Breach of Lease Must Be Material To Warrant Eviction

WRITTEN BY BOB HUNT POSTED ON MONDAY, 02 DECEMBER 2013 19:38

A typical residential lease agreement will contain a variety of provisions specifying what the tenant must do and what the tenant must not do. Many of these have nothing to do with the timely payment of rent. A lease may have a provision that prohibits the tenant from smoking on the premises. Another term of the lease might require the tenant to maintain the landscaping. Etc. etc.

If a tenant does not comply with some provision of the lease, then the landlord may give him a notice (usually, three-day) to perform the covenant or to quit the premises. If the tenant fails to do so, then the landlord may evict him. Right? No, not necessarily.

Recently the Superior Court of Los Angeles County heard a case where the landlord, NIVO 1 LLC, sought to evict tenant Amiteria Antunez. The tenant had been served with a 3-day notice to perform which said the tenant was "in violation of paragraph 17 of your lease agreement…" Paragraph 17 of the lease agreement stated: "INSURANCE: TENANT must maintain a personal property insurance policy to cover any losses sustained to Tenant's personal property or vehicle.

It is acknowledged that LANDLORD does not maintain this insurance to cover personal property damage or loss caused by fire, theft, rain, water overflow/leakage, acts of GOD, and/or any other causes. TENANT'S failure to maintain said policy shall be a complete waiver of TENANT'S right to seek damages against LANDLORD."

At trial the defendant testified that she had not had renter's insurance since she moved into the premises in 1998. Nor did she obtain such insurance after receiving the 3-day notice. The trial court found that the defendant's failure to obtain such insurance was not a material breach and, as such, could not support a forfeiture of the lease. The landlord appealed.

In its review (*NIVO LLC v. ANTUNEZ,* Appellate Division, Superior Court, Los Angeles County, No. BV 030104, July 5, 2013), the appellate court noted earlier case law which held that, "Whether a breach is so material as to constitute cause for the injured party to terminate a contract is ordinarily a question for the trier of fact," and also that, "Whether a particular breach will give plaintiff landlord the right to declare a forfeiture is based on whether the breach is material."

In the case at hand, the trial court had made the determination that the failure to maintain insurance was a "trivial breach" because the "provision benefits the tenant, not the landlord." The appellate court upheld the trial court's finding in favor of the tenant.

Some landlords might be upset by this ruling and the case law that undergirds it. How is a landlord - or a tenant - supposed to know if a breach of a particular covenant will be considered material? Some have suggested it *might* be helpful to identify some of the more important lease obligations as "material" and to include an explanation as to why they are. Simply saying that all the provisions are material probably wouldn't go very far.

Did anyone say that this would be easy?