However, if the landlord and tenant are actually negotiating for a new lease at the expiration of the old lease, and if the tenant remains in possession pending such negotiations, with either express or tacit consent of the landlord, the landlord is estopped from treating the tenant as holding over for another term. To establish this situation it is necessary that: (1) the landlord consent to the tenant remaining in the premises for a temporary period and; (2) that the parties were actually engaged in negotiating as to a renewal of the lease when the previous term ended. Unilateral acts or statements of the tenant do not constitute "negotiations"; there must be positive acts or statements on the part of the landlord.⁵⁵

⁴⁶ *Donnelly Adver. Corp. v. Flacomio*, 216 Md. 113, 140 A. 2d 165 (1958).

⁴⁷ *Hobbs v. Batory*, 86 Md. 68, 37 A. 713 (1897).

⁴⁸ *Hall v. Myers*, 43 Md. 446 (1876); *Gostin v. Needle*, 185 Md. 634, 45 A. 2d 772, 163 A.L.R. 1013 (1946).

⁴⁹ *Cramer v. Baugher*, 130 Md. 212, 100 A. 507 (1917).

⁵⁰ *Gostin v. Needle*, *supra*, n. 48.

⁵¹ *Schaeffer v. Bilger*, 186 Md. 1, 45 A. 2d 775, 163 A.L.R. 706 (1946).

⁵² *Bagley v. Clark*, 190 Md. 223, 57 A. 2d 739 (1948).

⁵³ *Gressitt v. Anderson*, 187 Md. 586, 51 A. 2d 159 (1947).

⁵⁴ *Canary v. Wagner*, 191 Md. 413, 62 A. 2d 257 (1948).

⁵⁵ *Donnelly Adver. Corp. v. Flacomio*, 216 Md. 113, 140 A. 2d 165 (1958).

D. Tenants at Will And By Sufferance.

In this section will be found statements in conflict with other portions of this manual. The reason is that the draftsmen of our statutes and ordinances have not always employed precision in the use of technical words and it is not unknown for the Courts to fall into the same error. The definitions of the law writers are here included to emphasize the principle that in solving a problem in the vexing area of landlord and tenant, it is not always possible to rely on the literal wording of a statute or a decision.

A tenant at will always is in occupation as of right. A tenant by sufferance is one who enters by lawful lease and holds possession wrongfully.⁵⁶ A tenant at will holds rightfully; a tenant at sufferance holds wrongfully.⁵⁷ A tenancy at will exists as a result of permissive possession without any understanding as to the duration of the possession; as for example, one who goes into possession under a void conveyance.⁵⁸ "As a general rule, a person who enters on land by permission of the owner for an indefinite period and without the reservation of any rent, is a tenant at will . . ."⁵⁹ "A permissive possession constituting a tenancy at will because of payment of a periodic rent may be changed into a tenancy from year to year or other periodic tenancy."⁶⁰ If a tenant at will transfers his interest in the land, and puts the transferee in possession, the latter is not a tenant at sufferance but a mere disseisor or trespasser since he did not enter by right. However, a sublessee of a tenant for years holding over after the expiration of the latter's term is a tenant at sufferance. A tenant at sufferance is "one holding possession, . . . who was not a trespasser and not a disseisor, and yet held of nobody".⁶¹

IV. CO-OWNER LANDLORDS

One co-tenant cannot make a lease which will be binding upon his co-tenants without their consent, but he can lease his own interest with or without the consent of the others, and the lessee will become a tenant in common with the others.⁶² One co-lessor can terminate the lease as to his own interest without the concurrence of the others.⁶³

⁵⁶ 1 MCADAM, n. 1, 676.

⁵⁷ 1 TIFFANY, n. 1, 153.

⁵⁸ *Op. cit. ibid.*, 105-106.

⁵⁹ 16 R.C.L., Landlord & Tenant, 611-612, § 91.

⁶⁰ 1 TIFFANY, n. 1, 125.

⁶¹ *Op. cit. ibid.*, 149.

⁶² *Thompson v. Thomas & Thompson Co.*, 132 Md. 483, 104 A. 49 (1918).

⁶³ *Cook v. Hollyday*, 186 Md. 42, 45 A. 2d 768 (1946).

When a husband and wife are owners by entireties and the husband leases the land giving warranties of title, he cannot bind his wife, as Maryland has not adopted the principle that under such circumstances the lease made by the husband is valid against the wife during coverture. However, after a divorce if the property leased comes into the individual ownership of the lessor he is estopped, and the lease will operate upon his estate as if vested at the time of its execution.⁶⁴

The statute of 4 Anne Ch. 16, Sec. 27,⁶⁵ authorizes a co-tenant to bring an action against his co-tenant for receiving more than his just share or proportion of the rent. But equity has no jurisdiction for an accounting for rents or claims for use and occupation by a single owner or one of several co-owners against a co-owner as tenant.⁶⁶

V. TERMINATION OF LANDLORD'S ESTATE IN MID-TERM

If the landlord has an estate for life and makes a lease for years and dies before the end of the term, then the estate of the life tenant's lessee terminates with the death of the life tenant. However, when the estate of the lessor determines and the remainderman accepts rent from the tenant the terms of the lease continue.⁶⁷

VI. ASSIGNMENTS OF LEASES

At common law restraints upon alienation are frowned upon. Therefore, in the absence of a prohibition in the lease the original tenant has the right to assign his interest or estate without consent of the landlord. Similarly, the holder of the reversion has the unqualified right to grant or convey his interest.

By the Statute 32 Hen. VIII c. 34, §§1 and 2,⁶⁸ the grantee of a reversion in lands or tenements shall have like advantages against the lessee as the lessors or grantors themselves or their heirs or successors might have had.⁶⁹ By this statute, ". . . all . . . Lessees . . . for a term of Years . . . shall . . . have like . . . Advantage and Remedy against . . . every person . . . which have . . . any Gift or Grant . . . of the Reversion of the . . . Lands . . . so letten . . . for any Condition, Covenant or Agreement . . . expressed

⁶⁴ *Columbian Carbon Co. v. Kight*, 207 Md. 203, 114 A. 2d 28, 51 A.L.R. 2d 1232 (1955).

⁶⁵ 2 ALEX. BRIT. STAT., n. 1, 664.

⁶⁶ *Paradise Amusement Co. v. Hollyday*, 190 Md. 48, 57 A. 2d 308 (1948).

⁶⁷ VENABLE, n. 1, 61.

⁶⁸ 1 ALEX. BRIT. STAT., n. 1, 335.

⁶⁹ VENABLE, n. 1, 57; *Outtoun v. Dulin*, 72 Md. 536, 20 A. 134 (1890).

in the Indentures of their . . . Leases, . . . as the same Lessees . . . might . . . have had against the said Lessors and Grantors . . .⁷⁰

The construction of this statute over the years has produced many complexities. What follows is an over-simplification, and is intended to serve as but a guide in solving the simpler problems arising as a result of assignment of either the term or the reversion. In any case, care must be exercised to see whether the party to be held as tenant is actually the assignee of the term, and not merely a sub-tenant.

A. Effect of Conveyance of the Reversion.

The weight of authority at common law was that covenants ran with the land and not with the reversion.⁷¹ Under the statute, without a formal assignment of the lease, the grantee of the reversion if it be a freehold title, has all of the rights of the original lessor against the lessee, or an assignee of the term of the lease, subject to the principle that only those agreements may be enforced which (1) run with the land, or (2) which, by the terms of the lease are binding upon the assignee thereof. The corollary to this appears to be that when the estate in reversion is less than a free-hold estate (*i.e.* less than a fee or estate for life) that a transfer of the reversion does not carry with it any rights to enforce the lease, unless there is an assignment of the lease. Here, it would appear that under the provisions of 29 Char. 2, Ch. 3, Sec. 3,⁷² and Code Article 8, Section 1,⁷³ that the assignment of the lease must be in writing. The statement in the text is debatable.⁷⁴

Chattels real. The prevalence of the ground rent system in Baltimore City, under which properties are held under ninety-nine year leases renewable forever indicates the wisdom, and probably the necessity, of requiring a written assignment of any sublease in existence at the time of the conveyance of the leasehold as the estate of the grantor is one less than freehold.

B. Assignment of Rent.

The assignee of the reversion is entitled to all rent falling due after the assignment. Rent which falls due before

⁷⁰ Liability to the tenant by the transferee of the reversion, on covenants of the original landlord is discussed in L.R.A. 1915 C 190.

⁷¹ 1 POE, n. 1, § 332.

⁷² 2 ALEX. BRIT. STAT., n. 1, 509.

⁷³ 1 MD. CODE (1957).

⁷⁴ See 1 TIFFANY, n. 1, 33, and *Outtoun v. Dulin*, 72 Md. 536, 20 A. 134 (1890).

the assignment belongs to the assignor but may be assigned like any other debt.⁷⁶ Rent follows the reversion so that when the lessor dies before the rent comes due, it goes to the person entitled to the estate;⁷⁶ if the lessor dies after the rent becomes due, it goes to his personal representative.⁷⁷

The English rule is that an assignee of a rent cannot distrain for arrears arising previous to assignment.⁷⁸ Adherence to this philosophy would deny the purchaser of property the right to either distress or summary ejectment for arrears of rent due at the time of purchase. An apparent departure from this rule was the decision in *Kaufman v. Collick*,⁷⁹ wherein it was held that when in connection with a transfer of real estate there is no assignment of accrued rent in arrears, the vendor is left to his remedy in an action of debt without any right to distrain or to summary eviction; but when the accrued rent is assigned to the purchaser at the time of transfer, then the vendee is clothed with every right of action which the former would have had if he had continued in ownership of the property, including the right of distress and summary ejectment.⁸⁰

Payments to agents or assignees. All payments of money or other dealings had with a person acting under a power of attorney or other agency are binding upon the representatives or principals of such attorney or agent, even though the principal may have died or assigned his claim — provided that the person making the payment had no notice of the death or assignment.⁸¹ Under the statute of 4 Anne Ch. 16, Sec. 10,⁸² a tenant is not liable to a new landlord for rent if he has paid it to a former landlord without notice of the conveyance. However, a tenant may not defeat a claim of creditors of the landlord by anticipating payments of rent⁸³ or transfer a growing crop to the damage of a mortgagee of the realty.⁸⁴ It is a general principle that the assignee of a claim or chose in action cannot recover from the original debtor who had paid it to the assignor after, but without notice of, the assignment.⁸⁵ An order by the landlord to the tenant to pay accruing rent

⁷⁶ *Outtoun v. Dulin*, *ibid.*

⁷⁷ *Getzandaffer v. Gaylor*, 38 Md. 280 (1873).

⁷⁸ *Martin v. Martin*, 7 Md. 368 (1855).

⁷⁹ *Brown v. Metropolitan*, 9 Eng. Rul. Cas. 610 (1859).

⁸⁰ *Kaufman v. Collick*, decided in Baltimore City Court, May 19, 1943.

⁸¹ THOMAS, *PROCEDURE IN JUSTICE CASES* (1917) § 166.

⁸² 1 MD. CODE (1957), Art. 10, § 42.

⁸³ 2 ALEX. BRIT. STAT., n. 1, 661.

⁸⁴ *Martin v. Martin*, 7 Md. 368 (1855).

⁸⁵ *Johnson v. Hines*, 61 Md. 122 (1883).

⁸⁶ *Robinson v. Marshall*, 11 Md. 251 (1857); *Lambert v. Morgan*, 110 Md. 1, 72 A. 407 (1909).

to a third person may operate as an assignment, so that the tenant may be bound to continue to pay such rent, notwithstanding a later notice from the landlord or a transferee of the reversion who took title knowing of the assignment.⁸⁶

Prepaid rent and security deposits. Advance rent that has accrued and been paid (in other words, prepaid rent) may not be recovered by the lessee's receiver when the lease has been terminated as a result of lessee's misconduct. In the circumstances of the particular case, recovery claimed on the ground of unjust enrichment of the landlord was denied.⁸⁷ In *Tatelbaum v. Chertkof*,⁸⁸ a distinction was drawn between prepayment of rent and a security deposit; if a security deposit, it remains the property of the tenant and passes on to the tenant's trustee in bankruptcy, subject to the landlord's claim; if a prepayment of rent, then it becomes the property of the landlord and is not recoverable by the tenant's trustee.

C. Effect of Assignment on Liability of Original Lessee.

The liability of the original lessee is based upon two principles: — privity of contract and privity of estate.⁸⁹

Privity of contract. Expressed stipulations in a lease continue to be binding upon the lessee in spite of an assignment and its recognition by the landlord, an illustrative stipulation being the covenant to pay rent.⁹⁰ The theory is that the lessee binds himself to pay the rent, and this may be an agreement whose enforcement is independent of retention of an interest under the lease. Thus, provided the lease is under seal,⁹¹ the lessor may proceed against the original lessee under the covenants contained in the lease. To be freed from obligation, the original lessor or covenantor must be released by an instrument of equal dignity to that which created the obligation, i.e., an instrument under seal.⁹²

Privity of estate. The principle is that the person in possession of land is liable to the owner on the covenants or agreements that run with the land, contained in the original lease, because he who has the benefit of the use of the land as tenant, is bound to the owner.⁹³

⁸⁶ *Abrams v. Sheehan*, 40 Md. 446 (1874).

