

FEATURE ARTICLES

Adding Injury to Injury: Inadequate Protection of Tenants' Property During Eviction and the Need for Reform

By Larry Weiser* & Matthew W. Treu**

I. Introduction

Irene Parker, an 82 year-old single woman with health problems, was evicted at Christmas-time due to repair and rental disputes with her landlords. The amount in dispute was \$1,200, far less than the monetary value of Ms. Parker's life possessions, which was \$15,000. Upon being evicted and having everything she owned put on a public curb, Ms. Parker was forced to pay for a cab so that she could stay at a friend's home until she could find a new place to live. Ms. Parker's health prevented her from retrieving much more than the clothes on her back; she didn't have the strength to move her possessions herself, nor could she afford to hire anyone to move her possessions. Moreover, Ms. Parker noticed that many of her possessions, such as her washer and dryer, were not placed on the curb; rather they were apparently retained by the landlords.

The few times she drove past her former residence after the eviction, she noticed more and more of her things missing, until they were soon completely gone, likely taken by passers-by. Everything from her furniture and prescriptions to her family photographs and

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undergarments were taken; she was quite literally left with nothing. In the years since the eviction she has finally settled in a room at a local motel where she lives alone, still hopeful for some kind of justice.¹

Evictions, such as the one involving Irene Parker, are not isolated incidents. It has been estimated that almost one-third of the households in the United States, or approximately thirty-six million households, are composed of renters.² An approximation of the number of evictions that occur nationwide is difficult to ascertain. However, it is fair to estimate that hundreds of thousands of evictions occur each year, although some assert that this number is more likely in the millions.³ In short, the impact of residential evictions is felt by a large group of people each year.

Eviction often involves more than just being forced to relocate. For many tenants, eviction results in homelessness.⁴ Eviction, even under the most civil circumstances, involves a great amount of emotion and humiliation that results from being forced out of a home. The trauma of eviction is further exacerbated when a tenant's personal property and possessions are taken and sold by the landlord, or dumped in the street and exposed to theft or vandalism. The loss of personal property is more than an inconsequential aspect of the eviction process. Such losses have a devastating impact on people already traumatized by an eviction. Yet, this is exactly what happens to a number of tenants each year as a result of state laws that fail to protect a tenant's personal property during the eviction process.

The lack of respect for a tenant's personal property during eviction has largely escaped scrutiny by the judiciary, state

¹ Letter from Irene Parker, to Wash. State Senate Consumer Prot. and Hous. Comm. (Feb. 22, 2007) (on file with the Gonzaga Law School's University Legal Assistance Clinical Law Program) (advocating against a bill that would authorize landlords to place evicted tenants' property on the street) [hereinafter Letter].

² NATIONAL LOW INCOME HOUSING COALITION, OUT OF REACH (2006), <http://www.nlihc.org/pubs/issue.cfm> (follow "Publications & Reports" hyperlink; then follow "Out of Reach" hyperlink); See also Brian J. Delaney, *Landlord-Tenant Law*, 37 SUFFOLK U. L. REV. 1109, 1109 (2004) (citing U.S. Census Bureau 2001).

³ Chester Hartman & David Robinson, *Evictions: The Hidden Housing Problem*, 14 HOUSING POL'Y DEBATE, 461, 461 (2003).

⁴ Eric N. Lindblom, *Toward a Comprehensive Homelessness-Prevention Strategy*, 2 HOUSING POL'Y DEBATE 957, 968 ("As many as half of all homeless adults . . . make the final move from housed living into homelessness because of an eviction or some other landlord or rent problem.").

legislatures, and legal commentators alike. This article attempts to bring greater exposure to this issue by reviewing how different jurisdictions deal with the disposition of a tenant's personal property during the eviction process. Because of the severe emotional trauma caused by eviction, it is vital to establish clear procedures governing the eviction process. In considering the content of such procedures, state legislatures should carefully consider how to sufficiently protect the personal property of tenants by making accommodations for the storage of a tenant's personal property during eviction and abolishing distress for rent in those jurisdictions that still allow for it.

