Torts notice and disposal of goods

Torts (Interference with Goods) Act 1977

The law does not expect a bailee (landlord) to hold onto someone else’s goods at their own expense indefinitely. Therefore, a procedure is provided under the Torts (Interference with Goods) Act to allow a landlord to require the bailor (former tenant) to collect them and to sell goods. The wording of the Act is not very clear nor is there any clear legal precedent on the exact process to follow. The problem is that the Act is intended primarily for situations where there is an intentional bailment agreement, for example self-storage. It provides for two types of notice: 1. Notice requiring collection of goods 2. Notice of intention to sell goods So which notice should a landlord serve? The short answer is both (they can be combined together). That way, if you want to sell the items, you have served the notice requiring the tenant to collect the goods and you have also served the notice advising of sale. There isn’t a notice under the Act advising that you will be disposing of the goods which is why best practice is to serve both so that the tenant is under no illusion that the landlord intends parting with possession of them and the covering letter can explain further.

Notice requirements The notice requiring the tenant to collect the goods must: · Specify the name and address of the bailee (landlord) · Give details of the goods · Give the address where they are held · State that the goods are ready for delivery to the bailor (tenant) · Specify the amount, if any, which is payable by the bailor to the bailee in respect of the goods and which became due before the giving of the notice · Be in writing and served by delivering it to the tenant, leaving at their last known address or sending it by post The notice advising of sale must contain the same information as the notice requiring collection. However it must also: · Notify the date on or after which the landlord intends to sell the items · State that any costs of sale will be retained from the sale proceeds · Be served by post – recorded delivery or special delivery only (not ordinary first class) A sample combined notice and covering letter appear at the end of this guidance. Because it’s a combined notice it must be served by recorded or special delivery. Notice period under the Act The Act does not specify a notice period; it states: “The period between giving of the notice and the date specified in the notice as that on or after which the bailee proposes to exercise the power of sale shall be such as will afford the bailor a reasonable opportunity of taking delivery of the goods.” The OFT ‘fair term’ copied above states that goods will be stored for a month which indicates their view on a reasonable period for tenants to collect their goods. A court may accept a shorter period; our view is that 21-28 days is reasonable. Important: The Act requires not less than 3 months’ notice “If any amount is payable in respect of the goods by the bailor to the bailee, and become due before giving of the notice”. This creates a grey area in the landlord and tenant situation and we are not aware of any court authority on the point. Often there will be rent arrears or other costs the landlord will want to set off against any proceeds of sale. It is therefore arguable that those sums are payable in respect of the goods and the notice period should be 3 months. However, our preferred view is that the landlord is an involuntary bailee which means there was no bailment agreement providing for anything to be due in respect of the goods. There may be sums due in respect of the tenancy agreement (e.g. rent arrears) but it won’t contain any clause claiming those sums against any goods left at the property (because if it did the landlord wouldn’t need to use the Torts Act process). Therefore our view is that the landlord can use a shorter notice period. However, it’s an arguable point without any court authority which means that a judge may take a different view so anyone averse to taking any risk on that point should adopt the 3 month notice period.
What if the landlord can’t contact the tenant?
The Act allows the landlord to sell goods if he has failed to trace or communicate with the tenant with a view to giving notice of sale after having taken ‘reasonable steps’. Reasonable steps are not defined but our experience is that judges will expect the following (as appropriate): · Write to the last known address (even if it’s the rental property – they may have set up a divert with Royal Mail) · Write to known contacts from the referencing process – e.g. employers or relatives asking them to provide a forwarding address or forward on your letter if they are not prepared to do so · Email the tenant using any known email addresses · Call the tenant on any mobile numbers or other numbers (e.g. work) · Use social media. You may know of the tenant’s Facebook, LinkedIn, Twitter, Google + or other account. Be sure to message privately to avoid the risk of being accused of breaching the Data Protection Act · Ask anyone you are still in contact with who knows the tenant whether they will give you a forwarding address or, if not, whether they will deliver a letter for you · Instruct a tracing agent. Many agencies offer a ‘no trace no fee’ service for £25-£30 Important: Remember the notice can only be validly served by recorded or special delivery so, even if you make contact with the tenant through one of these methods, you still need an address to send the notice to for it to be valid. Keep a record of the attempts made to contact the tenant and allow a reasonable time for response. If none of these methods has worked you can sell the goods provided that you are reasonably satisfied that they belong to the tenant. You must adopt the best method of sale reasonably available.

Breakdown:

- You should make all efforts you can to find or trace the tenant/s to their present address or if they have a forwarding address contact them through that if at all possible.
- If your tenant owes you money you are allowed to dispose of any items, but you must keep them for 3 months before disposing of them. If the tenant does not owe you any money, you must keep the goods for a reasonable period, 28 days is normally reasonable before monetising the items.
- Send a letter to the tenant by registered post or recorded delivery with a legal notice. This will notify them that the items are in your possession for collection and that they will be kept for up to 90 days.
- Making quite sure your notice clearly names you as the landlord and gives full contact details for yourself as landlord and include complete contact details.
- If the items are unclaimed after the allocated period, you can dispose of them to a buyer, who will receive good title to them. The original owner will therefore lose all rights to the goods.
- Once you have covered your expenses in this process and any rent arrears etc, any proceeds left over will belong to the original owner – your tenant, if they should turn up and claim within six years.