⁸⁷ *Lochner v. Martin*, *The Daily Record*, Feb. 4, 1959.

⁸⁸ 212 Md. 475, 129 A. 2d 680 (1957).

⁸⁹ *Consumers' Ice Co. v. Bixler & Co.*, 84 Md. 437, 35 A. 1086 (1896).

⁹⁰ *Insley v. Myers*, 192 Md. 292, 64 A. 2d 126 (1949).

⁹¹ 1 ALEX. BRIT. STAT., n. 1, 337.

⁹² 1 POE, n. 1, § 388.

⁹³ *Consumers' Ice Co. v. Bixler & Co.*, 84 Md. 437, 35 A. 1086 (1896).

When letting is by sealed instrument. When the lease is under seal and contains a covenant to pay rent, the original lessee will remain liable to the lessor under the covenant, notwithstanding an assignment of the lease to a third party, and acceptance of rent by the landlord from the assignee of the term.⁹⁴ When a lessee transfers his interest in the lease, he remains a proper party plaintiff in a suit against the lessor to enforce the covenants of the lease.⁹⁵

When letting is not by sealed instrument. An assignment of the term by the original tenant to another, plus surrender of possession to the assignee of the term, combined with an acceptance by the landlord of the assignee of the term as tenant, has the effect (1) of exonerating the original tenant from any obligations to the original landlord; and (2) making the assignee of the term responsible to the landlord.⁹⁶ Even if the tenant has not legally terminated the tenancy, as by a written notice, the acceptance of a third person as tenant by the landlord, operates as a surrender in law and this acceptance consequently exonerates the original tenant from liability.⁹⁷

No covenant to pay rent. If there is no express covenant to pay rent, the lessee's liability ceases if the lessor consents to an assignment; and such assent may be inferred by his accepting rent from the assignee of the term, or by any other act accepting the assignee of the term as a tenant. However, to destroy the privity of estate of the original tenant (and thus his obligation, even though not express, to pay rent) there must exist the concurrence of the landlord in the transfer of the term by the original lessee to the assignee of the term.⁹⁸

D. Effect of Assignment on Assignee of Original Lessee.

Covenants that run with the land. The obligations of an assignee of the term or lease to the original lessor or to the grantee of the reversion, rest upon whether or not the liability asserted is one that runs with the land. Fundamentally, these obligations rest upon privity of estate.⁹⁹ Such covenants are those which relate to or touch and concern the thing demised, or which extend to the land,

⁹⁴ 1 PoE, n. 1, § 388.

⁹⁵ *Rubin v. Leosatis*, 165 Md. 36, 166 A. 428 (1933).

⁹⁶ 1 PoE, n. 1, 388.

⁹⁷ *Lamar v. McNamee*, 10 G. & J. 116 (Md., 1838).

⁹⁸ *Consumers' Ice Co. v. Bixler & Co.*, 84 Md. 437, 35 A. 1086 (1896).

⁹⁹ *Williams v. Safe Dep. & Tr. Co.*, 167 Md. 499, 175 A. 331 (1934); *Jones v. Burgess*, 176 Md. 270, 4 A. 2d 473 (1939).

so that the thing required to be done will affect the quality, value or mode of enjoying the estate.¹⁰⁰ For example, as the covenant to pay rent runs with the land, the lessee is contractually bound to the lessor to the end of the term¹⁰¹ and the assignee of the lessee is bound by virtue of his possession because of privity of estate.¹⁰² Acceptance of an assignment of a lease does not impose upon the assignee any liability for rent other than that growing out of privity of estate.¹⁰³ The increasing scope of the role of equity in enforcing covenants finds expression in *Raney v. Tompkins*,¹⁰⁴ in which a covenant by vendor against use of his remaining land as a filling station was enforced against his grantees having knowledge of the restriction.¹⁰⁵

Rent and taxes. The covenant to pay rent and taxes runs with the land, so that an assignee of the term is under an obligation to pay the rent issuing from the land under the original lease, and this obligation does not depend upon his actual possession or entry.¹⁰⁶ Similarly, the holder of the reversion has the right to enforce the payment of rent due by the assignee, accruing during assignee's possession of the land.¹⁰⁷ However, a suit at law cannot be maintained against the assignee of a lease who has assigned over, for ground rent falling due after the assignment to him and before the assignment by him; the remedy of the lessor being in equity alone.¹⁰⁸ The rationale of the principle is that while there may be a debt, it is no longer enforceable at law because the essence of the right to bring suit is privity of estate and if there is no existing tenancy, then under the statute, the right to sue at law is lost to the landlord.¹⁰⁹

¹⁰⁰ VENABLE, n. 1, 58; 1 TIFFANY, n. 1, § 149, pars. (2), (3), (4); Glenn v. Canby, 24 Md. 127 (1866).

¹⁰¹ Worthington v. Cooke, 56 Md. 51 (1881).

¹⁰² Union Trust Co. v. Rosenberg, 171 Md. 409, 189 A. 421 (1937).

¹⁰³ Reid v. Wiessner & Sons Brewing Co., 88 Md. 234, 40 A. 877 (1898).

¹⁰⁴ 197 Md. 98, 78 A. 2d 183 (1951).

¹⁰⁵ The application of the principles to determine the covenants which do and which do not run with the land is a matter of great difficulty, far beyond the scope of this article. For beginning points of research into the principles see 1 POE, n. 1, §§ 149, 323-335 A and 389-392; 1 ALEX. BRIT. STAT., n. 1, 337-355; Spencers Case, 1 Smith Lead. Cas. 137 (1872), 1 TIFFANY, n. 1, 886. Regarding damages, or relief, for breach of restrictive covenants running with the land, see Easton v. The Careybrook Co., 210 Md. 286, 123 A. 2d 342 (1956).

¹⁰⁶ Williams v. Safe Dep. & Tr. Co., 167 Md. 499, 175 A. 331 (1934); Jones v. Burgess, 176 Md. 270, 4 A. 2d 473 (1939).

¹⁰⁷ Hughes v. Young, 5 G. & J. 67 (1832); Lester v. Baltimore, 29 Md. 415 (1868); Consumers' Ice Co. v. Bixler & Co., 84 Md. 437, 35 A. 1086 (1896); Gibbs v. Didier, 125 Md. 486, 94 A. 100 (1915); 1 POE, n. 1, 149.

¹⁰⁸ Hart v. Home Owners' Loan Corp., 169 Md. 446, 182 A. 322 (1936).

¹⁰⁹ Gibbs v. Didier, *supra*, n. 107.

E. When Assignee's Liability Begins.

Assignment of record. When the conveyance of the term to the assignee of the leasehold estate is by an assignment necessary to be recorded, any liability to which he is subject comes into being at the time the assignment is recorded. There can be no hiatus in a tenancy. Therefore, in the case of a lease for more than seven years, the assignor of the term remains liable under the covenants of the lease until the assignment is recorded. The recording is the final and complete act which passes title and until this is accomplished all else is unavailing.¹¹⁰

Possession. If the estate acquired by the assignee is one not affected by the recording laws, as for example, a leasehold estate for less than seven years,¹¹¹ then liability under the lease for any covenant that runs with the land does not arise unless and until the assignee goes into possession, and this liability ceases when he goes out of possession.

Sub-tenants. When there is a covenant by the lessee that he will not assign his interest, a conveyance by him (in the absence of waiver by the landlord) creates no rights as tenant in the purported assignee who holds as a sub-tenant without liability to the landlord and without rights assertable against the landlord. Also, even though there may be no prohibition against assignment (or there being one, it has been waived) an incomplete or ineffective assignment creates the status of sub-tenant in the purported assignee, who again, so far as the landlord is concerned, has neither rights nor liabilities.

When there is a conveyance of land, signed only by the grantor but accepted by the grantee, a covenant in the conveyance that the grantee will pay mortgage debts existing against the land conveyed, has the effect of binding the grantee as though he had signed the deed.¹¹² By analogy, if an assignment of lease contains an agreement on the part of the assignee of the term to perform the covenants of the lease, then the assignee will be liable to the same extent as though he had executed the original lease, even though the assignee of the term simply accepts the assignment and takes possession of the demised premises thereunder.¹¹³

Based in part upon the foregoing discussion the following principles appear to apply in a proceeding brought in Peoples Court or before a justice: (1) If the lease be under

¹¹⁰ *Nickel v. Brown*, 75 Md. 172, 23 A. 736 (1892).

¹¹¹ 2 Md. CODE (1957), Art. 21, § 1.

¹¹² *Stokes v. Detrick*, 75 Md. 256, 23 A. 846 (1892); *Rosenthal v. Heft*, 155 Md. 410, 142 A. 598 (1928), 159 Md. 302, 150 A. 850 (1930).

¹¹³ *Williams v. Safe Dep. & Tr. Co.*, 167 Md. 499, 175 A. 331 (1934).

seal, suit may be brought against the original lessee for unpaid rent whether or not he holds possession. If the lease is not under seal, then a legally effective assignment of the term exonerates the original lessee from liability. (2) An assignee of the term of the lease may rid himself of future liability under the lease by effectively assigning the term to someone else. (3) To be legally valid, the assignment of a parole lease by the tenant or lessor must be in writing.¹¹⁴ (4) When the original lease was made by one whose estate determines, such as a life tenant, if the remainderman accepts rent from the lessee after the determination of the life estate, then the terms of the lease continue and the remainderman becomes the landlord and the original lessee retains his rights as tenant under the original lease.¹¹⁵ (5) The grantee of a reversion is not entitled to arrears of rent which became due prior to the transfer of the reversion.¹¹⁶ (6) When the original lessor did not hold title of record at the time of the lease, an assignee of the original lessor, being the holder of a chose in action, may bring suit or levy distress only upon a written assignment of the reversion. (7) When a tenant under a lease for years transfers his interest in the lease, he remains a proper party plaintiff in a suit against the lessor to enforce the covenants of the lease.¹¹⁷ (8) On the principle that the whole carries with it all of its parts, a grant of record title by the original lessor, vests in the grantee the right to enforce any of the covenants contained in a lease made by the grantor prior to the grant, including distress for rent; as the conveyance of the reversion carries with it all of the incidents thereof, including the right to collect rent from the tenant or occupant and to enforce the payment of the same.¹¹⁸ (9) Distress. Regardless of the term or nature of the lease, the assignee-occupant of the premises should be named as tenant in the landlord's affidavit; as, after a legally effective assignment by the original lessee, the only liability that may be asserted against him is in covenant, arising out of privity of contract.

VII. IMPLIED COVENANTS

Fitness. When a lease contains no express warranty of fitness of the property for the purpose for which it is rented there is no implied warranty, and in case the prop-

¹¹⁴ 29 CHAR. 2, CH. 3, § 3, 2 ALEX. BRIT. STAT., n. 1, 521.

¹¹⁵ VENABLE, n. 1, 61.

¹¹⁶ 1 ALEX. BRIT. STAT., n. 1, 355.

¹¹⁷ RUBIN v. LEOSATIS, 165 MD. 36, 166 A. 428 (1933).

¹¹⁸ OUTTOUN v. DULIN, 72 MD. 536, 20 A. 134 (1890).

erty falls down because of an inherent defect, the lessor is not bound to repair, although the lessee will still be compelled to pay the rent.¹¹⁹

Possession. There is no implied covenant in a lease that the landlord is required to give the lessee possession. When at the time of the lease premises are wrongfully held by a third person, such as a tenant holding over, the lessee, having the right of entry, has no action against the lessor, but is left to his remedy against the wrongdoer.¹²⁰ Where landlord locks the demised premises and refuses tenant admission for the purpose of removing his furniture and effects, the landlord is exposed to a suit for conversion of the tenant's furniture and goods.¹²¹

Quiet enjoyment. While there is an implied covenant of quiet enjoyment, this implication does not extend to indemnity against damage from the acts of a trespasser.¹²²

Use. When premises are leased for a specific purpose, there is an implied covenant on the part of the tenant that there will be no change of use and if such takes place the landlord may enjoin him in equity¹²³ although when the lease is general in terms as to use of the premises, the tenant may use them for any lawful purpose not injurious to the reversion.¹²⁴

Wall advertisements. In the absence of a limitation in the lease itself, a lease of a building includes the external walls; and a landlord is not entitled to place an advertisement on the outside wall of demised premises, or to lease such rights to others.¹²⁵

Waste. A tenant is liable for all waste committed on the landlord's property, except when caused by an act of God, public enemy or the lessor himself.¹²⁶

VIII. CONSTRUCTION OF LEASES

Description of premises. When a bathroom is used in common by the tenants of a building, a lease of the portion of the building containing the bathroom does not give an

¹¹⁹ Clark & Stevens v. Gerke, 104 Md. 504, 65 A. 326 (1906); See also, Decedent's Estate, *infra*, pp. 38-39.