Part II of this article briefly summarizes the history of landlord-tenant law in the United States and the effect of the Uniform Residential Landlord and Tenant Act on state landlord-tenant statutes. Part III discusses how various states have addressed the landlords' duty to store a tenant's personal property to illustrate the need for a more uniform approach that protects a tenant's personal property. Part IV discusses a recent Washington State appellate case that ruled that landlords have a duty to store the personal property of an evicted tenant, and the legislature's reaction to this court ruling.

II. The Development of Landlord-Tenant Law in the United States

A. The Rise of Contract-Based Landlord-Tenant Law

Laws governing the landlord-tenant relationship in the United States were long based on common law doctrines borrowed from feudal England. According to English common law, a lease conveyed an interest in real property not just a contract.⁵ The notion of leases as property conveyances was based on the outdated premise, derived from English agrarian principles, "that a tenant is primarily interested in the use of the land" and less interested in any housing units found on the land.⁶ The problems with property-based landlord-tenant law were especially apparent with regard to protecting the tenant's interest in the habitability of the rented premises. According to property law concepts, the tenant assumed

⁵ 1 AMERICAN LAW OF PROPERTY § 3.11 (A.J. Casner ed., 1952).

⁶ Irene Castaldo, Note, *The Uniform Residential Landlord and Tenant Act: New Hope for the Beleaguered Tenant?*, 48 ST. JOHN'S L. REV. 546, 547-48 (1974) (quoting Milton R. Friedman, *The Nature of a Lease in New York*, 33 CORNELL L.Q. 165, 166 (1947)).

the risk that the premises were defective at the time of conveyance.⁷ Essentially, the landlord fulfilled his duty by conveying the property and was under no implied duty to repair or maintain the premises in habitable condition.⁸

During the mid-twentieth century, courts increasingly rejected antiquated notions of property law in favor of principles of contract to describe the landlord-tenant relationship.⁹ The rise of contract-based landlord-tenant law, heavily influenced by developments in consumer law,¹⁰ offered increased protection to tenants.¹¹ Rights such as implied warranties of habitability¹², once unavailable to tenants, are now almost uniformly recognized in jurisdictions across the United States.¹³

There have been a number of developments in landlord-tenant law during the past one-hundred years that increase protections available to tenants. By the end of the twentieth century, most states had abolished the right of landlords to use self-help in evicting tenants, replacing it with an expedited judicial process providing a level of due process to the tenant prior to the court authorizing an order to evict.¹⁴ However, the harm caused by a tenant's loss of

⁷ Michael Madison, *The Real Properties of Contract Law*, 82 B.U. L. REV. 405, 410 (2002).

⁸ Milton R. Friedman, *The Nature of a Lease in New York*, 33 CORNELL L.Q. 165, 166 (1947).

⁹ Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and the Need for Reform*, 46 WAYNE L. REV. 135, 137-38 (2000).

¹⁰ See Mary Ann Glendon, *The Transformation of American Landlord-Tenant Law*, 23 B.C. L. REV. 503, 504 (1982).

¹¹ See, e.g., Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517 (1984); Glendon, *supra* note 10, at 504.

¹² See *Foisy v. Wyman*, 160 P.2d 160 (Wash. 1973) (finding an implied warranty of habitability for residential leased premises).

¹³ See Spector, *supra* note 9, at 137; See also Note, *The Uniform Residential Landlord and Tenant Act: Facilitation Of or Impediment to Reform Favorable to the Tenant?*, 15 WM. & MARY L. REV. 845, 846 (1974) ("Probably in no other area of landlord-tenant law has there been so clear a trend of judicial decisions favoring tenants as in the law governing landlord obligations to deliver and maintain premises which are suitable for human habitation.").

¹⁴ JESSE DUKEMINIER, JAMES E. KRIER, GREGORY S. ALEXADER & MICHAEL H. SCHILL, *PROPERTY* 409 (6th ed. 2002) (describing the development of summary proceedings supplanting the use of self-help in a majority of states).

property in the summary eviction process threatens to undermine many of the reforms that have evolved to protect tenants. This loss of property is often caused by summary eviction procedures that fail to sufficiently protect a tenant's property.

