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The Tenancy at Will in Iowa

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THE TENANCY AT WILL IN IOWA

In Iowa a tenancy at will is presumed by statute to arise when a person is in possession of real estate with the assent of the owner. The statute also requires that a thirty-day notice in writing be given to terminate the tenancy; if the interval between rent payments is less than thirty days, the notice need not be longer than that interval.¹

Most tenancies at will arise either from an informal letting for an indefinite time at an agreed rental or by the tenant's holding-over after the expiration of a term for years. There are numerous examples in the Iowa reports of hold-over tenants. In an early case a tenant for a term of years held over with the assent of the landlord and continued to pay rent according to the terms of the lease. The common law might have established a tenancy from year to year, but the Iowa statute was held to create a tenancy at will.² Although the landlord is under no obligation to accept the hold-over tenant as a tenant at will,³ if he allows him to remain in "peaceable possession" for thirty days,⁴ a tenancy at will is probably created, and the statutory notice is thereafter required in order to terminate the tenancy. A similar situation exists where a lessee for a term of years remains in possession after the death of his lessor who is a life tenant.⁵ In another case land encumbered with a judgment lien was leased and later sold under execution during the term of the lease. The lessee was held to become a tenant at will of the purchaser and liable to him for the rent from the time the purchaser took title.⁶ If negotiations are pending be-

¹ Iowa Code § 562.4 (1950).

² O'Brien v. Troxel, 76 Iowa 760, 40 N.W. 704 (1888); see Note, 152 A.L.R. 1402 (1944).

³ See Andrews v. Marshall Creamery Co., 118 Iowa 595, 600, 92 N.W. 706, 708 (1902). As soon as the tenant holds over without the landlord's consent he becomes a tenant at sufferance. See Wernet v. Jurgensen, 241 Iowa 833, 838, 43 N.W.2d 194, 197 (1950). As a tenant at sufferance his possession is wrongful and the landlord may oust him in a forcible entry and detainer action after a three-day notice. Iowa Code § 648.3 (1950).

⁴ Iowa Code § 648.18 (1950) provides that thirty days "peaceable possession" with the knowledge of the landlord is a bar to the forcible entry and detainer action. Whether such possession automatically creates a tenancy at will under Iowa Code § 562.4 (1950) is not certain. That is, would the peaceable possession be a defense if the landlord brought an action of ejectment? The cases are not clear on this point although there have been rulings on what constitutes peaceable possession under sec. 648.18. Town of Lakota v. Gray, 240 Iowa 193, 35 N.W.2d 841 (1949); Rudolph v. Davis, 237 Iowa 1383, 25 N.W.2d 332 (1946). In the former case the court appears to regard the peaceable possession as creating a tenancy at will. *Id.* at 196, 35 N.W.2d at 843.

⁵ Egbert v. Duck, 239 Iowa 646, 32 N.W.2d 404 (1948); Hall v. Henninger, 145 Iowa 230, 121 N.W. 6 (1909).

⁶ Kane v. Mink, 64 Iowa 84, 19 N.W. 852 (1884); cf. Munson v. Plummer, 59 Iowa 120, 12 N.W. 806 (1882).

tween the parties for a new lease when the term expires, the continued possession of the tenant is treated as that of a tenant at will.⁷

Statutory Construction. Judicial construction has given the statutory phrase "with the assent of the owner" a reasonably well-defined meaning. In *Martin v. Knapp*,⁸ it was held that the trial judge erred in an instruction which carried the inference that the failure of the owner to object to the possession of the occupant would alone create a tenancy at will, and the court added that a tenancy at will could only be created with the assent, express or implied, of both parties.⁹ Some litigation has arisen over the question of implied assent. Allowing the occupant to remain in "peaceable possession" for thirty days while making no objection probably creates a tenancy at will.¹⁰ Assent of the owner was found where a purchaser at a special execution sale did not demand a sheriff's deed¹¹ but accepted a certificate of purchase subject to redemption and permitted the tenants to continue in possession of the property.¹² In another case where the remaindermen failed to assert their rights for nearly three months after the termination of the life estate, it was held that such failure to act implied assent by the owners and the occupant was entitled to a thirty-day notice before termination.¹³ A recent decision declared that a housekeeper of a deceased joint tenant was a tenant at will rather than a tenant at sufferance in view of the fact that the surviving joint tenant had told her that she might remain in possession pending a settlement of the estate.¹⁴