¹²⁰ Sigmund v. Howard Bank, 29 Md. 324 (1868).

¹²¹ Kirby v. Porter, 144 Md. 261, 125 A. 41 (1923).

¹²² Baugher v. Wilkins, 16 Md. 35 (1860).

¹²³ Gale v. McCullough, 118 Md. 287, 84 A. 469 (1912); North Avenue Market v. Keys, 164 Md. 185, 164 A. 152 (1933).

¹²⁴ Gallagher v. Shipley, 24 Md. 418 (1866).

¹²⁵ Needle v. Scheinberg, 187 Md. 169, 49 A. 2d 334 (1946). For a discussion of the relative rights of landlord and tenant as to the use of exterior walls for advertising purposes, see 32 Am. Jur. 197, Landlord and Tenant; 13 L.R.A. (N.S.) 586; L.R.A. 1915B 1057; 22 A.L.R. 800.

¹²⁶ White v. Wagner, 4 H. & J. 373 (Md., 1815).

exclusive right to its use by one tenant when his lease generally describes that portion of the demised premises which includes the bathroom, but specifies rooms not including the bathroom.¹²⁷

Effect of new lease. When, before the expiration of a written lease, a new lease is entered into between the parties, the new lease does not necessarily revoke the provisions of the old lease, so that options contained in the original lease are not necessarily extinguished by the execution of a new lease, if the continued existence of the options is not inconsistent with the provisions of the new lease.¹²⁸

Modification by conduct. By their conduct after a tenant has gone into possession, the parties may construe the terms of an ambiguous lease, as well as alter or modify the contract of letting.¹²⁹ Thus, when an original lease did not oblige a landlord to consent to a tenant's application to a liquor license board for a license, the fact that landlord had given such consent in the past made such use a term of the letting, and the landlord was required to consent to a renewal application.¹³⁰

IX. OCCUPANCY AS NOTICE

The doctrine is that possession is notice of the rights of the party in possession to the extent they would have been ascertained upon inquiry. The extent of this imputed knowledge is limited to those rights which are asserted under subsisting relations between the party in possession and the owner of the land, and thus to some actual outstanding title or equitable interest, and should not be extended to those which might arise from a non-existent, different and merely anticipated status with a third party.¹³¹ Open possession inconsistent with the record title charges a prospective purchaser with notice of the occupant's rights,¹³² but possession by the tenants of a vendor is not notice to a mortgagee of rights in the vendor conflicting with the rights of the vendee-mortgagor.¹³³ However, the purchaser of property occupied by a tenant is under notice sufficient to put him on inquiry as to the terms of the

¹²⁷ *Needy v. Middlekauff*, 102 Md. 181, 62 A. 159 (1905).

¹²⁸ *Stedman v. Hill*, 195 Md. 568, 74 A. 2d 41 (1950).

¹²⁹ *Saul v. McIntyre*, 192 Md. 413, 64 A. 2d 282 (1949); *Standard, Inc. v. Alexander, Inc.*, 214 Md. 214, 133 A. 2d 460 (1957).

¹³⁰ *Saul v. McIntyre*, *ibid.*

¹³¹ *Liggett Co. v. Rose*, 152 Md. 146, 136 A. 651 (1927).

¹³² *Bldg. & Loan Assn. v. Boden*, 169 Md. 493, 182 A. 665 (1936); *Irvington Fed. Etc. Assn. v. West*, 194 Md. 211, 71 A. 2d 1 (1950).

¹³³ *Wicklein v Kidd*, 149 Md. 412, 131 A. 780 (1926).

letting, and failing to make it he is visited with the consequences of knowledge.¹³⁴ The existence of a "For Rent" sign on property is not in itself sufficient to charge a subsequent purchaser with notice of a previous purchaser's rights.¹³⁵

X. RENT

*Bankruptcy.*¹³⁶

Double rent. The general law is that when the tenant has the right to terminate the tenancy by giving notice to the landlord; and actually gives a sufficient notice of termination, but does not deliver up possession to the landlord at the time contained in the notice, then the tenant shall thenceforth pay to the landlord double the rent originally contracted for during all the time the tenant continues in possession.¹³⁷ It should be noted that there is no such right in the landlord at common law when the landlord terminates the tenancy.¹³⁸ In Baltimore City, in the discretion of the judge, damages not exceeding double rent may be assessed against a tenant holding over after notice to quit.¹³⁹ It has also been held that in addition damages may be awarded the landlord for his expenses in and about the proceedings.¹⁴⁰ The Baltimore City Charter, Section 743, provides:

"In all cases the tenancy mentioned in this subdivision of this Article, if the tenant, after notice, fail to quit at the end of the term, or at a period when he shall begin as aforesaid to be holding over, such tenant, his executors or administrators, may, at the election of the lessor, his heirs, executors, administrators or assigns, be held as a tenant and bound to pay double the rent to which the said tenancy was subject, and payable and recoverable in all respects and to every effect as if, by the original agreement or the understanding as to such tenancy, said double rent were the reserved rent of the demised premises, according to the terms and conditions of payment of such originally reserved rent."

¹³⁴ Engler v. Garrett, 100 Md. 387, 59 A. 648 (1905); Achtar v. Posner, 189 Md. 559, 56 A. 2d 797 (1948).

¹³⁵ Bldg. & Loan Assn. v. Treichel, 164 Md. 636, 166 A. 404 (1933).

¹³⁶ For a discussion of the landlord's rights respecting future rent when bankruptcy terminates an unexpired lease, see In Bonwit, Lennon & Co., 36 Fed. Supp. 97 (D.C. Md. 1940).

¹³⁷ 11 Geo. II, ch. 19, par. 18, 2 ALEX. BRIT. STAT., n. 1, 990.

¹³⁸ 2 ALEX. BRIT. STAT., n. 1, 740, 755.

¹³⁹ Charter & P.L.L. of Baltimore City (1949), § 741.

¹⁴⁰ McElroy v. Wright, 1 Balto. City Rep. 26 (1889).

The application of this section is subject to some obscurities. The question is, to what do the words "the tenancy mentioned in this subdivision of this Article" refer? If they apply to Charter sections 728-730 inclusive, then double rent may be collected by the landlord in leases from year to year (Sec. 728), as well as leases for a fixed term for any period less than a year (Sec. 729), and to tenancies at will, at sufferance or per autre vie (Sec. 730). However, if the application is limited to the tenancies described in sections 729 and 730, then a tenant holding over at the expiration of a lease from year to year is not bound for double rent. The matter has not been passed upon by the Court of Appeals, although there have been a number of cases before that tribunal involving tenants holding over at the expiration of leases from year to year.¹⁴¹

Increased only by agreement. A landlord cannot alter or amend the terms of a tenancy by giving a written notice of the change. Any increase in the amount of rent must be accomplished by agreement of the parties; it cannot be unilaterally increased by an act of the landlord.¹⁴²

Necessity for demand. Once the relationship of landlord and tenant is established, failure of the landlord to demand the rent does not justify the presumption that he has released or extinguished his right to rent under the lease,¹⁴³ as no demand is necessary for rent.¹⁴⁴

Not apportionable. Rent does not accrue from day to day as interest does, but the entire rent falls due on the rent day, is not apportionable with respect to time and, unless otherwise specially stipulated, is always payable by the party holding the estate on rent day to the owner of the reversion at the rent day,¹⁴⁵ except with respect to rent when the lessor is a tenant for life and dies in mid-term.¹⁴⁶

Overpayment recoverable. When rent is overpaid due to a mistake of fact by the tenant, he may recover the overpayment back from the landlord, and as a private estate is a complex conception, depending upon the facts and the consequences thereof, a mistake of a person regarding his

¹⁴¹ In Allegany County, there can be no action for double rent against a tenant holding over, MD. LAWS 1890, Ch. 265, Flack's Code of Public Local Laws (1930), Art. 1, § 380.

¹⁴² *De Young v. Buchanan*, 10 G. & J. 149 (1838).

¹⁴³ *Myers v. Silljacks*, 58 Md. 319 (1882).

¹⁴⁴ *Offutt v. Trail*, 4 H. & J. 20 (Md. 1815); *Campbell v. Shipley*, 41 Md. 81 (1874).

¹⁴⁵ LATROBE, JUSTICES PRACTICE (1889) 176 (736); *Martin v. Martin*, 7 Md. 368 (1855).

¹⁴⁶ 11 Geo. II, Ch. 19, § 15, 2 ALEX. BRIT. STAT., n. 1, 738.

private legal rights may be regarded as a mistake of fact; it is not less a fact because it involves a conclusion of law.¹⁴⁷

Receivers. A court appointed receiver is neither the assignee in fact or by operation of law of the premises and cannot be held liable as a tenant for use and occupation.¹⁴⁸

Services other than direct money payment. A covenant to pay as rent taxes, water-rent and fire insurance premiums, is sufficiently certain and definite as to make such payments enforceable in the same manner as a money rent, even though such provisions may create a rent which is not uniform throughout the term of the lease.¹⁴⁹

Trustees. A trustee appointed to foreclose a mortgage under the Charter of Baltimore City¹⁵⁰ is not clothed with title to the mortgage; the title remains in the mortgagee. Consequently, the holder of the reversion may proceed against the mortgagor or mortgagee for a breach of the covenant to pay rent.¹⁵¹ When there is a decree for the sale of the reversion in lands to which rent is incident, the court may order any rent in arrear to be sold with such estate, and the purchaser shall have the same right to recover such rent by distress, entry or action, as if he had been owner of the estate when the rent accrued.¹⁵² If a lease is made prior to a mortgage the purchaser at foreclosure has no greater rights than the lessor, but leases subsequent to the mortgage are not valid against the purchaser at foreclosure.¹⁵³

When due. The general rule is that rent is not due until earned and therefore rent is payable at the end of term or period unless otherwise agreed.¹⁵⁴ Such an agreement can be implied. The actions of the parties at the inception of the letting govern their rights thereafter, except as amended by agreement. Thus, if rent is paid in advance at the time of the letting it rent is payable in advance thereafter. As rent may be paid by the tenant on Sunday, if the rent falls due on a Sunday and is not paid, it is in arrear on the following Monday and the landlord may then

¹⁴⁷ *B. & A. R.R. Co. v. Carolina Coach Co.*, 206 Md. 237, 111 A. 2d 464 (1955).

¹⁴⁸ *Gaither v. Stockbridge*, 67 Md. 222, 9 A. 632, 10 A. 309 (1887).

¹⁴⁹ *Theatrical Corp. v. Trust Co.*, 157 Md. 602, 146 A. 805 (1929); *Feldmeyer v. Werntz*, 119 Md. 285, 86 A. 986 (1913).

¹⁵⁰ *Charter & P.L.L. of Balto. City* (1949) § 508.

¹⁵¹ *Williams v. Safe Dep. & Tr. Co.*, 167 Md. 499, 175 A. 331 (1934); *Hart v. Home Owners' Loan Corp.*, 169 Md. 446, 182 A. 322 (1936).

¹⁵² 2 MD. CODE (1957), Art. 16, § 160.

¹⁵³ *Smith v. Pritchett*, 168 Md. 347, 178 A. 113 (1935); 5 MD. CODE (1957), Art. 66, § 20.

¹⁵⁴ *Castleman v. Du Val*, 89 Md. 657, 43 A. 821 (1899).

distrain therefor.¹⁵⁵ However, there may be a question arise because of our Sunday laws.¹⁵⁶

An obligation for the payment of a future rent cannot be commuted into a present debt, as in advance of the rent day there is no present debt for future payment.¹⁵⁷

Who may collect. Payment of installments of rent to the husband in an estate by the entireties is sufficient during the continuance of the marriage.¹⁵⁸

Who may pay. If the party in possession is not the tenant or his assignee then the landlord is not required to accept a tender of ground rent due, but such payment can be made by the next of kin of the tenant.¹⁵⁹ Under the Baltimore City Charter¹⁶⁰ the surviving spouse or any member of the immediate family or household who has occupied the premises with the deceased tenant may, upon payment to the landlord of the current rent and rent in arrears be substituted as tenant to the same extent as the original tenant.

XI. ENFORCEMENT OF RENT

Baltimore City. Landlord's rights when rent is unpaid are: (a) Housing accommodations — residences or dwellings — Letting of less than three months — summary ejectment exclusively. Letting of three months up to one year — either summary ejectment or distress. Letting in excess of one year — distress exclusively. (b) Commercial or business accommodations. Letting of less than three months — summary ejectment exclusively. Letting of more than three months — distress exclusively.

*Counties.*¹⁶¹

XII. USE AND OCCUPATION

When a tenant occupies premises before completion of renovation, his liability for use and occupation is the fair

¹⁵⁵ *Childs v. Edwards*, 2 K.B. 753; 2 ALEX. BRIT. STAT., n. 1, 767.