B. Distress For Rent

Distress for rent is defined as an extrajudicial remedy consisting of seizure and holding of personal property by an individual without judicial intervention for the purpose of compelling the payment of a debt.¹⁵ At early common law, when a tenant's rent became overdue, the landlord simply showed up at the door, seized any property on the leased premises, and held this property until the rent was paid.¹⁶ By the end of the twentieth century, most states had abolished the right of landlords to use self-help in evicting tenants.¹⁷ Distress for rent is still recognized in a surprising number of jurisdictions, however, most states have abolished the remedy in the case of residential leases.¹⁸ While seizing the tenant's property can have a catastrophic impact on tenants, it rarely yields more than a marginal benefit to the landlord. Most of the time the landlords are not interested in selling the tenant's possessions, but merely desire to hold it as ransom for the payment of rent due.¹⁹ In most instances, landlords are not permitted to hold or sell a tenant's property to satisfy back rent either before or after the eviction proceeding.²⁰

¹⁵ Davis v. Odell, 729 P2d 1117, 1121 (Kan. 1986); Raffaele v. Granger, 196 F.2d 620 (3d Cir. 1952).

¹⁶ See Shane J. Osowski, *Alaska Distress Law in the Commercial Context: Ancient Relic or Functional Remedy?*, 10 ALASKA L. REV. 33, 34 (1993).

¹⁷ *Id.*

¹⁸ *Id.* at 34; See also RESTATEMENT (SECOND) OF PROPERTY: LANDLORD & TENANT, § 12.1, statutory note 5 (2007) (stating that 16 jurisdictions provide landlords with statutory remedies similar to distress for rent and another 29 jurisdictions allow the landlord to place a lien on the tenant's property).

¹⁹ Gerald R. Gibbons, *Residential Landlord-Tenant Law: A Survey of Modern Problems with Reference to the Proposed Model Code*, 21 HASTINGS L.J. 369, 410-11.

²⁰ Robert F. Fitzpatrick, *The Development Of Massachusetts Law Governing The Disposition Of Evicted Tenants' Property*, 25 SUFFOLK U. L. REV. 1109, 1121-22 (1991).

C. Summary Eviction Proceedings

Until the mid-eighteenth century, a landlord's primary legal mechanism for removing tenants from the leased property was an action in ejectment.²¹ An action in ejectment involved numerous procedural complexities that made the process expensive and time-consuming.²² In response to the inefficiencies that accompanied the ejectment process, states adopted summary procedures for the removal of tenants.²³ Summary procedures for evicting a tenant currently exist in every state. One commentator has described the summary eviction procedures as:

as a compromise between landlords' and tenants' interests. The process aids tenants by requiring a landlord to prove to the court that the tenant no longer has a right to possession. It helps landlords by providing a judicial eviction proceeding that is quicker and simpler than regular civil proceedings.²⁴

In *Lindsey v. Normet*, the Supreme Court of the United States held that the Oregon landlord-tenant statute, allowing for removal of the tenant within a six day process, was not, on its face, a violation of the 14th Amendment due process clause.²⁵ Nevertheless, summary eviction proceedings that compromise fairness to the tenant in favor of speed and efficiency, often cause the loss of a tenant's personal property.²⁶ Moreover, many times the summary procedures impair the ability of tenants to defend or assert their rights. As stated in Justice Douglas' dissent in *Lindsey v. Normet*:

But where the right is so fundamental as the tenant's claim to his home, the requirements of due process should be more embracing. In the setting of modern urban life, the home, even though it be in the slums, is where man's roots

²¹ Gibbons, *supra* note 19, at 371.

²² *Id.*

²³ See Gibbons, *supra* note 19, at 372; See also Spector, *supra* note 9, at 154.

²⁴ Randy G. Gercheck, *No Easy Way Out: Making The Summary Eviction Process A Fairer And More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. Rev. 759, 791 (1994).

