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Opinion No. 09-170

Firearms, Vehicle Towing, Guests, and Security Deposits on Leased Property

QUESTIONS

1. Can a landlord prohibit tenants who possess valid handgun carry permits from possessing firearms in the apartment if the tenant has a permit issued by the State?
2. If there is a clause in an apartment lease that prohibits the possession of firearms within the leased space, is a landlord also required to post signs that satisfy the requirement of Tenn. Code Ann. § 39-17-1359 to effectively prohibit such possession on property owned by the landlord?
3. If the landlord chooses to post signs prohibiting firearms on the property pursuant to Tenn. Code Ann. § 39-17-1359, is the landlord required to post a sign at each individual apartment or common area?
4. Does Tenn. Code Ann. § 66-28-518(b) require landlords to use specific language in restricted parking signs to be able to immediately tow unauthorized vehicles?
5. May a landlord avoid both the notice and signage requirement set forth in Tenn. Code Ann. § 66-28-518 by using a clause in a lease that authorizes the landlord to immediately tow an unauthorized vehicle that is parked on the property?
6. Does a landlord have the authority to prohibit a person from entering the property to visit a tenant within the confines of the leased space?
7. Does the failure of a landlord to list the estimated dollar cost of any repairs necessary prior to the signature of both parties on the damage listing preclude the landlord from collecting repair costs from the tenant pursuant to Tenn. Code Ann. § 66-28-301?

OPINIONS

1. A landlord can prohibit tenants, including those who hold handgun carry permits, from possessing firearms within the leased premises. Such a prohibition may be imposed through a clause in the lease, or, in counties where the Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. §§ 66-28-101 to 66-28-501, is in effect, such a prohibition may be imposed by adopting a rule that satisfies the requirements of Tenn. Code Ann. § 68-28-402.

2. A landlord who prohibits firearms through a lease or property rule would not be required to post signs that satisfy the requirements set forth in Tenn. Code Ann. § 39-17-1359. However, if the landlord does not post such signs, persons who violate the prohibition would not be subject to criminal prosecution for violating Tenn. Code Ann. § 39-17-1359.

3. Property owners who elect to post signs that give notice that the possession of firearms is prohibited on their property must post the signs at all public entrances to the property or area where firearms are prohibited. The location where these signs must be erected to satisfy the requirements set forth in Tenn. Code Ann. § 39-17-1359 would depend on the layout of the property in question.

4. No particular wording is required by Tenn. Code Ann. § 66-28-518(b) to appear in the landlord's posted signs announcing the landlord's parking rules. Any sign giving reasonable notice of the landlord's parking rules will suffice.

5. Tenn. Code Ann. § 66-28-201(a) prohibits a landlord from using a clause in a lease to circumvent the requirement that signs be posted in parking areas before a landlord may immediately tow vehicles that are parked in violation of the landlord's parking policy. Tenn. Code Ann. § 66-28-518.

6. A landlord may prohibit a guest of a tenant from coming onto the property if there is a clause in the lease authorizing the landlord to take such action.

7. Under Tenn. Code Ann. § 66-28-301(b) a landlord cannot retain a security deposit if the landlord fails to give the tenant a written estimate of the cost of repairs. However, the tenant would still be liable for the cost of any damages to the property. Tenn. Code Ann. § 66-28-301(g).

ANALYSIS

1. You ask if a landlord may prohibit tenants, including holders of handgun carry permits, from possessing firearms on the leasehold. The relationship between a landlord and tenant in Tennessee is governed by the Uniform Residential Landlord and Tenant Act ("the Act") in counties where it applies,¹ Tenn. Code Ann. §§ 66-28-101 to 66-28-521, and by general principles of contract and real property law. *Planters Gin Co. v. Fed. Compress & Warehouse Co.*, 78 S.W.3d 885, 889-90 (Tenn. 2002); *Ryan v. Stanger Inv. Co.*, 620 S.W.2d 505, 508 (Tenn. Ct. App. 1981).

Under both case law and the Act, a landlord and tenant are free to establish terms governing the use of the property. Tenn. Code Ann. § 66-28-201(a); *Planters Gin Co. v. Fed.*

¹ The Uniform Residential Landlord and Tenant Act, Tenn. Code Ann. §§ 66-28-101 to 66-28-521, is only applicable to counties having a population of more than 68,000 according to the 1970 federal census or any subsequent federal census. Tenn. Code Ann. § 66-28-102(a). Prior to October 1, 2008, the Act was only applicable in certain counties that fell within specific population brackets. In these counties where the Act first became applicable on October 1, 2008, it applies to rental agreements entered into, extended, or renewed after that date. 2008 Pub. Acts. Ch. 1067, § 4.

Compress & Warehouse Co., 78 S.W.3d 885, 889-90 (Tenn. 2002). A landlord and a tenant may, therefore, mutually agree through a lease to prohibit the possession of firearms on the premises. Tenn. Code Ann. § 66-28-201(a).