¹⁵⁶ MD. CODE (1957), Art. 27, § 492. The practitioner is referred to the learned opinion of Judge Niles in *Brennan v. Blouse*, Baltimore City Court, The Daily Record, August 29, 1956, in which the Sunday laws are examined, although not in landlord-tenant litigation.

¹⁵⁷ *Boulevard Corp. v. Stores Corp.*, 168 Md. 532, 178 A. 707 (1935).

¹⁵⁸ 2 WILLISTON, CONTRACTS (3rd ed. 1959) 747-8. However, see *Columbian Carbon Co. v. Kight*, 207 Md. 203, 209, 114 A. 2d 28, 51 A.L.R. 2d 1232 (1955), in which the Court of Appeals affirms previous holdings that since the passage of the Married Women's Property Acts the wife shares equally with the husband in the income from a tenancy by the entireties. For a discussion of husband's agency for his wife as regards real estate see *Twilley v. Bromley*, 192 Md. 465, 64 A. 2d 553 (1949).

¹⁵⁹ *Chesapeake Realty Co. v. Patterson*, 138 Md. 244, 113 A. 725 (1921).

¹⁶⁰ Charter & P.L.L. (1949) § 462.

¹⁶¹ See *Rhynhart, Distress*, 13 Md. L. Rev. 185 (1953).

value of the uncompleted accommodations and not necessarily the agreed rent.¹⁶² As regards city property, rents and profits chargeable for the occupancy are confined to a fair occupation rent for the purpose for which the premises are adapted.¹⁶³

When a tenant removes from demised premises in obedience to a notice to quit, but leaves trash and rubbish on the premises this does not amount to use and occupancy, nor can the tenant be deemed to have held over.¹⁶⁴

XIII. CONSTRUCTIVE AND PARTIAL EVICTION

In order that there be constructive eviction, the landlord's acts must involve a substantial interference with tenant's enjoyment and must be of a grave and permanent character.¹⁶⁵ If the landlord makes a tortious entry on the lessee and expels him, it is a suspension of the rent for the time the tenant is kept out; if the lessee regains possession the rent will revive.¹⁶⁶ An entry by the landlord without the expulsion of the tenant does not produce a suspension of the rent.¹⁶⁷ When property is leased for a distillery and the landlord refuses to execute documents required by the United States showing his consent, then, since the tenant is entitled to the beneficial enjoyment of the premises for such a purpose, there is a constructive eviction as the lease for use as a distillery would be a nugatory and incomplete act and in an action in *assumpsit* for the rent the tenant had the right of recoupment for his damage to the extent of the rent.¹⁶⁸ Partial eviction means more than mere trespass and must be something of a permanent character done by the landlord with the intention of depriving the tenant of a portion of the premises. Hence a negligent excavation by a landlord, resulting in a broken sewer pipe affecting the tenants' use of the demised property, is not a defense to a suit by landlord for the rent.¹⁶⁹

When deprivation of the beneficial use is not by the act of the landlord, the tenant remains liable for the rent.¹⁷⁰ Notice from a zoning enforcement officer prohibiting a particular use of premises does not amount to constructive

¹⁶² *Guilford Bldg. Co. v. Goldsborough*, 140 Md. 159, 116 A. 913 (1922).

¹⁶³ *McLaughlin v. Barnum*, 31 Md. 425 (1869).

¹⁶⁴ 2 *TIFFANY*, n. 1, 1474, 64 L.R.A. 648.

¹⁶⁵ *Op. cit. ibid.*, 1260.

¹⁶⁶ *Mackubin v. Whetcroft*, 4 H. & McH. 135, 155 (Md. 1798).

¹⁶⁷ *Martin v. Martin*, 7 Md. 368 (1855).

¹⁶⁸ *Grabenhorst v. Nicodemus*, 42 Md. 236 (1875).

¹⁶⁹ *Jackson v. Birgfeld*, 189 Md. 552, 56 A. 2d 793 (1948).

¹⁷⁰ *Wagner v. White*, 4 H. & J. 564 (Md. 1815).

eviction by the landlord. To constitute constructive eviction the act complained of must have been done by the landlord or by his procurement with the intent and effect of depriving the tenant of the use and enjoyment of the leased premises.¹⁷¹

Most commercial leases prohibit the use of the premises by the tenant for any but a specified business. If the business authorized by the lease becomes illegal then it would appear that the familiar rule of contract law that supervening objective impossibility rescinds would become effective and the lease would be terminated by the passage of the statute.¹⁷² However, when premises are leased to be used exclusively for saloon and restaurant purposes and subsequently a liquor licensing authority forbids its use for saloon purposes with which decision the landlord has nothing to do, then as the lessee is not entirely deprived of the beneficial use of the premises there is no constructive eviction and the tenant remains liable for the rent.¹⁷³ If by law a use of premises theretofore legal is prohibited, there may result an impossibility of performance or a frustration of the purposes of the lease that will allow the tenant to terminate the lease when the tenants do not bind themselves to pay rent regardless of such happening. When a tenant receives notice from an administrative authority challenging his use of premises, he is under an obligation to pursue his remedies until impossibility of performance becomes a fact, as distinguished from a possibility.¹⁷⁴

Zoning and use restrictions. A letting for a use prohibited by zoning law is not necessarily impossible of performance when there is an administrative authority with power to vary the zoning law.¹⁷⁵

In some jurisdictions a constructive eviction by the landlord operates to suspend the rent.¹⁷⁶ It arises only by the act of the landlord¹⁷⁷ amounting to serious interference with the tenant's enjoyment of the premises, such as maintenance of an unsafe wall, depriving tenant of the use of a part of the demised premises¹⁷⁸ or maintenance of defective plumbing, causing foul and offensive odors.¹⁷⁹ There

¹⁷¹ McNally v. Moser, 210 Md. 127, 122 A. 2d 555 (1956).

¹⁷² BRANTLEY, CONTRACTS (2nd ed. 1912) § 195.

¹⁷³ Standard Brewing Co. v. Weil, 129 Md. 487, 99 A. 661 (1916).

¹⁷⁴ McNally v. Moser, *supra*, n. 171.

¹⁷⁵ McNally v. Moser, *ibid.*

¹⁷⁶ 2 McADAM, n. 1, § 419, 2 TIFFANY, n. 1, 1265, fn. 34.

¹⁷⁷ 2 McADAM, *ibid.*, § 404.

¹⁷⁸ *Op. cit. ibid.*, § 407.

¹⁷⁹ *Op. cit. ibid.*, § 409.

is no constructive eviction when the tenant is inconvenienced by the making of repairs.¹⁸⁰ It has been held that a tenant constructively but not actually evicted has the right of recoupment or counterclaim on a suit by the landlord for the rent.¹⁸¹ Such constructive evictions have been held to exist for breach of a covenant to heat, denial of the use of an elevator, shutting off the water supply, defective plumbing, and breach of a covenant to repair.¹⁸²

The majority, and apparently the Maryland, view seems to be that there is no constructive eviction suspending the rent unless the tenant moves,¹⁸³ and that acts of omission by the landlord, such as the failure to supply power, heat, or elevator service, or failure to perform a contract to repair, do not amount to constructive eviction.¹⁸⁴

Criminal liability. Any person who shall:

“ . . . wilfully deprive a tenant of ingress to or egress from his dwelling, or who shall without the consent of the tenant diminish essential services to the tenant, such as the providing of gas, electricity, water, heat, light, furniture, furnishings, or similar services, to which, under the expressed or implied terms of the tenancy the tenant may be entitled, shall be guilty of a misdemeanor and upon conviction thereof, shall be subject to a fine not exceeding . . . \$50 and imprisonment of not more than Ten (10) days, or both, in the discretion of the court, for each and every offense.”¹⁸⁵

XIV. TENANT'S RIGHT TO RECOUPMENT

In a suit for rent the defendant has the right of recoupment for a breach or nonperformance by the landlord, to the extent of the rent, as when a lessee pays under compulsion taxes or mortgage interest owed by the lessor, he is entitled to deduct such payments from the rent.¹⁸⁶ When a sub-tenant pays rent due from a lessee to the original lessor, he is entitled to deduct it from any rent he may owe the lessee.¹⁸⁷ A tenant deprived of the beneficial use of premises by the failure of the landlord to make repairs contracted for, is entitled to an allowance for the proportion of the rent for the time he was so deprived.¹⁸⁸

¹⁸⁰ *Op. cit. ibid.*, §§ 408, 414.

¹⁸¹ 2 UNDERHILL, LANDLORD AND TENANT (1909) § 698.

¹⁸² *Op. cit. ibid.*, §§ 678, 680-683.

¹⁸³ 2 TIFFANY, n. 1, 1264.

¹⁸⁴ *Biggs v. McCurley*, 76 Md. 409, 25 A. 466 (1892); *cf. op. cit. ibid.*, 1271.

¹⁸⁵ Baltimore City Ord. No. 769, May 27, 1942.

¹⁸⁶ *Woodcock v. Pope*, 154 Md. 135, 140 A. 78 (1928).

¹⁸⁷ VENABLE, n. 1, 59, 62.

¹⁸⁸ *Biggs v. McCurley*, 76 Md. 409, 25 A. 466 (1892).

XV. REPAIRS

There is no implied covenant requiring a landlord to make repairs¹⁸⁹ so that when there is no agreement as to payment for repairs it is not the duty of the landlord to make repairs after the tenancy begins.¹⁹⁰ Unless compelled by agreement, the landlord is not bound to make any repairs during the term of a lease, so that a covenant is never implied that a lessor will make repairs.¹⁹¹ Even though a landlord may be under no duty to make repairs, he can be held liable therefor in a suit by a third party who makes the repairs, notwithstanding that the order was given to the third party by the tenant, provided there is sufficient evidence to show tenant to have been landlord's agent for this purpose. The mere existence of a landlord-tenant relationship does not constitute the tenant as the agent of the landlord. But the landlord-tenant relationship does not preclude an agency status reached by express agreement or authorization.¹⁹²

However, when the tenant makes repairs at the request of the landlord, the tenant may be entitled to reimbursement.¹⁹³ When a landlord contracts to make repairs and improvements and does not do so, the tenant has an action for breach of the agreement, in which the measure of damages is the difference between the fair rental value of the unrepaired premises and the agreed rent.¹⁹⁴ Likewise, when the landlord has expressly agreed to make repairs, the tenant may, in a suit for rent, recoup to the extent of the landlord's rent claim any damages sustained as a direct result of the landlord's non-performance, including the cost of the repairs.¹⁹⁵

Even though there is a covenant by a landlord to make repairs, this covenant usually is independent of the covenant to pay rent and a failure to repair is no defense to an action founded upon nonpayment of rent, although there is *obiter dicta* in the *Biggs* case to the effect that when the repairs required are of a trifling nature requiring but a small outlay of money, the lessee may make the repairs and claim an allowance out of the rent.¹⁹⁶ If the covenants,

¹⁸⁹ *Gluck v. M. & C.C. of Balto.*, 81 Md. 315, 32 A. 515 (1895); *Whitcomb v. Mason*, 102 Md. 275, 62 A. 749 (1905).

¹⁹⁰ *Bonaparte v. Thayer*, 95 Md. 548, 52 A. 496 (1902).

¹⁹¹ *Woodcock v. Pope*, 154 Md. 135, 140 A. 76 (1928).

¹⁹² *Taetle v. Livezey Lumber Co.*, 217 Md. 270, 142 A. 2d 821 (1958).

¹⁹³ *Clark & Stevens v. Gerke*, 104 Md. 504, 65 A. 326 (1906).

¹⁹⁴ *Biggs v. McCurley*, 76 Md. 409, 25 A. 466 (1892).

¹⁹⁵ *Cramer v. Baugher*, 130 Md. 212, 100 A. 507 (1917).

¹⁹⁶ *WILLISTON, CONTRACTS* (1936) 887 F; *Biggs v. McCurley, supra*, n. 194, 415.

by intention of the parties, are dependent then non-performance by landlord is a defense to a claim for rent.¹⁹⁷ In a summary proceeding to recover possession because of nonpayment of rent, the tenant cannot assert a counterclaim for breach of the landlord.¹⁹⁸

While neither the landlord nor the tenant, in the absence of an agreement, is under a legal duty to make repairs, any dangerous condition of the premises which imperils either the occupant or members of the community is forbidden. Under Ordinance 384, approved March 6, 1941, the Commissioner of Health of Baltimore City is empowered to require the occupant or tenant of premises to maintain them in a sanitary condition;¹⁹⁹ likewise, the Commissioner is empowered to order that premises which are in any way detrimental to life or health be altered or improved by the owner.²⁰⁰

In *Givner v. Commissioner of Health*,²⁰¹ the Court of Appeals discussed the powers in the Commissioner of Health to require installation of inside toilets, prohibit the use of lead paint, and require a particular dwelling to be vacated, all in the interests of public health or safety; and held generally that if a particular regulation is fairly debatable, the "courts will not substitute their judgment for that of the official" charged with the duty of promulgation or enforcement.²⁰²

XVI. TERMINATION OF THE RELATIONSHIP

A. Notice to Quit

Here, as in summary ejection, complexities arise because the subject is affected by two statutes: one, the general law affecting all of the counties; and second, the public local law of Baltimore City. It is provided by the Code:

"Where the public general law and the public local law of any county, city, town or district are in conflict, the public local law shall prevail."²⁰³

¹⁹⁷ *Brady v. Brady*, 140 Md. 403, 117 A. 882 (1922).