²⁵ *Lindsey v. Normet*, 405 U.S. 56 (1972).

²⁶ Spector, *supra* note 9, at 137.

are. To put him into the street when the slum landlord, not the slum tenant, is the real culprit deprives the tenant of a fundamental right without any real opportunity to defend. Then he loses the essence of the controversy, being given only empty promises that somehow, somewhere, someone may allow him to litigate the basic question in the case.²⁷

Most states have adopted a summary eviction process with varying protections to both the landlord and tenant.²⁸ The summary eviction process must be able to provide an efficient process to protect the landlord from undeserved economic loss and prevent delay and intentional abuses by tenants.²⁹ On the other hand, the process needs to protect the tenant from “unmerited harassment and dispossession.”³⁰

D. The Uniform Residential Landlord Act

In 1972, the National Conference of Commissioners on State Laws drafted and approved the Uniform Residential Landlord and Tenant Act (URLTA).³¹ Its “principal goal... was to modernize residential landlord and tenant law and encourage both the landlord and the tenant to maintain and improve the quality of housing.”³²

The (u)nderlying purposes and policies of this Act are:

- (1) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants;
- (2) to encourage landlords and tenants to maintain and improve the quality of housing; and

²⁷ *Lindsey*, 405 U.S. at 89 (Douglas, J., dissenting).

²⁸ Gercheck, *supra*, note 24.

²⁹ *Id.*

³⁰ *Lindsey*, 405 U.S. at 73.

³¹ UNIFORM RESIDENTIAL LANDLORD AND TENANT ACT (1974) [hereinafter URLTA] (twenty-one states including Alabama, Alaska, Arizona, Connecticut, Florida, Hawaii, Iowa, Kansas, Kentucky, Michigan, Mississippi, Montana, Nebraska, New Mexico, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Virginia and Washington have codified all or parts of the URLTA).

³² *Id.* § 1.102.

(3) to make uniform the law with respect to the subject of this Act among those states which enact it.³³

As noted above, two of the primary purposes of the URLTA are “to simplify and revise the law governing the rights of landlords and tenants and to establish uniformity regarding landlord-tenant laws among those states that implement the Act.”³⁴ In promoting uniformity, the URLTA endorses an approach to landlord-tenant law that is heavily influenced by contract law.³⁵

The URLTA also specifically rejects the notion of distress for rent.³⁶ However, the URLTA says nothing about a landlord’s duty to store in event of either the abandonment of the premises by the tenant or by unlawful detainer or eviction.

III. Landlord’s Duty to Store A Tenant’s Property

The emotional trauma caused by eviction is well-illustrated by the following experience involving Bob Dole’s former press secretary: “[b]y the time I was 17, my family and I had been evicted 34 times. . . [W]orst of all, imagine hearing the knock on the door when the officers come to throw you out of your home and pile all your worldly possessions on the sidewalk for passersby to see.”³⁷ Based on the severe emotional trauma caused by the loss of personal property during eviction, it is surprising that a number of jurisdictions provide little or no protection for such property during the eviction process.³⁸

³³ *Id.*

³⁴ *Id.*

³⁵ See Madison, *supra* note 7.

³⁶ URLTA §4.205.

³⁷ Hartman & Robinson, *supra* note 3, at 470 (quoting Douglas MacKinnon, *The Welfare Washington Doesn’t Know*, N.Y. TIMES, May 21, 2002).

³⁸ COLO. REV. STAT. ANN. § 13-40-122(3) (2007) (landlord has no duty to store or maintain tenant’s personal property removed from premises during eviction); FLA. STAT. ANN. § 83.62 (2007) (no duty to store personal property and landlord may dispose of personal property or store it if they choose); GA. CODE ANN. § 44-7-55(c) (2007) (the landlord shall owe no duty as to the disposition of the tenant’s personal property); Centagon, Inc. v. Bd. of Dirs. of 1212 Lake Dr. Condo. Ass., 2001 WL 1491523, at *6 (N.D. Ill. Nov. 21, 2001) (case law establishing no duty to store); Khan v. Heritage Prop. Mgmt., 584 N.W.2d 725, 730 (Iowa Ct. App. 1998);

Generally, there is great lack of uniformity among state landlord-tenant statutes. Statutory provisions governing the disposition of tenants' property left on premises after eviction is no different. Notwithstanding the lack of uniformity, statutes on the issue can be divided into three categories: A) statutes that mandate storing the personal property left on the premises; B) statutes that explicitly state that a landlord has no duty to store the property; C) statutes that fail to mention what is to be done with property left on the premises.

