Cherokee Nation Code Annotated
Title 41: Landlord and Tenant
Chapter 3: Non-Residential Landlord and Tenant Act
§ 252. Abandonment or surrender of non–residential rental property—Disposition of personal property of tenant—Notice—Storage costs—Liability of landlord—Application of proceeds of sale
Cite as: 41 CNCA § 252

A. If a tenant abandons, surrenders possession of, or is evicted from non–residential rental property and leaves goods, furnishings, fixtures or any other personal property on the premises of the non–residential rental property, the landlord may take possession of the personal property ten (10) days after the tenant receives personal service of notice or fifteen (15) days after notice is mailed, whichever is latest, and if the personal property has no ascertainable or apparent value, the landlord may dispose of the personal property in a reasonable commercial manner. In any such case, the landlord has the option of complying with the provisions of subsection (B) of this section.

B. If the tenant abandons, surrenders possession of, or is evicted from the non–residential rental property and leaves goods, furnishings, fixtures or any other personal property of an ascertainable or apparent value on the premises of the non–residential rental property, the landlord may take possession of the personal property and give notice to the tenant, demanding that the personal property be removed within the dates set out in the notice but not less than (15) days after delivery or mailing of such notice, and that if the personal property is not removed within the time specified in the notice, the landlord may sell the personal property at a public sale. The landlord may dispose of perishable commodities in any manner the landlord considers fit. Payment by the tenant of all outstanding rent, damages, storage fees, court costs and attorney fees shall be a prerequisite to the return of the personal property. For purposes of this section, notice sent by registered or certified mail to the tenant's last-known address with forwarding requested shall be deemed sufficient notice.

C. After notice is given as provided in subsection (B) of this section, the landlord shall store all personal property of the tenant in a place of safekeeping and shall exercise reasonable care of the personal property. The landlord shall not be responsible to the tenant for any loss not caused by the landlord's deliberate or negligent act. The landlord may elect to store the personal property on the premises of the non–residential rental property that was abandoned or surrendered by the tenant or from which the tenant was evicted, in which event the storage cost may not exceed the fair rental value of the premises. If the tenant's personal property is removed to a commercial storage company, the storage cost shall include the actual charge for the storage and removal from the premises to the place of storage.

D. If the tenant makes timely response in writing of an intention to remove the personal property from the premises and does not do so within the later of the time specified in the notice provided for in subsection (B) of this section or within fifteen (15) days of the delivery or mailing of the tenant's written response, it shall be conclusively presumed that the tenant abandoned the personal property. If the tenant removes the personal property within the time limitations provided in this subsection, the landlord is entitled to the cost of storage for the period during which the personal property remained in the landlord's safekeeping plus all other costs that accrued under the rental agreement.

E. If the tenant fails to take possession of the personal property as prescribed in subsection (D) of this section and make payments of all amounts due and owing, the personal property shall be deemed abandoned and the landlord may thereupon sell the personal property in any reasonable manner without liability to the tenant.

F. Notice of sale shall be mailed to the owner and any other party claiming any interest in said personal property, if known, at their last-known post office address, by certified or registered mail at least ten (10) days before the time specified therein for such sale. For purposes of this section, parties who claim an interest in the personal property include holders of security interests or other liens or encumbrances as shown by the records in the office of the court clerk of the county where the lien would be foreclosed.

G. The landlord or any other person may in good faith become a purchaser of the personal property sold. The landlord may dispose of any personal property upon which no bid is made at the public sale.

H. The landlord may not be held to respond in damages in an action by a tenant claiming loss by reason of the landlord's electing to destroy, sell or otherwise dispose of the personal property in compliance with the provisions of this section. If, however, the landlord deliberately or negligently violated the provisions of this section, the landlord shall be liable for actual damages.

I. Any proceeds from the sale or other disposition of the personal property, as provided in subsection (B) of this section, shall be applied by the landlord in the following order:

1. to the reasonable expenses of taking, holding, preparing for sale or disposition, giving notice and selling or disposing thereof;

2. to the satisfaction of any properly recorded security interest;

3. to the satisfaction of any amount due from the tenant to the landlord for rent or otherwise;

4. the balance, if any, shall be paid into the court within thirty (30) days of the sale and held for six (6) months and, if not claimed by the owner of the personal property within that period, shall escheat to Cherokee Nation.

Historical Data

LA 17–91, eff. December 14, 1991.