¹⁹⁸ 2 TIFFANY, n. 1, 1766.

¹⁹⁹ § 156 A.

²⁰⁰ §§ 156 B, 156 C.

²⁰¹ 207 Md. 184, 113 A. 2d 899 (1955).

²⁰² See also *State v. Reilsfeld*, *The Daily Record*, Feb. 25, 1955, (Criminal Court of Baltimore City) where Niles, C.J., and Duer, J., held that the holder of the bare legal title is subject to the penalty provisions of Sections 112 to 119 of Article 12 of the Baltimore City Code of 1950, for failure to remedy conditions dangerous to health after having been served with appropriate notice by the Health Commissioner.

²⁰³ 1 MD. CODE (1957), Art. 1, § 13.

1. Public General Law

The Code provides:

"In all cases where any interest in real estate shall be let or leased for any definite term or at will and the lessor, his heirs, executors, administrators, or assigns shall desire to repossess the same after the expiration of the term for which it was demised and shall give notice in writing one month before the expiration of said term or determination of said will to the tenant or to the person actually in possession of the premises to remove from the same at the end of said term, and if the said tenant or person in actual possession shall refuse to comply therewith the lessor, his heirs, executors, administrators or assigns may make complaint thereof in writing to any justice of the peace of the county or city wherein such real estate is situate."²⁰⁴

"The provision of the preceding sections shall apply to all cases of tenancies from year to year, tenancies by the month and by the week; provided, that in case of tenancies from year to year in the counties, a notice in writing shall be given three months before the expiration of the current year of the tenancy, except that in case of farm tenancies, the notice shall be given six (6) months before the expiration of the current year of the tenancy; and in monthly or weekly tenancies, a notice in writing of one month or one week, as the case may be, shall be so given; and the same proceeding shall apply, so far as may be, to cases of forcible entry and detainer; and the benefit of all such proceedings shall enure to the heirs, executors, administrators, or assigns of the owner of such estate as the case may be. In case of removal of such proceedings under a writ of certiorari, a sufficient record thereof shall be the original papers with a copy of the judgment and entries by the justice under his hand and seal. This section, so far as the same relates to notices, shall not apply to Baltimore City. Nothing contained in the laws relating to landlord and tenant contracts, shall be construed as preventing the parties to any such contract, by agreement in writing, from substituting a longer or shorter notice to quit than heretofore required or to waive all such notice, provided the property to which such contract pertains is located in

²⁰⁴ 5 MD. CODE (1957), Art. 53, § 1. §§ 2 and 3 deal with tenants holding over.

any special taxing area, or incorporated town of Montgomery County."²⁰⁵

"When the tenant shall give notice by parol to the landlord or to his agent or representatives, at least one month before the expiration of the lease or tenancy in all cases except in cases of tenancies from year to year, and at least three months' notice in all cases of tenancy from year to year in the counties, except in all cases of farm tenancy the notice shall be six months, of the intention of such tenant to remove at the end of that year and to surrender possession of the tenement at that time, and the landlord, his agent or representative shall prove said notice from the tenant by legal and competent testimony, it shall not be necessary for the said landlord, his agent or representative to prove a written notice to the tenant, but the proof of such notice from the tenant as aforesaid shall entitle his landlord to recover possession of said tenement under the provisions of this article. This section shall not apply to Baltimore City."²⁰⁶

2. Baltimore City Local Law and Practice

Leases for years. At common law, no notice to quit is necessary to terminate a tenancy for years at the expiration of the term named in the lease.²⁰⁷ However, if the landlord desires to avail himself of the summary remedy provided by Article 53, Section 1,²⁰⁸ he must give three month's written notice to the tenant before the expiration of the term.²⁰⁹ If the landlord fails to give the notice, if any, provided for in the lease, or the notice required by Article 53, Section 1, or that required by the Charter, Sections 728-731,²¹⁰ then being barred from the summary proceedings which are brought in the Peoples' Court, he must proceed in an action of ejectment in a court of higher jurisdiction.²¹¹

When notice to quit or notice of termination is given with respect to a lease containing notice provisions, such notice must be in accordance with the provisions and terms

²⁰⁵ *Ibid.*, § 7.

²⁰⁶ *Ibid.*, § 8.

²⁰⁷ *Smith v. Pritchett*, 168 Md. 347, 178 A. 113 (1935); 2 TAYLOR, LANDLORD AND TENANT (1904) § 465; 2 TIFFANY, n. 1, 1419.

²⁰⁸ 5 MD. CODE (1957).

²⁰⁹ *Trotter v. Lewis*, 185 Md. 528, 45 A. 2d 329 (1946); *Darling Shops v. Balto. Center*, 191 Md. 289, 60 A. 2d 669, 6 A.L.R. 2d 677 (1948), noted 9 Md. L. Rev. 362 (1948).

²¹⁰ 5 MD. CODE (1957); Charter & P.L.L. of Balto. City (1949).

²¹¹ 2 POE, n. 1, § 482.

of the lease itself.²¹² In the absence of estoppel or waiver by the landlord, the receipt by him of an oral notice of termination does not preclude him from insisting upon the requirements of a written notice as set out in the lease.²¹³ When a lease for years contains no such provisions, then the notice must be given at least one month before the termination date of the lease.²¹⁴

Leases from year to year. When tenant is in occupancy under a lease from year to year, such as when he takes possession under a void lease and pays a yearly rent, the notice to quit necessary to be given by landlord upon which to base a suit against a tenant holding over is the same as that for a lease from year to year — *i.e.*, ninety days.²¹⁵

3. Notice by Landlord

“Where any lands or tenements in the City of Baltimore are held from year to year, the tenancy shall be terminated if the lessor give to the tenant ninety days’ notice before the end of the year.”²¹⁶

If land or tenements be held in said city by tenancy at will, at sufferance or per autre vie, thirty days’ notice by the landlord or reversioner to the tenant or occupant shall terminate such tenancy at the expiration of thirty days.²¹⁷

The Code provision is one month’s notice;²¹⁸ the Charter provision is thirty days. A reconciliation of these provisions is: (a) If the lease is one from month to month, then notice must be given at least one month prior to the terminal date on which the letting is to end. As examples: — If the day on which rent is due is the fifth of the month, then the notice must be served not later than midnight of the fourth and the tenancy will be terminated at midnight on the fourth of the following month. If the day on which rent is due is the first of the month, then the notice must be served not later than midnight of the last day of the month preceding the “notice month” at the end of which the tenancy is terminated. As regards tenancies beginning

²¹² *Supra*, n. 210, § 735.

²¹³ *Leonard v. Apartments Company*, 161 Md. 451, 157 A. 752 (1932).

²¹⁴ 5 Md. CODE (1957), Art. 53, § 1.

²¹⁵ *Darling Shops v. Balto. Center*, 191 Md. 289, 60 A. 2d 669, 6 A.L.R. 2d 677 (1948), noted, 9 Md. L. Rev. 362 (1948). See this annotation for a discussion of the incidents of a tenancy implied in fact by the tenant entering under a void or unenforceable lease and the notice necessary to be given by the landlord to terminate such a tenancy.

²¹⁶ Charter & P.L.L. of Baltimore City (1949) § 728.

²¹⁷ *Ibid.*, § 730.

²¹⁸ 5 Md. CODE (1957), Art. 53, § 1.

on the first of the month, the provisions of the City Charter cannot be applied because of two inconsistent factors: — (1) our Julian calendar contains months of 28, 29, 30 or 31 days, as the case may be; and (2) rent is not apportionable. Consequently, the provisions of Article 53, Section 1 control, and a notice of termination must be given on the day prior to the first of the month. There is room for argument that when the particular month contains thirty-one days, and a notice is served on the first of the month, under Baltimore City local law since there are thirty clear days between the date of service and date of termination, the tenancy is terminated. In view of the fact that tenancies may be terminated as regards months continuing as few as twenty-eight days, it would seem logical that the same rule should apply to all tenancies — so that as regards tenancies beginning on the first of the month, (because of the ambiguity contained in the local law in Baltimore City) notice to quit must be given prior to the first of the month of termination of the tenancy. (b) If the tenancy is one from week to week, then neither the Charter provision nor the Code provision can be literally applied. The practice in such case is to give five weeks notice, beginning with the rent day next succeeding the service of the notice to quit.

4. Notice by Tenant

A tenant may terminate a tenancy from year to year, from month to month, from week to week, at will, or at sufferance by giving to the landlord thirty days' notice previous to the end of the term.²¹⁹ Notice by a tenant must be in writing.²²⁰

Count of time. As rent is not apportionable, neither the landlord nor the tenant can give a notice by which a tenancy is terminated in mid-term, as for example, a notice to quit terminating the tenancy on the fifteen of the month, when the tenancy is one from month to month, with rent due in advance on the first of the month. Therefore, the count of time on a notice to quit begins with the next rent day following the service of the notice.

Sufficiency of notice.

“Such notice shall be sufficient in form if it contains a request by the landlord to the tenant to leave the premises, or if it states the intentions of the tenant

²¹⁹ Charter & P.L.L. of Baltimore City (1949) § 728.

²²⁰ *Kinsey v. Minnick*, 43 Md. 112 (1875).

to leave the same, and it need not state the time when the tenant is requested to leave the same, or when the tenant intends to do so."²²¹

Form of notice to quit:

"To Tenant: As I am desirous to have again and repossess the premises which you now hold of me as tenant, I hereby give you notice to vacate and remove from the same at the end of the term of your tenancy, which will expire on"

Who may give notice.

"Notice on the part of the landlord may be given either by the original lessor or by the person or persons succeeding him in the ownership of the reversion. One having merely an equitable title based on a contract for the sale to him of the reversion has no authority to give it. * * * An authorized agent of the landlord may give the notice on behalf of his principal, and he may . . . give it in his own name, if he has general control over the property, as when he is an agent to let and also to receive rents . . . while if acting under a special authority for this particular purpose he must, . . . give the notice in the name of his principal. * * *"²²²

A notice to quit need not be signed by the landlord in person. It is sufficient if it clearly shows on whose behalf it is sent, to what property it relates, and of what facts it is intended to inform the tenant. A landlord's agent having authority to rent a property is presumed to have like authority to give to the tenant a notice to quit.²²³

"'When the reversion is transferred, the proper person to give the notice is the grantee and not the original lessor. A purchaser of the reversion cannot give the requisite notice before he has received his deed. The grantee of the reversion may take advantage of a notice to quit given by his grantor prior to the conveyance of the reversion'."²²⁴

Quaere, can there be circumstances under which the notice may be given by the purchaser before a conveyance

²²¹ Charter & P.L.L., *supra*, n. 219, § 733.

²²² 2 TIFFANY, n. 1, 1438, § 198.

²²³ Benton v. Stokes, 109 Md. 117, 71 A. 532 (1908).

²²⁴ Walker v. Kirwan, 137 Md. 139, 111 A. 775 (1920).

of the property, on the theory that the contract purchaser is the equitable owner?²²⁵ When the object is to secure possession for the purchaser of tenant-occupied property, the practice is to give the notice in name of both the vendor-owner and the purchaser. The naming of an unnecessary person as landlord is treated as surplusage.

Service of notice. The notice required by the preceding sections shall be in writing and served on the tenant or left at his place of abode or business, or served on his agent or servant, or served on any occupant of the premises; and if there be no person living on the premises the same may be served by being set upon a conspicuous part of the premises.²²⁶

Irregular notices. Service of a notice addressed to a wife (being the tenant) upon her husband (her agent in renting and living on the premises) is a sufficient notice. A misdescription of the premises, or a misstatement of dates which cannot mislead will not vitiate the notice; nor need it be directed to the person. Even if directed by a wrong name, such as the husband instead of the wife, if she keeps it without objection, the error is waived.²²⁷ However, reference is made to *Wm. Penn Supply v. Watterson*,²²⁸ which holds in a mechanic's lien case that agency as between husband and wife may not be implied from marital status.

Premature terminal date in notice. At nisi prius it has been decided that a notice to quit on April 28, when the expiration of the lease was February 28, was defective and did not terminate the tenancy.²²⁹ However, as a notice is good if upon the whole it is intelligible and so certain that the tenant cannot reasonably misunderstand it, an obvious mistake in some part will not invalidate it if it is otherwise so explicit that the party receiving it cannot be misled.²³⁰ If the person who gives the notice becomes committed thereby even though there may be an error in the terminal date, the notice is not thereby vitiated.²³¹

As a notice to quit can be given only by the landlord or on his behalf and as the tenant is bound by constructive notice as to ownership as shown by the Land Records, then the tenant may rely on the title as shown by the

²²⁵ *Caltrider v. Caples*, 160 Md. 392, 153 A. 445, 87 A.L.R. 1500 (1931).