A. Statutes Imposing an Affirmative Duty to Store

Among the states that require a duty to store are Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Idaho, Maine, Maryland, Massachusetts, Minnesota, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Washington and Wisconsin.³⁹ Every statute

Banks v. Korman Assoc., 527 A.2d 933, 934 (N.J. Super. Ct. App. Div. 1987); *Ringler v. Sias*, 428 N.E.2d 869 (Ohio Ct. App 1980) (landlord has no duty to care for property that is removed pursuant to eviction); TEX. PROP. CODE ANN. § 24.0061(d)-(f) (2007); VA. CODE ANN. § 55-248.38.1 (2007).

³⁹ ALASKA STAT. § 34.03.260(b) (2007) (duty to store for 15 days with reasonable care); 2007 Ariz. Legis. Serv. § 33-1321 (West) (duty to store 5 days after declaration of abandonment); ARK. CODE ANN. § 18-17-913 (duty to store property for 24 hours); CAL. CIV. PRO. CODE § 1174(e)-(f) (2007) (duty to store for 30 days); CONN. GEN. STAT. ANN. § 47(a)-42 (2001), *amended* by: 2007 CONN. ACTS 591; 25 DEL. CODE ANN. § 5715(e) (2007) (duty to store for 7 days); IDAHO CODE ANN. § 6-311C (2007) (tenants' belongings must be put in a "safe place for storage."); 14 ME. REV. STAT. ANN. § 6013 (2007) (duty to store up to 14 days with sufficient notice); 2007 Md. Laws Ch. 440 (H.B. 922) *amending* § 8-401 (duty to store for 4 days with notice); MASS. GEN. LAWS ANN. 239 § 4 (2007); MINN. STAT. ANN. § 504B.365 (2007) (duty to store personal property for 45 days and landlord is liable for any damage not anticipated by the reasonable person); NEB. REV. STAT. § 69-2303 (2007) (duty to store for up to 14 days depending on method of delivery of notice to prior tenant); NEV. REV. STAT. § 118A.460 (2007) (duty to store for 30 days after eviction); N.H. REV. STAT. ANN. § 540-A:3 (2007) (duty to store for 28 days); N.M. STAT. ANN. § 47-8-34.1(6)(C) (2007) (duty to store for 3 days following eviction); N.C. GEN. STAT. ANN. § 42-36.2 (2007). *See also* *Smithers v. Tru-Pak Moving Sys., Inc.*, 468 S.E.2d 410, 413-15 (1996); 41 OKLA. STAT. ANN. § 130 (2007) (duty to store for 30 days following eviction); OR. REV. STAT. ANN. § 90.425 (2)-(5) (2007) (duty to store for 15 days); S.D. CODIFIED LAWS § 43-32-26 (2007) (duty to store property over \$100 for 30 days); TENN. CODE ANN. § 29-15-124 (2007) (duty to store upon request from tenant); WASH. REV. CODE ANN. § 59.18.312 (2007) (duty to store tenant's property in a "reasonably safe" place for up to forty-five days at the execution of a writ of execution or eviction); WIS. STAT. ANN. § 799.45 (2007) (must use ordinary care in removing tenant's property and

under this category imposes on landlords a duty to store a tenant's property for a certain period of time after eviction, ranging from three to forty-five days.⁴⁰ After the property is stored for the mandated period under the statute, the landlord is typically able to either sell or dispose of the property.⁴¹ Further, under these statutes, the landlord is often entitled to compensation for the amount paid to store the personal property.⁴² Courts in these jurisdictions have recognized that a landlord is under an affirmative duty to store property left on the premises and may be liable for any damage to the property.⁴³