Under the Act, a landlord may also prohibit firearms by adopting a rule that satisfies the requirements of Tenn. Code Ann. § 66-28-402(a). It states:

A landlord, from time to time, may adopt rules or regulations, however described, concerning the tenant's use and occupancy of the premises. It is enforceable against the tenant only if: (1) Its purpose is to promote the convenience, safety, or welfare of the tenants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of the services and facilities held out for the tenants generally; (2) It is reasonably related to the purpose for which it is adopted; (3) It applies to all tenants in the premises; (4) It is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform the tenant of what the tenant must or must not do to comply; (5) It is not for the purpose of evading the obligations of the landlord; and (6) The tenant has notice of it at the time the tenant enters into the rental agreement.

If the landlord complies with the requirements of Tenn. Code Ann. § 66-28-402(a), and that rule is in effect at the time the lease is executed, then the rule will be enforceable.²

You also ask if a tenant who holds a valid handgun carry permit could possess a firearm on property notwithstanding a clause prohibiting the possession of firearms on the leasehold. Handgun carry permits authorize holders to carry a firearm in public for the purpose of going armed. Tenn. Code Ann. § 39-17-1308. Under the general principles of contract law, a tenant can contractually agree to give up rights as long as the waiver is not unconscionable, Tenn. Code Ann. § 66-28-204, or in violation of a statute. *See, e.g. Freeman v. Thompson*, 600 S.W.2d 234, 236 (Tenn. Ct. App. 1979). A lease provision forbidding the possession of firearms on the leased premises is neither.

2. You ask whether landlords may prohibit the possession of firearms on their properties without having to post a notice as specified in Tenn. Code Ann. § 39-17-1359. That statute authorizes property owners to prohibit weapons on their property by prominently posting notices at all public entrances to the property. Tenn. Code Ann. § 39-17-1359(a). It is a misdemeanor offense to carry a firearm on property where such signs are posted. Tenn. Code Ann. §§ 39-17-1358(b) and 39-17-1359.

As discussed above, landlords may prohibit firearms on leased premises through a clause in the lease or by enacting a rule before the execution of the lease. Such a clause or rule would impose a contractual obligation upon the tenant, and a violation of that obligation would constitute a breach of the lease. If such a breach occurred, the landlord could resort to civil

² Tenn. Code Ann. § 66-28-402(b) also allows a landlord to adopt a rule or regulation after execution of the rental agreement "if reasonable notice of its adoption is given to the tenant and it does not work a substantial modification to the rental agreement."

remedies to enforce the terms of the lease. Tenn. Code Ann. § 66-28-505. By posting the signs as set forth in Tenn. Code Ann. § 39-17-1359, a landlord could also subject a tenant to criminal penalties.

3. You have asked if a landlord who elects to post signs pursuant to Tenn. Code Ann. § 39-17-1359 would be required to post a sign on the door of each living unit. To prohibit firearms under Tenn. Code Ann. § 39-17-1359(a), a property owner must post signs “in prominent locations, including all entrances primarily used by persons entering the building, portion of the building or buildings where weapon possession is prohibited.” The sign must be “plainly visible to the average person entering the building, premises, or property.” *Id.*

Under the rules of statutory construction, if the language is plain and unambiguous, the plain meaning of the statute should be applied. *Brown v. Erachem Comilog, Inc.*, 231 S.W.3d 918 (Tenn. 2007). Tenn. Code Ann. § 39-17-1359(a) unambiguously states that the signs must be plainly visible at each public entrance to the area where firearms are prohibited. The exact location where signs would be required to be posted would depend on the facts and circumstances of each case.

4. You ask whether Tenn. Code Ann. § 66-28-518(b) requires that signs posted to give notice of a landlord’s parking rules must contain a particular form of words in order to enable a landlord to immediately tow vehicles parked in violation of the rules. Tenn. Code Ann. § 66-28-518(b) states:

A landlord may have a tenant’s, occupant’s, tenant’s guest’s, or trespasser’s vehicle immediately towed or otherwise removed from such real property, without notice, if and when such person fails to comply with the landlord’s permit parking policy as defined in the landlord’s posted signage.

This statute does not prescribe any specific language that a landlord should use in posting a permit parking policy sign. *Id.* You also asked if a sign that says “TENANT PARKING ONLY” would satisfy the legislature’s intent and allow a landlord to tow a non-tenant’s vehicle parked on the premises. Under the rules of statutory construction, statutes should be interpreted so as to give effect to the intent of the legislature. *State v. Hannah*, 259 S.W.3d 716 (Tenn. 2008). Under this statute, the legislature requires landlords to give automobile owners notice, through a posted parking permit policy, where they may legally park on the property before the vehicle can be towed. A “TENANT PARKING ONLY” sign would give sufficient notice that parking by non-tenants is unauthorized. Tenn. Code Ann. § 66-28-518(b) does not explicitly require that the posted parking permit policy include notice that unauthorized automobiles are subject to immediate towing.