Another controversial element of the statute is the presumption of the tenancy at will. In *O'Brien v. Troxel*,¹⁵ in which a tenant for a term of years held over, the court stated that the common law presumption of a tenancy from year to year must yield to the statutory presumption of a tenancy at will. It is clear that the statutory presumption is not conclusive but may be rebutted by proof that the parties by their agreement or acts determined upon or recognized a different tenancy,¹⁶ or by showing that the person

⁷ *Potter v. Henry Field Seed Co.*, 239 Iowa 920, 32 N.W.2d 385 (1948) (The parties entered into one extension of a lease which contained a provision for automatic extension upon the failure to vacate at the expiration of the term. At the end of the extended period negotiations were pending between lessor and lessee for a further lease. The court held the subsequent possession of the lessee to be a tenancy at will.); cf. *Culavin v. Northwestern Bell Tel. Co.*, 224 Iowa 813, 276 N.W. 621 (1937) (automatic renewal of lease).

⁸ 57 Iowa 336, 10 N.W. 721 (1881); accord, *Hodgson v. Keppel*, 214 Iowa 408, 412, 238 N.W. 439, 441 (1932).

⁹ See *Martin v. Knapp*, 57 Iowa 336, 343, 10 N.W. 721, 724 (1881).

¹⁰ See note 4 *supra*.

¹¹ Iowa CODE § 3101 (1873); Iowa CODE § 626.95 (1950).

¹² *Munson v. Plummer*, 59 Iowa 120, 12 N.W. 806 (1882).

¹³ *Hall v. Henninger*, 145 Iowa 230, 121 N.W. 6 (1909); see *Norman v. Dougan*, 201 Iowa 923, 926, 208 N.W. 366, 368 (1926).

¹⁴ *Wernet v. Jurgenson*, 241 Iowa 833, 43 N.W.2d 194 (1950).

¹⁵ 76 Iowa 760, 761, 40 N.W. 704, 705 (1888).

¹⁶ *Sanders v. Sutlive Bros.*, 163 Iowa 172, 143 N.W. 492 (1913); see *Halligan v. Frey*, 161 Iowa 185, 188, 141 N.W. 944, 945 (1913).

in possession holds adversely and does not recognize the owner as landlord.¹⁷

Two recent cases have raised the problem of pleading so as to obtain the advantages offered by the presumption. In *Town of Lakota v. Gray*,¹⁸ a forcible entry and detainer action was brought. The defendant failed to file an answer, choosing instead to rely upon a motion to dismiss. The court explained that it could not indulge the presumption of a tenancy at will in the absence of a showing of assent. The plaintiff's petition had no allegation from which to infer such assent, and if facts existed to show it, these should have been pleaded by the tenant as an affirmative defense.

In *Wernet v. Jurgenson*¹⁹ the plaintiff asked for damages resulting from her dispossession and the removal of her effects from a dwelling house without legal process. The house was originally held by the defendant and her husband as joint tenants with right of survivorship. The defendant's husband employed the plaintiff as housekeeper and told her that she could continue to occupy the premises after his death. Plaintiff remained in possession and the defendant also granted her permission to stay on until a settlement of the estate was reached. The plaintiff pleaded that she was in possession with the permission of the owner and that she had in fact been permitted to remain on the premises for eight months. The majority of the court held that she was a tenant at will. Justice Mulrone, dissenting, argued that plaintiff should have pleaded that she was a tenant of the owner. He stated that the pleading did not raise the presumption; that the statute involves a rule of proof, not of pleading; and that while the statute gives the assistance of a presumption when proving a tenancy, it does not relieve one suing on the basis of a tenancy from alleging that fact.²⁰ The dissent seems untenable since the plaintiff should not be required to plead what he need not prove.

Rights of Tenants at Will. The statutory tenant at will apparently has retained most of the rights enjoyed at common law by persons who held tenancies of uncertain term. In addition to these common law rights, he is entitled to the thirty-day notice to terminate his tenancy. The tenant may maintain an action of trespass against third persons, and he has the right of possession against the landlord himself until the proper termination of the tenancy.²¹ The early case of *Reilly v. Ringland*²² declared the right of the tenant at will to emblements and the collateral right to enter upon the premises to harvest crops growing at the termination of his tenancy. One who becomes a tenant at will is said to take the

¹⁷ *Martin v. Knapp*, 57 Iowa 336, 10 N.W. 721 (1881).

¹⁸ 240 Iowa 193, 35 N.W.2d 841 (1949).

¹⁹ 241 Iowa 833, 43 N.W.2d 193 (1950).

²⁰ See *id.* at 840, 43 N.W.2d at 199.

²¹ 1 TIFFANY, REAL PROPERTY 249 (3d ed. 1939).