²²⁶ *Charter & P.L.L. of Balto. City* (1949) § 732.

²²⁷ *Cook v. Creswell*, 44 Md. 581 (1876).

²²⁸ 218 Md. 291, 146 A. 2d 420 (1958).

²²⁹ *Matthews v. Whiteford*, 119 Md. 122, 85 A. 1040 (1912).

²³⁰ *Cook v. Creswell*, 44 Md. 581 (1876); *Benton v. Stokes*, 109 Md. 117, 121, 71 A. 532 (1908); *Walker v. Kirwan*, 137 Md. 139, 111 A. 775 (1920).

²³¹ *Dugan v. Yourtee*, People's Court No. 13329-48, *affd.* in *Baltimore City Court* by *Sherbow, J.*

Land Records and this regardless of when the deed was recorded. By Article 21, Section 16,²³² a deed recorded after six months is constructive notice from and after the date on which it is recorded.²³³ A notice to quit or a suit against a tenant holding over can be effective or maintained only when brought by the record title owner or by a landlord to whom attornment has been made, as persons dealing with the owner of the reversion are bound only by the title shown by the Land Records.²³⁴

B. Surrender and Abandonment

A surrender of demised premises by a tenant before the expiration of his term does not relieve him from liability for rent unless the surrender is accepted by the landlord; and a reletting by the landlord at the risk of the tenant is not an acceptance of surrender by the landlord.²³⁵ However, in any such reletting the landlord faces the hazard that his act may discharge the tenant's liability if the landlord relets the premises for a period longer than the remainder of the term.²³⁶

As a notice to quit by a landlord or a notice of termination by a tenant must be in writing, if the tenant removes from premises held by him under a tenancy from month to month, without a surrender accepted by the landlord, then the tenant may be liable for rent accruing after the removal, and beyond the succeeding month's rent.²³⁷ When a tenant abandons demised property without legal notice to the landlord he remains liable for the rent.²³⁸

C. Fire

When premises become untenable because of fire or unavoidable accident, the letting being for seven years or less, the tenancy is thereby terminated and all liability for rent ceases proportionately.²³⁹ However, if the lease provides for such a contingency, then the provisions of the statute are inoperative.²⁴⁰ When premises are merely damaged by fire so that part thereof becomes untenable, the lease is not thereby terminated, as "untenantable by

²³² 2 MD. CODE (1959).

²³³ *Nickel v. Brown*, 75 Md. 172, 23 A. 736 (1892).

²³⁴ *Gable v. Preachers' Fund Society*, 59 Md. 455 (1883).

²³⁵ *Oldewurtel v. Wiesenfeld*, 97 Md. 163, 54 A. 969 (1903).

²³⁶ *Ralph v. Dalley*, 293 Pa. 90, 141 A. 640, 61 A.L.R. 763 (1927); see annotation at 61 A.L.R. 773.

²³⁷ *Kinsey v. Minnick*, 43 Md. 112 (1875).

²³⁸ *Emrich v. Union Stock Yard Co.*, 86 Md. 482, 38 A. 943 (1897).

²³⁹ MD. CODE (1959), Art. 53, § 37.

²⁴⁰ *Spear v. Baker*, 117 Md. 570, 84 A. 62 (1912).

fire" means a permanently untenable condition rendering further occupancy impossible and necessitating not merely repairs, but rebuilding.²⁴¹

Where a lease provided for its termination upon substantial destruction of the premises by fire, the elements, or any other cause not the fault of the tenant, it was held that such destruction must make the premises permanently untenable, or be so extensive as to require practically the equivalent of a new building. When the cost of repairs amounted to \$5,000 to a building valued at \$100,000, and were completed within a month, the lessee was denied the right to terminate.²⁴²

D. Judicial Sales

As a writ of possession under Article 66, Section 19,²⁴³ to a purchaser of lands sold at mortgage foreclosure is of the same nature as a writ of possession or habere facias possessionem under Article 75, Section 42,²⁴⁴ the rights respecting property sold at mortgage foreclosure or on execution against the occupant or tenant are as follows: (a) Under Code Article 66, Section 20,²⁴⁵ a purchaser at a mortgage foreclosure sale has all of the rights against the tenant that the mortgagor had. Consequently, the purchaser may file appropriate actions in People's Court to the same extent as could the landlord or owner whose estate was sold.²⁴⁶ (b) The purchaser at a judicial sale may secure out of the court which ordered the sale a writ of possession against the occupants of the property, consisting either of the mortgagor or debtor or those who hold under him. (c) An assignee of the purchaser at a judicial sale may not have a writ of possession out of the court which directed the sale, as in *Turner v. Waters*,²⁴⁷ where it was held that the right to a writ of possession applied for by a purchaser at an execution sale, did not devolve upon the purchaser's administrator.

XVII. LANDLORD'S LIEN

A landlord has no lien for rent unless he distrains,²⁴⁸ nor does he have an equitable lien upon property taken in

²⁴¹ *Barry v. Herring*, 153 Md. 457, 138 A. 266 (1927).

²⁴² *Standard, Inc. v. Alexander, Inc.*, 214 Md. 214, 133 A. 2d 460 (1957).

²⁴³ 5 MD. CODE (1957).

²⁴⁴ 7 MD. CODE (1957).

²⁴⁵ *Supra*, n. 243.

²⁴⁶ *Smith v. Pritchett*, 168 Md. 347, 349, 178 A. 113 (1935).

²⁴⁷ 14 Md. 62 (1859).

²⁴⁸ *Buckey v. Snouffer*, 10 Md. 149 (1856); *Stewart v. Clark*, 60 Md. 310 (1883); *Mears v. Perine*, 156 Md. 56, 143 A. 591, 62 A.L.R. 1100 (1928).

distress and replevied by the tenant.²⁴⁹ A landlord has a quasi-lien on the goods of his tenant subject to distress even before distress levied for arrearages of rent, but this potential right does not become a lien on the goods until they have actually been seized under a distress. This quasi-lien may be converted to a lien, even without a distress, under the Statute of 8 Anne, Ch. 14,²⁵⁰ and if the landlord's claim for rent is properly established it will take precedence over the debt on which an attachment issues and he is entitled to be first paid out of the proceeds of the property condemned.²⁵¹ If a landlord permits distrained goods to remain in a tenant's possession for an unreasonable length of time, then a bona fide purchaser without notice of the distress takes the goods free of the landlord's lien. Three months has been held to be an unreasonable time.²⁵²

In bankruptcy. A landlord has no lien upon distrainable goods passing into the hands of a trustee in bankruptcy unless he levied his distraint before the filing of the petition.²⁵³ If distress is levied by a landlord before the tenant's adjudication as a bankrupt, the landlord is entitled to priority for his accrued rent, out of the proceeds of sale of the bankrupt's assets by the bankruptcy trustee.²⁵⁴ The lien acquired by a distress within four months of a bankruptcy petition is not voidable as it is one secured other than through legal proceedings.²⁵⁵

A. Attaching or Execution Creditor

By 8 Anne, Ch. 14, an execution creditor must pay rent in arrear for a period of not less than one year before the goods and chattels executed upon, may be removed by the officer.²⁵⁶ The same principle applies to the rights of the landlord against an attaching creditor.²⁵⁷ Therefore, when goods are sold on execution by the sheriff, the landlord is entitled to be paid the rent accrued and unpaid before the levying of the execution, provided he gives reasonable

²⁴⁹ *Gelston v. Rullman*, 15 Md. 260 (1860).

²⁵⁰ 2 ALEX., n. 1, 680; *Gaither v. Stockbridge*, 67 Md. 222, 9 A. 632, 10 A. 309 (1887); *Calvert Bldg. & Const. Co. v. Winakur*, 154 Md. 519, 141 A. 355 (1928).

²⁵¹ *Thomson v. Balto. & Susq. Steam Co.*, 33 Md. 312 (1870).

²⁵² *Lamotte v. Wisner*, 51 Md. 543 (1879).

²⁵³ *Irving Trust Co. v. Burke*, 65 F. 2d 730 (4th Cir. 1933); *Loan Service v. Grossman*, 165 Md. 478, 170 A. 183 (1934).

²⁵⁴ *In re Seward*, 8 F. Supp. 865 (D.C. Md. 1934).

²⁵⁵ *In re Pottee Brick Co. of Baltimore City*, 179 Fed. 525 (D.C. Md. 1910).

²⁵⁶ 2 ALEX., n. 1, 681.

²⁵⁷ *First Nat'l Bk. v. Corp. Comm.*, 161 Md. 508, 157 A. 748, 86 A.L.R. 1407 (1932).

notice to the sheriff or constable,²⁵⁸ and whether or not the goods are removed from the premises.²⁵⁹ The notice given by landlord to the constable to sell under a fi fa must state under oath the amount of rent due.²⁶⁰

If the goods are not removed from the premises then the landlord has no action against the constable under the statute of 8 Anne, Ch. 14,²⁶¹ if they be sold on the premises, a motion by the landlord that the constable pay the rent due out of the money in his hands is appropriate.²⁶²

When goods are removed from demised premises by the sheriff under a writ of attachment, there being no rent due at the time of removal, the landlord has no claim against the proceeds of the sale, as he has no right to follow and distrain on the goods.²⁶³ As the purpose of the statute is to protect the landlord's right to distrain, there is no such priority in landlord's claims arising in Baltimore City, when the term of the lease is three months or less, for the right to distrain in such cases has been taken away and the right to summarily eject substituted.²⁶⁴ In a suit for taking goods under a void attachment, the defendant may mitigate damages by proving payment of rent in arrear to the landlord pursuant to 8 Anne, although such payment must be either compulsory or by court order.²⁶⁵

B. Bankruptcy, Insolvency and Receivership

"Whenever any person or corporation shall make an assignment for the benefit of his or its creditors, or shall be adjudicated insolvent, or shall be adjudicated bankrupt, or shall be dissolved as a corporation, or a receiver is appointed to take possession of his or its

²⁵⁸ 2 POE, n. 1, § 635.

²⁵⁹ *Washington v. Williamson*, 23 Md. 244 (1865).

²⁶⁰ MD. CODE (1959), Art. 53, § 23 — Suggested forms are as follows:

Form of landlord's notice. "To . . . Constable. Take notice that the sum of . . . dollars for . . . month's rent on the property . . . street . . . County, Maryland, due at . . . last, is now due to me from . . ., on which premises were certain goods now in your possession by virtue of a writ of execution issued at the suit of . . . against . . ."

Form of affidavit. "Be it remembered, that on . . . before me, the subscriber, a Judge of the People's Court of Baltimore City, personally appeared . . ., and made oath in due form of law, that . . . is justly and bona fide indebted to him in the sum of . . . dollars and . . . cents, for rent in arrear and already due to him for the property . . .; and that he, the said . . ., hath not received, either directly or indirectly, any part or parcel of the said rent, so claimed to be due and in arrear, or any security or satisfaction for the same [Except the credits (if any) given], to the best of his knowledge and belief."

²⁶¹ *Supra*, n. 256, 680, 686.

²⁶² *Washington v. Williams*, *supra*, n. 259.

²⁶³ *White v. Hoeninghaus*, 74 Md. 127, 21 A. 700 (1891).

²⁶⁴ *Putman's Sons v. Van Buren*, 1 Balto. City Rep. 130 (1890).

²⁶⁵ *Wanamaker v. Bowes*, 36 Md. 42 (1872).

property or estate, in the distribution of the property or estate of such person or corporation, all the money owing from such person or corporation for rent of any real or leasehold property in this State due not more than three months, but not actually distrained for, before the execution of such assignment or the filing of the bill or petition for such receiver, dissolution or adjudication, shall constitute a lien on, and shall be paid in full out of, the distrainable property of such person or corporation, to the same extent but no further than if distress for said rent had been levied by the landlord before such execution or filing.²⁶⁶

This preference may be lost.²⁶⁷

C. Decedent's Estates

A landlord having a claim for distrainable rent against a deceased tenant has, of course, no problem if there are sufficient assets in the estate. However, if the assets are insufficient, the landlord's rights are not too clearly defined.

Claim in Orphans Court. Under the Code the landlord may file claim in the Orphans Court.

"If the claim be for rent there shall be produced the lease itself, or the deposition of some credible witness or witnesses, or an acknowledgment in writing of the deceased, establishing the contract, and the time which hath elapsed during which rent was chargeable, and a statement of the sum due for such rent, with an oath of the creditor endorsed thereon, 'that no part of the sum due for said rent, or any security or satisfaction for the same hath been received, except what (if any) is credited', and if the creditor be an assignee, there shall be such oath of the original creditor with respect to the time of the assignment."²⁶⁸

If his claim is to be a preferred claim, then:

"The proof of a claim for rent in arrear, so as to render the same a preferred claim, shall be the proofs and vouchers for rent aforesaid; and proof that the claim is such that a distress therefor might be levied

²⁶⁶ 4 MD. CODE (1959), Art. 47, § 16.