B. Statutes Providing a Landlord Has No Duty to Store

There is a second category of state statutes that expressly place no duty on landlords to store the property of tenants left on the premises following eviction. These states include Colorado, Florida, Georgia, Illinois, Iowa, New Jersey, Ohio, Texas and Virginia.⁴⁴ It comes as no surprise that courts refuse to place an affirmative duty to store on landlords, where the statute specifically provides there is no such duty.⁴⁵

C. Statutes Lacking Any Provisions Regarding a Duty to Store

A surprising number of state statutes lack any procedures at all governing the removal of a tenant's property after eviction or a duty to store. These states include Alabama, Hawaii, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Montana, New York, North Dakota, Pennsylvania, Rhode Island, South Carolina, Utah, Vermont, West Virginia and Wyoming.⁴⁶ The

give notice to the tenant as to the location of his removed property).

⁴⁰ See *supra* note 39.

⁴¹ See *id.*

⁴² See *id.*

⁴³ See, e.g., *Gray v. Whitmore*, 17 Cal. App. 3d 1, 16 (Cal. Ct. App.1971); *Statewide Agencies v. Diggs*, 62 P.3d 1105, 1108-09 (Kan. 2003).

⁴⁴ See *supra* note 38.

⁴⁵ See, e.g., *Campos v. Inv. Mgmt. Prop.*, 917 S.W.2d 351, 355 (Tex. App. 1996).

⁴⁶ See generally Alabama: ALA. CODE § 6-6-337 (2007); Hawaii: HAW. REV. STAT. ANN. § 521-56 (2007); Indiana: IND. CODE ANN. § 32-30-8-12 (2007);

District of Columbia also falls into this category.⁴⁷ Typically, these statutes merely provide that a sheriff shall return possession of the rental property to the landlord.⁴⁸ Generally, courts interpreting this third category of statutes have refused to impose a duty to store on landlords.⁴⁹ Where the statute fails to provide procedures for removing a tenant's property after eviction, some courts have inferred such removal as a necessary part of returning the premises to the landlord.⁵⁰

D. Relevance of the Common-Law Theories of Conversion and Constructive Bailment on a Landlord's Duty to Store

As previously stated, over half of all states are either vague or fail to mention anything about a duty to store in their summary eviction statutes.⁵¹ In some circumstances, a tenant may be able to pursue a claim based on theories of conversion or constructive bailment for property lost or damaged during eviction, where such claims are not precluded by a summary eviction statute on point.

Conversion arises where one "willfully interfere[s] with any chattel, without lawful justification, whereby any person entitled

Kansas: KAN. STAT. ANN. §58-2565(d) (2007); Kentucky: KY. REV. STAT. ANN. § 383.590; Louisiana: LA. CODE CIV. PRO. art. 4734 (2007); Michigan: MICH. COMP. LAWS. ANN. § 600.5744 (2007); Mississippi: MISS. CODE. ANN. § 89-7-51(2) (2007); Missouri: MO. ANN. STAT. § 535.010 (2007); Montana: MONT. CODE ANN. § 70-27-205 (2007); New York: N.Y. REAL PROPERTY ACTIONS AND PROCEEDINGS LAW § 749 (McKinney 2007); North Dakota: N.D. CENT. CODE § 47-16-13.4 (2007); Pennsylvania: 68 PA. CONS. STAT. § 250.503 (2007); Rhode Island: R.I. GEN. LAWS § 9-25-9(b) (2007); South Carolina: S.C. CODE ANN. § 27-40-710(D) (2007); Utah: UTAH CODE ANN. § 78-36-10.5(3)-(4) (2007); Vermont: 9 VT. STAT. ANN. § 4468 (2007); West Virginia: W. VA. CODE ANN. § 37-6-8 (2007); and Wyoming: WYO. STAT. ANN. § 1977 § 1-21-1210 (2007) (setting out general provisions for writs of possession or eviction, but indicating nothing specifically in regard to the duties imposed on landlords in reference to the evicted tenants' personal property and storage thereof. Some of these states go so far as to state that a landlord *may* store the tenant's property left on the premise, but state no affirmative duty).