²² 39 Iowa 106 (1874); cf. *Martin v. Knapp*, 57 Iowa 336, 10 N.W. 721 (1881).

land in its existing condition and is entitled to the crops then growing and subsequently planted.²³ The Iowa court has also ruled that in the absence of restriction in his lease, he will be presumed to have the right to sublet the premises.²⁴

Termination. At common law a demand for possession was sufficient to terminate a tenancy at will. The tenant also could terminate at any time without advance notice.²⁵ After the enactment of the Iowa statute, the court held that the estate was not terminated by a conveyance by the landlord and that the thirty-day statutory notice was the exclusive method of termination.²⁶ Although most states do not follow this view,²⁷ Iowa has given the lessee a substantial estate, eliminating much of the hardship which resulted from the indefinite duration of the common law tenancy. The Iowa court does not seem to have decided whether the notice required must coincide with the intervals between rent payments. If it does not, troublesome questions of apportionment of rent would be raised.²⁸

The notice must be for a full thirty-day period. In one case it was held that a notice dated January 12 and purporting to terminate a tenancy at will "within thirty days from the date of this notice" was void under the statute because actual service was not made until January 13, thus giving the tenant a notice of only twenty-nine days.²⁹

The written notice carries no required form nor any special method of service. Its purpose is simply to notify the tenant of the fact that the landlord does not intend to extend the tenancy. If it is understood that the tenancy is to terminate by a given date, the notice is valid,³⁰ even though it is denominated a notice to quit.³¹ A valid statutory notice may be nullified if after the expiration of the notice the tenant is allowed to remain in possession for thirty days³² or if the landlord otherwise intentionally waives the notice previously given.³³

²³ See *Martin v. Knapp*, 57 Iowa 336, 341, 10 N.W. 721, 722 (1881).

²⁴ *Goldsmith v. Wilson*, 68 Iowa 685, 28 N.W. 16 (1886).

²⁵ 1 TIFFANY, REAL PROPERTY 258-259 (3d ed. 1939).

²⁶ *German State Bank v. Herron*, 111 Iowa 25, 82 N.W. 430 (1900). The statute as originally passed in 1851 is substantially the same as the present enactment except that it provides for a three-months notice. IOWA CODE §§ 1208, 1209 (1851).

²⁷ See Note, 120 A.L.R. 1006-1019 (1939).

²⁸ See Note, 26 IOWA L. REV. 76, 86 (1940).

²⁹ *Murphy v. Hilton*, 224 Iowa 199, 275 N.W. 497 (1937). If the landlord elects to terminate the tenancy by the thirty-day notice, is it possible to serve the three-day forcible entry and detainer notice during the thirty-day period?

³⁰ *Rudolph v. Davis*, 237 Iowa 1383, 25 N.W.2d 332 (1946).

³¹ *Potter v. Henry Field Seed Co.*, 239 Iowa 920, 32 N.W.2d 385 (1948); *Bates v. Bates*, 237 Iowa 1408, 24 N.W.2d 460 (1946).

³² *Fritch & Himes v. Reynolds*, 189 Iowa 16, 176 N.W. 297 (1920).

³³ See *Potter v. Henry Field Seed Co.*, 239 Iowa 920, 927, 32 N.W.2d 385, 389 (1948); see Note, 120 A.L.R. 557 (1939) (on waiver by landlord of notice given by him).

There may be a surrender of the estate at will where both parties conduct themselves in a manner inconsistent with the continuance of the tenancy. In *Brayton v. Boomer*³⁴ a tenant at will disposed of his business and with the knowledge of the landlord delivered possession of the premises to the purchaser with an agreement that the purchaser would thereafter pay the rent. It was held that the landlord's tacit consent to the agreement released the tenant from further liability for rent. The parties may also waive the notice by agreement. Setting a date on which the relationship is to cease apparently converts the tenancy at will into one for a fixed term which is determinable without notice.³⁵ A recent case held that a refusal by the tenant of a single offer made by the landlord to rent the premises for the succeeding year was sufficient to estop the tenant from claiming the right to the statutory notice.³⁶ The court commented that although the statute was probably enacted for the benefit of the tenant, it was not intended to give him an unfair advantage over the landlord.³⁷

³⁴ 131 Iowa 28, 107 N.W. 1099 (1906).

³⁵ IOWA CODE § 562.6 (1950).

³⁶ *Wetzstein v. Dehrkoop*, 241 Iowa 1237, 44 N.W.2d 695 (1950).

³⁷ *Id.* at 1243, 44 N.W.2d at 698.