5. You have asked if the Uniform Residential Landlord and Tenant Act permits a landlord to immediately tow unauthorized vehicles where the signs required under Tenn. Code Ann. § 66-28-518(b) have not been posted, if the facility’s parking policy is set forth within the lease.

Tenn. Code Ann. § 66-28-518 regulates the towing of vehicles by landlords. A landlord's right to tow an unauthorized vehicle depends on whether the landlord has posted signs displaying the property's parking rules. If the landlord posts such signs, then any vehicle in violation of those rules, whether it be owned by a tenant, occupant, guest, or trespasser, can be towed immediately. Tenn. Code Ann. § 66-28-518(b). If signs are not posted, then the landlord may only tow the unauthorized vehicle ten days after posting a written notice on the vehicle. Tenn. Code Ann. § 66-28-518(a).³

Tenn. Code Ann. § 66-28-201(a) prohibits the use of rental agreements to waive or forego rights or remedies that are afforded by the Act. Tenn Code Ann § 66-28-518 sets out the conditions under which a landlord may resort to the towing of an automobile as a remedy for violation of the landlord's parking rules. Any attempt to use a lease term to waive the signage posting requirements or otherwise modify the statutory remedies would violate Tenn. Code Ann. §§ 66-28-201(a) and 66-28-518 and would therefore be ineffective.

6. You have asked if a landlord can prohibit a guest of a tenant from visiting the tenant's leased premises. Absent a clause in the lease which gives the landlord power to limit visitors, a tenant can freely invite any person onto the property. The right to quiet enjoyment of the property is an implied term of every lease. *Couch v. Hall*, 412 S.W.2d 635, 637 (Tenn. 1967); *Marshall v. Summers*, 934 S.W.2d 647, 650 (Tenn. Ct. App. 1996). The right of quiet enjoyment affords tenants with an exclusive right to occupy and use the property as they see fit, subject only to the terms of the lease. *Southern Bell Tel. & Tel. Co. v. Yates*, 232 S.W.2d 796, 798-99 (Tenn. Ct. App. 1950). The right to quiet enjoyment of the property, however, may be modified or limited by express provisions in the lease. *O'Connor*, 75 Tenn. at 223.

A lease may contain a provision that restricts the right of tenants to invite certain classes of guests, such as convicted felons,⁴ or limits the length of time a guest may remain. Absent such restrictions, the right to quiet enjoyment would afford a tenant with the right to invite whomever the tenant desires onto the property, free from the landlord's oversight.

7. You ask if a landlord will forfeit any claim for damages to leased premises because of a failure to provide the tenant with a damage cost estimate at the time the lease is terminated. Tenn. Code Ann. § 66-28-301(b)(1) states that upon termination of the leasehold, "[t]he landlord shall inspect the premises and compile a comprehensive listing of any damage to the unit that is the basis for any charge against the security deposit and the estimated dollar cost of repairing the damage. . . ." Tenn. Code Ann. § 66-28-301(c) states, in part, "No landlord shall be entitled to retain any portion of the security deposit . . . if the final damage listing required by subsection (b) is not provided."

³ A landlord may also tow a vehicle ten days after posting notice on the vehicle if the vehicle has flat or missing tires, is not operational, has a missing or broken windshield, is missing any fenders or bumpers, or has been out of compliance with state and local vehicle tag registration for more than thirty days. Tenn. Code Ann. § 66-28-519. A landlord can tow a "nuisance vehicle" 24 hours after posting notice on the vehicle. Tenn. Code Ann. § 66-28-520.

⁴ See, e.g., *Ross v. Broadway Towers, Inc.*, 228 S.W.3d 113, 123 (Tenn. Ct. App. 2006) (public housing resident could be evicted for having live-in caretaker who was a convicted felon, in violation of lease terms).

By its terms, Tenn. Code Ann. § 66-28-301(c) prohibits a landlord from retaining a security deposit if no written estimate of damages is given to the tenant at the time a lease is terminated. There is nothing in the statute to indicate that the failure to provide such a list of damages releases the tenant from any liability. To the contrary, Tenn. Code Ann. § 66-28-301(g) preserves the landlord's right to recover from the tenant any damages that the landlord is entitled to receive under the Act. This would include recovery of the cost of any cleaning needed to restore the property to its pre-rental condition, Tenn. Code Ann. § 66-28-401(2), and the cost of repairing damage intentionally or negligently caused to the property by the tenant, Tenn. Code Ann. § 66-28-401(4), as well as any other claims available to the landlord under the lease. Tenn. Code Ann. § 66-28-505(c).

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