⁴⁷ D.C. CODE § 42-3210 (2007).

⁴⁸ See *supra* note 46.

⁴⁹ See, e.g., *Khan v. Heritage Prop. Mgmt.*, 584 N.W.2d 725, 729 (Iowa App. 1998); *Ringler*, 428 N.E.2d at 870.

⁵⁰ *Khan*, 584 N.W.2d at 729.

⁵¹ See *supra* note 46.

thereto is deprived of the possession of it.”⁵² Conversion does not require intent on the part of the tortfeasor to deprive the rightful owner of personal property.⁵³ Conversion simply requires the wrongful interference of personal property through dominion that causes injury to the victim.⁵⁴ In order to maintain an action for conversion, the plaintiff also needs to establish “some property interest in the goods allegedly converted.”⁵⁵

In some circumstances, courts have allowed a tenant to recover for lost property based on theories of constructive bailment.⁵⁶ In general, a bailor-bailee relationship requires 1) an express or implied contract, 2) delivery of property to the bailee, and 3) the bailee’s acceptance of the property.⁵⁷ A bailment may be implied without formal delivery or acceptance of property by the bailee.⁵⁸ Rather, knowingly taking possession or control of property may support the establishment of a bailor-bailee relationship by implication.⁵⁹ Some states have held that a landlord who evicts a tenant and takes possession of the premises becomes the involuntary bailee of any personal property of the tenant left on the premises.⁶⁰ A bailee is then required to use reasonable care to protect the bailor’s property left on the premises.⁶¹

⁵² *Judkins v. Sadler-Mac Neil*, 376 P.2d 837, 838 (Wash. 1962) (citing RESTATEMENT OF TORTS § 237 (1934)).

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Meyers Way Dev. Ltd. v. United Sav. Bank*, 910 P.2d 1308, 1320 (Wash. App. 1996).

⁵⁶ *Christensen v. Hoover*, 643 P.2d 525, 529 (Colo. 1982) (holding that a constructive gratuitous bailment relationship was created when the tenant’s property was taken into possession by the landlord).

⁵⁷ *Russell v. Am. Real Estate Corp.*, 89 S.W.3d 204, 210 (Tex. App. 2002).

⁵⁸ *Russel*, 89 S.W.3d at 211.

⁵⁹ *Id.*

⁶⁰ *See Bank of Am. v. Taliaferro*, 301 P.2d 393, 396 (Cal. Ct. App. 1956); *Murphy v. Schwark*, 201 P. 757 (Wash. 1921) (holding that when a vendee of the landlord takes possession and control of the premises after the tenant moves out they become the gratuitous bailee of the personal property left on the premises that is subject to reasonable care).

⁶¹ *Murphy*, 201 P. at 757.

However, most of the case law applying theories of bailment to tenant evictions is outdated, and many states have since adopted summary eviction statutes that may make such case law obsolete. Even in jurisdictions where the summary eviction statute is unclear or silent on point, a number of courts have refused to impose the duties of bailee on landlords for property left behind by the tenant after a lawful eviction has been performed by a sheriff or officer.⁶² Some of these same courts have held that a landlord may be liable for damage to the property as a bailee if he actively participates in the removal of the property or assumes control over the property once a writ of execution has been executed.⁶³

III. *Parker v. Taylor*⁶⁴ and the Duty to Store Debate in Washington State

A. The Court of Appeals Rules that the Washington Landlord-Tenant Act Provides a Duty to Store

Irene Parker's case, in the State of Washington, exemplifies the need for a duty to store requirement in residential landlord-tenant statutes.⁶⁵ Ms. Parker, 82 years, entered into a residential lease agreement with her landlords, the Taylor's, on May 19, 2003.⁶⁶ Beginning August 2003, Ms. Parker began withholding rent from the Taylor's due to their failure to repair a number of deficiencies occurring throughout the residence.⁶⁷ On September 30, 2003, the landlords filed an action in Spokane County Superior court to evict Ms. Parker.⁶⁸

⁶² *Banks v. Korman Assoc.*, 527 A.2d 933 (N.J. Super. Ct. App. Div. 1987); *McCready v. Booth*, 398 So. 2d 1000 (Fla. Dist. Ct. App. 1981).