²⁶⁷ A discussion of the rights of conflicting rights and claims when there is insufficient money to pay claims will be found in *Easter v. Tatelbaum*, 198 Md. 636, 84 A. 2d 914 (1951). The Statute of 8 Anne, Ch. 14, 2 ALEX., n. 1, 680, is not superseded or abrogated by this Act; *In re Seward*, 8 F. Supp. 865 (D.C. Md. 1934).

²⁶⁸ 8 MD. CODE (1959), Art. 93, § 97.

on said deceased's goods and chattels in the hands of the administrator; but the preference given for rent is not to impair the landlord's right of distress if he should think it proper to exercise it."²⁶⁹

In the settlement of a decedent's estate, after taxes due and in arrear, claims for rent in arrear against the decedent for which a distress might be levied by law are preferred debts,²⁷⁰ it is essential that a proper voucher be filed or the claim will not be given a preferred status.²⁷¹ Attention is particularly called to the provisions of Article 93, Section 6, subsection (a),²⁷² which apparently limits a landlord's preferred claim to rent for a period not more than three months. Assuming the proper form of claim is filed, then the claim for distrainable rent is payable as a preferred claim immediately after payment of taxes due and in arrear.²⁷³ It appears that a number of expense categories are paid before rent, or, for that matter, taxes. Article 93, Section 6,²⁷⁴ dealing with the order of priority of disbursements (as distinguished from debts) treats a number of items, including funeral expenses, as having priority over all debts, including a landlord's preferred claim. Another guide to the legislative intent to protect funeral expenses may be found in Article 81, Section 202(c),²⁷⁵ which gives taxes priority over all debts excepting necessary funeral expenses.

Distress. Article 93, Section 98,²⁷⁶ provides that "preference given for rent is not to impair the landlord's right of distress if he should think it proper to exercise it". A landlord may distrain during the term, after the death of the tenant and before administration granted, for rent due and in arrear.²⁷⁷ While the case of *Longwell v. Ridinger*,²⁷⁸ deals with the preferred status of the landlord's claim for distrainable rent in the Orphans Court, there is obiter dicta in this case that a landlord may distrain after letters of administration have issued on the estate of the deceased tenant.

²⁶⁹ *Ibid.*, § 98.

²⁷⁰ *Calvert Bldg. & Const. Co. v. Winakur*, 154 Md. 519, 141 A. 355 (1928).

²⁷¹ *Maynadier v. Armstrong*, 98 Md. 175, 56 A. 357 (1903).

²⁷² 8 MD. CODE (1959).

²⁷³ 8 MD. CODE (1957), Art. 93, § 130.

²⁷⁴ 8 MD. CODE (1959).

²⁷⁵ 7 MD. CODE (1959).

²⁷⁶ 8 MD. CODE (1957).

²⁷⁷ *Keller v. Weber*, 27 Md. 660 (1867).

²⁷⁸ 1 Gill 57 (Md. 1843).

XVIII. TORT LIABILITY

The liability of a landlord in tort arises from a breach of a duty assumed by contract or imposed by law. As an example of the latter, when there is more than a single tenant the landlord is responsible for the condition of hallways and other rooms used in common²⁷⁹ and is liable for damages caused by his failure to remedy defects in the appliances or parts of the building over which he retains control.²⁸⁰ When in a multiple unit dwelling inadequate precautions by the landlord cause rat infestation in the portions over which the landlord retains control, resulting in a tenant being infected with typhus, the landlord may be held liable for the damage resulting to tenant or his family.²⁸¹ A landlord may be liable to third parties if premises are unsafe when leased and property is of a public character.²⁸² As regards hazards in a recreation room maintained by a landlord in a multiple dwelling for the convenience of the tenants (thus not necessary for use in connection with portions of the building leased by them), there is no duty owed by the landlord to a person not a tenant injured in such a room while using it without the knowledge of the landlord. The injured person, being a trespasser or bare licensee, has no claim for injury against the landlord despite being of tender years.²⁸³

The question of negligence in maintaining a dangerous place depends upon whether such place of danger is in the natural order of things or whether it is unusual in the experience of reasonably prudent persons. Where a tenant slipped and fell on linoleum-treaded outside steps during a snowstorm, plaintiff was denied recovery because it was not shown such use of linoleum was unusual or out of common experience.²⁸⁴

A landlord may be liable to guests or customers of his lessee only to the same extent that he is liable to the tenant himself. However, where the premises are to be used for public or quasi-public purposes, the landlord must use ordi-

²⁷⁹ *Whitcomb v. Mason*, 102 Md. 275, 62 A. 749 (1905). *Landay v. Cohn*, 220 Md. 24, 150 A. 2d 739 (1959), points out that the use must be within the confines of the invitation.

²⁸⁰ *Kinnier v. J. R. McAdams, Inc.*, 142 Md. 305, 120 A. 838 (1923); *Sezzin v. Stark*, 187 Md. 241, 49 A. 2d 742 (1946); *Ross v. Belzer*, 199 Md. 187, 85 A. 2d 799 (1952); *RESTATEMENT, TORTS* (1934) § 360. See note, *Landlord's liability for injury due to defects in inside passageways and chambers used in common by tenants*, 25 A.L.R. 2d 444.

²⁸¹ *State, use of Pumphrey v. Manor Real Estate & Trust Co.*, U. S. Dist. Ct.; *Chesnut, J.*; *Daily Record*, Aug. 20, 1949.

²⁸² *Smith v. Walsh*, 92 Md. 518, 48 A. 92 (1901).

²⁸³ *Levine v. Miller*, 218 Md. 74, 145 A. 2d 418 (1958).

²⁸⁴ *Seaman v. State, use of Jeter*, 213 Md. 359, 131 A. 2d 871 (1957).

nary diligence to see that the property leased is in a reasonably safe condition at the time of the lease. Thus, when a patron of a tavern is injured when falling down a flight of steps, if there is evidence that the stairway was unsafe or potentially dangerous at the time of letting, the landlord may be held liable to the injured person. A person is a "patron" if his visit promises actual or potential financial benefit to the occupant in connection with the business conducted on the premises, so that the patron may be a solicitor of new accounts for a bank as well as a customer who wants to buy a bottle of beer.²⁸⁵

A landlord is not liable for injuries caused by defects existing at the time of the lease except as he may have failed to inform the lessee of defects known to him and not apparent to the lessee. It is necessary to distinguish between actual knowledge by the landlord of the dangerous condition, or whether he has information to reasonably support a conclusion of the existence of danger. Maryland has adopted the rule of liability upon the landlord if "he had reason to know" of the danger, as distinguished from "should have known" of the danger.²⁸⁶ A lessor who conceals or fails to disclose to his lessee any natural or artificial condition involving unreasonable risk of bodily harm to persons upon the land is subject to liability.²⁸⁷ However, a landlord is not an insurer of the safety of the premises or the appliances supplied by him. In Maryland the common law rule that there is no obligation upon the landlord to repair or rebuild prevails, and in the absence of agreement the tenant must guard against apparent dangers.²⁸⁸ Here continues the philosophy that the liability of a landlord to a tenant rests upon violation of duty. Unless the particular condition which causes the injury has been made known to the landlord a reasonable time before the accident, giving him time to make correction, there is no liability on the landlord unless the landlord has exclusive control of the apparatus whose failure causes injury. Thus, in the case of an unexplained explosion of a gas heater the doctrine of *res ipsa loquitur* did not apply, and the landlord was not liable when it was shown that he merely retained the right and duty to adjust and repair, since there was no notice to the landlord nor opportunity to find and correct the condition causing the

²⁸⁵ *Austin v. Beutner*, 211 Md. 61, 124 A. 2d 793 (1956).

²⁸⁶ *State v. Feldstein*, 207 Md. 20, 113 A. 2d 100 (1955).

²⁸⁷ *Miller v. Howard*, 206 Md. 148, 110 A. 2d 683 (1955).

²⁸⁸ *Ibid.*

explosion.²⁸⁹ However, it has been held that when a landlord makes available a laundry room for the use of all of his tenants, he is under a duty to keep it and the appliances therein in a reasonably safe condition.²⁹⁰ In *2310 Madison Avenue v. Allied Bedding Mfg. Co.*,²⁹¹ the landlord was held liable for damage to goods of a first floor tenant caused by water coming from second floor due to a clogged drain pipe, when there was an agreement by landlord to make repairs and when he was notified three weeks earlier of a water leak, and failed to discover the cause of the leak. The landlord may not escape responsibility for an obligation to make repairs to appliances or equipment under his control by delegating the making of such repairs to an independent contractor.

Liability may result from an obligation assumed by the landlord's contract. The promise of landlord to repair must be supported by consideration, such as inducing the tenant to remain for a longer term; if the landlord's promise is made after the tenancy begins and the tenant is not induced to do anything but what he has already contracted to do, the promise of landlord is without consideration.²⁹² When a landlord agrees to make repairs and does not do so, then the tenant or a member of his family has an action for any personal injuries sustained, provided there is some clear act of negligence beyond the breach of contract.²⁹³ However, a tenant has no action for personal injuries resulting from the mere breach of a contract to repair, since to be actionable such breach must be a negligent one.²⁹⁴ When a landlord makes repairs, whether or not bound by a covenant to repair, he must exercise reasonable care in making the repairs or improvements and is liable for any injuries sustained by the tenant, just as he would be if he were obligated by a covenant in the lease to do the work.²⁹⁵ When an obligation is on the landlord to repair, he is not responsible for injuries caused by hidden defects in the premises unknown to him,²⁹⁶ and a casual expression of

²⁸⁹ *Lee v. Housing Autho. of Baltimore*, 203 Md. 453, 101 A. 2d 881 (1954).

²⁹⁰ See note, 25 A.L.R. 2d 565, dealing with a landlord's liability for personal injury or death due to defects in appliances supplied for use of different tenants.

²⁹¹ 209 Md. 399, 121 A. 2d 203 (1956).

²⁹² *McKenzie v. Egge*, 207 Md. 1, 113 A. 2d 95 (1955).

²⁹³ *Robinson v. Hell*, 128 Md. 645, 98 A. 195 (1916); *Edelman v. Monouydas*, 186 Md. 479, 47 A. 2d 41 (1946).

²⁹⁴ *Thompson v. Clemens*, 96 Md. 196, 53 A. 919 (1903). *Pinkerton v. Slocumb*, 126 Md. 665, 95 A. 965 (1915). *Wilson v. Yates*, 137 Md. 54, 111 A. 161 (1920).

²⁹⁵ *Miller v. Howard*, 206 Md. 148, 110 A. 2d 683 (1955).

²⁹⁶ *King v. Compton*, 187 Md. 363, 50 A. 2d 131 (1946).

opinion as to the safety of premises will not support an action for negligent misrepresentation.²⁹⁷ The careful practitioner will keep in mind that the foundation of a landlord's tort liability lies in negligence, regardless of the origin of his duty, whether in contract, or imposed upon him by his status or the ownership of the property.²⁹⁸

Nuisance. The distinction between nuisance and negligence lies in definition of a private nuisance as "a violation of an absolute duty so that it does not rest on the degree of care used but rather on the degree of danger existing with the best of care".²⁹⁹ When property leased is not a nuisance at the time but becomes a nuisance only by the act of the tenant while the latter is in possession, the owner is not liable to third parties for the consequences of the nuisance.³⁰⁰

A distinguishing point seems to be whether the nature of the tenancy detracted from the owner-landlord's control. Here the duration of the tenancy seems to be of moment; a short-term tenancy, such as from month to month, creates the thought of the privilege of the landlord to regain control of the premises. Consequently, liability in the landlord may exist on the ground of reasonable opportunity in him to abate the nuisance created by the tenant.³⁰¹

When the premises are a nuisance at the time of the letting, then the owner is liable whether in or out of possession.³⁰² Both the landlord and the tenant may be liable to a third person damaged by the defective condition of leased premises, notwithstanding the provisions of the lease, when the premises contain a nuisance at the time of the demise which becomes active by ordinary use of the premises by the tenant.³⁰³ In this connection see *Sherwood Brothers, Inc. v. Eckard*,³⁰⁴ in which it was held that the landlord is liable for injuries to persons on leased premises, such as customers of the lessee, only to the same extent as he is to the tenant himself; accordingly, the landlord is

²⁹⁷ *Holt v. Kolker*, 189 Md. 636, 57 A. 2d 287 (1948).

²⁹⁸ For a review of the authorities dealing with the liability of a landlord for his failure to make repairs, see *Richardson v. Katzoff*, Ct. of Com. Pleas, O'Dunne, J.; *Daily Record*, April 1, 1939.

²⁹⁹ *State v. Feldstein*, 207 Md. 20, 34, 113 A. 2d 100 (1955).

³⁰⁰ *Marshall v. Price*, 162 Md. 687, 161 A. 172 (1932). In this connection see note in 39 A.L.R. 2d 973, dealing with the liability of the owner or landlord for injuries to a third party resulting from a nuisance created by a tenant.

