

## DISCUSSION FOR QUESTION 8

### 1. Lisa's legal rights and remedies regarding Tim's occupancy.

Once the lease term expired, Tim no longer had any right of possession in the house and a tenancy-at-sufferance" arises. See FJK Assocs. v. Karkoski, 725 A.2d 991, 993 (Conn. App. 1999); 49 Am.Jur.2d Landlord and Tenant § 284 (2006). Applicants should also receive credit if they describe Tim as a "holdover tenant." See Restatement (Second) of Property, Landlord and Tenant, § 14.1 (1976) (describing tenant-at-sufferance as "tenant improperly holding over.") During this period, Tim is still responsible for paying Lisa a reasonable rental value of the property which typically will be the rental rate under the expired lease. See Mack v. Fennell, 171 A.2d 844, 846 (Pa. 1961) (tenant is liable for use and occupancy during such interval); Restatement (Second) of Property, Landlord and Tenant, § 14.5 (1976).

When faced with a tenancy-at-sufferance, Lisa has two options. First, she can treat Tim as a trespasser and utilize available common law or statutory remedies, including a wrongful detainer action, to remove or evict Tim from the property. See id.; Bryan v. Big Two Mile Gas Co., 577 S.E.2d 258, 267 (W. Va. 2001); 49 Am.Jur.2d Landlord and Tenant §§ 273-274 (2006). Under this option, Lisa can also recover damages proximately resulting from Tim's wrongful withholding of possession. See 49 Am.Jur.2d Landlord and Tenant §§ 277-278 (2006); Restatement (Second) of Property, Landlord and Tenant, § 14.6 (1976). In this case, it appears that Lisa's damages would include \$1500 for the lost opportunity to rent the house to her friend for the TV commercial.

Alternatively, Lisa has the unilateral option of binding Tim to a new periodic tenancy. See Restatement (Second) of Property, Landlord and Tenant, § 14.4 (1976). The term of the periodic tenancy can be agreed upon by the parties, but absent such an agreement, courts will look to the terms of the original lease. If, as here, the lease term exceeds one year, some authorities indicate that a year-to-year tenancy is created. See Sinclair Refining Co. v. Shakespeare, 175 P.2d 389, 391 (Colo. 1946); 49 Am.Jur.2d Landlord and Tenant § 286 (2006). However, other authority provides that if rent under the expired lease was computed on a monthly basis, a month-to-month periodic tenancy is created. See Restatement (Second) of Property, Landlord and Tenant, § 14.4, comment (f) (1976); Roth v. Dillavou, 835 N.E.2d 425, 430 (Ill. App. 2005) (acceptance of monthly rental payments by the landlord will generally create a month-to-month tenancy).

### 2. If Tim vacates the house, can he legally take the air conditioning unit and fireplace?

Whether Tim can legally remove these items from the house when he leaves depends on whether the items have retained their status as personal property or, instead, have become "fixtures" to the real property. A fixture is former personal property that is so affixed or connected with real property that it is considered to be part of the real property. See 35A Am.Jur.2d Fixtures § 1 (2001).

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In landlord/tenant scenarios, the most important factor in determining whether an item of personal property has become a fixture is whether the owner of the personal property (the tenant) intended for the item to become part of the real property. See 8 Powell on Real Property § 57.04[4] (2001); 35A Am.Jur.2d Fixtures § 13 (2001); Hartberg v. Am. Founders' Sec. Co., 249 N.W. 48, 49 (Wis. 1933). An express agreement between the landlord and tenant regarding the status of the item will control. See Alexander v. Cooper, 843 S.W.2d 644, 646 (Tex. App. 1992). However, absent such an agreement (and in the present case), a court will look to various factors including (1) whether the nature of the item makes it essential to the use of the real property, (2) the manner or mode of attachment of the item, (3) whether the item is specially adapted to the real property, and (4) whether removal of the item will cause damage to the real property. See 8 Powell on Real Property § 57.05[5][b] (2001). In landlord/tenant cases, there is often a presumption that a tenant would not intend to make such a donation to the property owner. See 8 Powell on Real Property § 57.05[2][b] (2001); see also C.J.S. Fixtures § 54 (2004).

Applying the above listed factors, the window air conditioning unit that Tim installed would likely not be deemed a fixture and, therefore, may be removed by Tim. See Bay State York Co. v. Marvix, Inc., 119 N.E.2d 727, 730 (Mass. 1954) (detachable air conditioning units held to be removable by tenant). In contrast, the in-wall fireplace would appear to be more substantially attached to, and specially adapted for, Lisa's house and removal would probably result in damage to the house walls. Thus, it is likely to be deemed a fixture and not removable. See Wells v. Clowers Const. Co., 476 So.2d 105, 106 (Ala. 1985) (once affixed to a house, a fireplace becomes as much a part of that house as the four walls); see also 35A Am.Jur.2d Fixtures § 80 (2001).