³⁰¹ 39 A.L.R. 2d 973.

³⁰² *Owings v. Jones*, 9 Md. 108 (1856). *Miller v. Fisher*, 111 Md. 91, 73 A. 891 (1909). *Longley v. McGeoch*, 115 Md. 182, 80 A. 843 (1911).

³⁰³ *Beck v. Hanline*, 122 Md. 68, 89 A. 377 (1913).

³⁰⁴ 204 Md. 485, 105 A. 2d 207 (1954).

not liable for injuries caused by defects existing at the time of the lease except as he may have failed to inform the lessee of defects known to him and not apparent to the lessee. When large numbers of patrons may be expected to visit the leased premises, the landlord is obliged to see to it that the leased premises are in a reasonably safe condition at the time of letting.³⁰⁵ In *Austin v. Buettner*,³⁰⁶ the Court of Appeals reaffirmed the principle that the landlord may be liable to a patron of his lessee if the property leased is not in a reasonably safe condition at the time of the lease. Also, in this case the Court indicated that it was not committed to the principle that the landlord may be liable to a patron of his lessee if the property leased is not in a reasonably safe condition at the time of the lease. Also, in this case the Court indicated that it was not committed to the principle that the landlord's liability would be affected by the number of patrons. The reason for the presence of the injured person on the premises is of importance. The nature of liability of both landlord and tenant is affected by whether the injured person is an invitee, a business visitor or one with no existing potential business relationship. However, this liability exists only when injury occurs in a portion of the premises to which patrons are invited.³⁰⁷

Contributory negligence. A tenant is not guilty of contributory negligence unless the defect is so obviously dangerous that no person of ordinary prudence would be willing to use it.³⁰⁸ That a tenant knows of a defective condition and complains to the landlord does not necessarily mean that the tenant was aware of the full extent of the danger, and contributory negligence in such instance is a jury question.³⁰⁹ A tenant of a portion of an entire building is not contributorily negligent if he fails to anticipate a negligent lack of care on the part of other tenants of the building, and if at the time of renting the building was unsafe and unheated, the landlord is liable to a tenant injured by the bursting of a water pipe when the landlord took no precautions against such a happening.³¹⁰

³⁰⁵ RESTATEMENT, TORTS (1934) § 359.

³⁰⁶ 211 Md. 61, 124 A. 2d 793 (1956).

³⁰⁷ *Sherwood Brothers v. Eckard*, *supra*, n. 304.

³⁰⁸ *Miller v. Howard*, 206 Md. 148, 110 A. 2d 688 (1955).

³⁰⁹ *McKenzie v. Egge*, 207 Md. 1, 113 A. 2d 95 (1955).

³¹⁰ *Com. Realty Co. v. Nat. Dis. Pr. Corp.*, 196 Md. 274, 76 A. 2d 155 (1950).

XIX. REMEDIES OF LANDLORD

A. At Law.

Most written leases contain covenants on the part of the tenant relating to the use to be made of the demised premises. The rights reserved to the landlord in most instruments of lease fall into one or more of three categories.

Reentry. The usual provision gives the landlord the right to reenter upon the termination of the term or for breach of covenant by the tenant. In practice a landlord rarely avails himself of such right. It has been held at nisi prius that when a landlord attempts to exercise a right of reentry given him by the lease and is foiled by the tenant's threats, equity has jurisdiction to enjoin the tenant from resisting the entry.³¹¹ However, in *Redwood Hotel, Inc. v. Korbien*,³¹² the Court of Appeals denied equitable relief to a landlord because the principal relief sought was ejectment of the tenant. By analogy, see *Glorius v. Watkins*,³¹³ in which the Court of Appeals denied equity jurisdiction in a case brought by a vendor of real estate against the vendee under an installment sale contract, the purpose being to clear a cloud on title, the court saying that to grant the relief would in effect give a chancery suit the effect of an action of ejectment.

Tenancy determined by breach. Provisions in a lease for determination of the tenancy for breach of covenant by the tenant do not render the lease void upon such breach, but voidable at the option of the landlord.³¹⁴ For breach of a covenant in a lease the landlord has the right to relief in equity by injunction³¹⁵ or at law by an action in ejectment.³¹⁶ When a lease contains provisions that it shall be void for a breach of covenant, such as payment of rent, then upon a breach a court of law must hold the estate divested.³¹⁷ However, equity will permit a forfeiture only when it is the result of culpable neglect on the part of the tenant but not when the omission is caused by accident.³¹⁸ When rent is mailed in time to reach the lessor in the ordinary course of mail there is no forfeiture

³¹¹ *Snyder v. Baslow*, Cir. Ct. for Prince Georges Co., Gray, J.; Daily Record, Aug. 24, 1943.

³¹² 195 Md. 402, 73 A. 2d 468 (1950).

³¹³ 203 Md. 546, 102 A. 2d 274 (1954).

³¹⁴ *Western Bk. of Balt. v. Kyle*, 6 Gill 343 (Md. 1848); *Baltimore v. Steam Packet Co.*, 164 Md. 284, 164 A. 878 (1933).

³¹⁵ *Live Stock Co. v. Rendering Co.*, 179 Md. 117, 17 A. 2d 130 (1941).

³¹⁶ *Schlerf v. Bond*, 139 Md. 10, 114 A. 739 (1921); 2 PoE, n. 1, § 482.

³¹⁷ *Cooke v. Brice*, 20 Md. 397 (1863).

³¹⁸ *Wylie v. Kirby*, 115 Md. 282, 80 A. 962 (1911).

for tardy payment if the letter is miscarried or delayed in the post office.³¹⁹ When forfeiture is merely security for the payment of money, equity will treat it as in the nature of a penalty and in a proper case will grant relief.³²⁰ However, when a lease has been declared forfeited by a landlord for default in rent payments and tenant is insolvent, equity will not strike down the forfeiture, even though all arrears of rent are tendered by officers of the corporate lessee. This is on the theory that the promise of the tenant to pay later rent is manifestly worthless, as solvency is necessary to the performance of future rent obligations. Only when a substantial compliance with the covenant to pay future rent to the landlord is assured will equity deny forfeiture.³²¹

Conversion of tenancy. Some leases for years provide that upon breach by the tenant of a covenant, the letting is converted into one from month to month. If such a provision is effective, then, upon giving the notice of termination, the landlord would be entitled to the summary remedy against the lessee as a tenant holding over, and, in such case, the landlord would not be limited to ejectment against the lessee in a court of record. While obiter dicta, a nisi prius court did not criticize a provision in a lease that a violation of a covenant by the tenant would result in a conversion of the tenancy from one for years to one from month to month.³²² The question has not been decided by the Court of Appeals. However, some analogy may be made to the cases involving the contract provisions in Installment Land Contracts prior to Chapter 596, of the Acts of 1951,³²³ under which the Court of Appeals has given effect to provisions converting a vendor-purchaser relationship into a landlord-tenant relationship upon breach by the purchaser.

B. Equity.

If a landowner (by agreement, or by his failure to act to terminate a tenancy) permits a negligent or insolvent tenant to remain on his land, he cannot invoke the aid of equity except to prevent waste or irreparable injury.³²⁴ An

³¹⁹ Phillips Roofing Co. v. Md. Broadcasting Co., 184 Md. 187, 40 A. 2d 298 (1944).

³²⁰ Carpenter v. Wilson, 100 Md. 13, 59 A. 186 (1904).

³²¹ Evergreen Corp. v. Pacheo, 218 Md. 230, 145 A. 2d 774 (1958).

³²² Caroletta Apartment Corp. v. Burns; Sup. Ct. of Baltimore City, Mason, J.; Daily Record, March 3, 1950.

³²³ Now 2 Md. Code (1957), Art. 21, §§ 110-116.

³²⁴ Blain v. Everitt, 36 Md. 73 (1872).

injunction will not lie to oust a tenant on the ground that he is a bad tenant and worries the landlord; that his rent is in arrears; that he is disagreeable; that he will not give up possession of the premises upon demand of the landlord; or that he is insolvent. Even though it is contendable that an equity action will avoid a multiplicity of suits, this apparently is not an independent ground of equitable jurisdiction.³²⁵

Fraud in inception. A landlord induced to enter into a lease by fraudulent concealment or misrepresentation by the tenant has a remedy in equity, the relationship having a fiduciary character.³²⁶

Waste. By injunction, a landlord may prevent his lessee, or those claiming or holding under the lessee, from converting the demised premises to uses inconsistent with the terms of the contract of lease, and from making material alterations for such purposes, as well as committing other kinds of waste. If the acts constituting waste are those of a sub-lessee, the original lessee is not a necessary party.³²⁷ However, the prevention of waste is not an adequate basis for a suit in equity, in the absence of circumstances specifically alleged and proved, to show irreparable damage.³²⁸

XX. DEFENSES AVAILABLE TO TENANT

While a tenant will not be permitted to dispute his landlord's title, particularly when he has entered by virtue of his tenancy,³²⁹ he may show that his landlord's title has expired, been transferred or defeated,³³⁰ or that landlord himself admits a condition of the title which precludes the relationship of landlord and tenant.³³¹ Deficiencies in premises ascertainable by the tenant before he enters into a lease will not serve as defenses to a suit for rent.³³² A lessor cannot claim rent falling due after eviction of the tenant by title paramount, as the enjoyment of the land is the consideration for the rent.³³³

³²⁵ *Redwood Hotel v. Korbien*, 195 Md. 402, 73 A. 468 (1950).

³²⁶ *Gale v. McCullough*, 118 Md. 287, 84 A. 469 (1912).

³²⁷ *Maddox v. White*, 4 Md. 72 (1853).

³²⁸ *Glorius v. Watkins*, 203 Md. 546, 550-551, 102 A. 2d 274 (1954).

³²⁹ *Funk v. Kincaid*, 5 Md. 404 (1854); *Cook v. Creswell*, 44 Md. 581 (1876).

³³⁰ *Giles v. Ebsworth*, 10 Md. 333 (1856); *Maulsby v. Scarborough*, 179 Md. 67, 16 A. 2d 897 (1940).

³³¹ *Tizer v. Tizer*, 162 Md. 489, 160 A. 163, 161 A. 510 (1932).

³³² *Lewis v. Clark*, 86 Md. 327, 37 A. 1035 (1897).

³³³ *Martin v. Martin*, 7 Md. 368 (1855).

A. Waiver and Estoppel.

To waive forfeiture, an act of the landlord must amount to an affirmation of the tenancy or a recognition of its continuance, such as distraining for rent accruing after the right of forfeiture arises.³³⁴ The receipt of rent after a breach of covenant does not of itself operate as a waiver, unless the rent accrued subsequently to the act which works the forfeiture.³³⁵ Acceptance of rent accruing after a breach is a waiver of the forfeiture.³³⁶

As forfeitures for breach of covenant are not favored, any slight acquiescence in a breach will be construed as a waiver.³³⁷ When a landlord fails to exact prompt payment of rent he may be estopped from claiming a forfeiture for tardy payment of a later installment.³³⁸

The weight of authority seems to be that a mere demand by the landlord for rent after the term is not a binding election.³³⁹ Normally, when rent is paid by the occupier to the owner of land, the inference is that they intended to create a tenancy; but when a landlord has judgment of restitution, acceptance of rent by him during the period an appeal is pending does not estop him from enforcing his judgment when the judgment is affirmed on the appeal.³⁴⁰

Renewal. Even though the lease provides for written notice by tenant for its renewal, this may be waived by the landlord; and if he waives in fact, this will be binding upon the landlord's successor in title who has no actual knowledge thereof.³⁴¹

Assignment. When a lease contains a covenant against assignment, and the landlord permits an assignee to remain in possession for a number of years, permitting him to make improvements, the landlord has waived his rights and is estopped from asserting them.³⁴² Similarly, if lessor in a lease containing such a covenant by the lessee against assignment, consents to an assignment without restriction as to future assignments, the condition is waived by the landlord, and lessee may thereafter assign the term without lessor's consent.³⁴³

³³⁴ *In re Hook*, 25 F. 2d 498 (D.C. Md. 1928).

³³⁵ *Morrison v. Smith*, 90 Md. 76, 44 A. 1031 (1899).

³³⁶ 109 A.L.R. 1269.

³³⁷ *Live Stock Co. v. Rendering Co.*, 179 Md. 117, 17 A. 2d 130 (1941).

³³⁸ *Morrison v. Smith*, *supra*, n. 335. *Lombardo v. Clifford Bros. Co.*, 139 Md. 32, 114 A. 849 (1921).

³³⁹ 55 A.L.R. 286, 289.

³⁴⁰ *Hopkins v. Holland*, 84 Md. 84, 35 A. 11 (1896); 109 A.L.R. 1281.

³⁴¹ *Achtar v. Posner*, 189 Md. 559, 56 A. 2d 797 (1948).

³⁴² *Canary v. Wagner*, 191 Md. 413, 62 A. 2d 257 (1948).

³⁴³ *Reid v. Wiessner Brewing Co.*, 88 Md. 234, 40 A. 877 (1898).