⁶³ *Banks*, 527 A.2d. at 934; *Christensen*, 643 P.2d at 529.

⁶⁴ *Parker v. Taylor*, 150 P.3d 127 (Wash. Ct. App. 2007).

⁶⁵ *See Parker*, 150 P.3d at 127 (reversing trial court's grant of summary judgment to landlord).

⁶⁶ *Id.* at 127.

⁶⁷ Brief of Petitioner-Appellant at 2, *Parker v. Taylor*, No. 244750 (Wash.App. Div. III Dec. 2005).

⁶⁸ *Id.*

At the eviction proceeding, the trial court found that the rental value of the premises had diminished because of the lack of repairs.⁶⁹ The landlords obtained a reduced judgment against Ms. Parker in the amount of \$1210.⁷⁰ The judgment consisted of \$1000 for back rent and \$210 for other costs.⁷¹ Ms. Parker was confused as to who to pay, so on December 7, 2003 she wired \$1000 to the Taylors for back rent.⁷² The following morning, the landlords arrived at Ms. Parker's residence with a Spokane County Deputy.⁷³ At that time, the County Deputy ordered Ms. Parker to leave the premises.⁷⁴ On December 8, 2003 the landlords did not ask whether Ms. Parker wanted her personal property placed in storage or some other secure place.⁷⁵ Because Ms. Parker was ordered off of the premises, she only had time to collect a few personal items.⁷⁶ Ms. Parker thought she would be able to move to a new house and be able to move her belongings prior to the issuance of the writ of restitution.⁷⁷ By the time the landlord and the sheriff came to evict her, it was apparent that she was not able to nor did she arrange for any alternative.⁷⁸

During the course of 48 hours after the eviction most of Ms. Parker's property disappeared from the curbside.⁷⁹ To date, Ms. Parker has been unable to recover family photos, heirlooms, jewelry and household belongings that were put on the curb by her landlord.⁸⁰

Ms. Parker filed a claim for the lost property against the landlords for failure to store the property under the Washington State

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.*

⁷² Brief of Petitioner-Appellant at 2, Parker v. Taylor, No. 244750 (Wash.App. Div. III Dec. 2005).

⁷³ *Id.* at 3.

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

⁷⁷ See Brief of Petitioner-Appellant at 3, Parker v. Taylor, No. 244750 (Wash.App. Div. III Dec. 2005).

⁷⁸ See *id.* at 3-4.

⁷⁹ See *id.*

⁸⁰ See *id.* at 4.

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Residential Landlord-Tenant Act (RLTA).⁸¹ The trial court dismissed Ms. Parker's complaint concluding that the landlord did not have a duty to store under the RLTA.⁸²

The Washington State Court of Appeals reversed the trial court and ruled that the RLTA was not ambiguous and required a landlord to store a tenant's property once the landlord chooses to enter the premises and take possession of the tenant's property.⁸³ In addition, the court stated that public policy supported its plain language analysis stating:

A landlord's right in quickly recovering his or her property is balanced with a tenant's personal property rights. A tenant who abandons a residence, leaving personal property, leaves on his or her own free will and may be presumed to have taken the belongings he or she desires, whereas a tenant who is escorted off the premises by a sheriff, upon the execution of a writ of restitution, does not leave on his or her own free will and is leaving without removing all his or her desired belongings.⁸⁴

The case was remanded for a jury trial in March, 2008.⁸⁵ Meanwhile, Ms. Parker, now 85, is living in a residential motel and has not been able to replace most of her belongings and clothes.⁸⁶

⁸¹ Wash. Rev. Code § 59.18.312 (2007); *Parker*, 150 P.3d at 128.

⁸² *Parker*, 150 P.3d at 128.

⁸³ *Id.* at 127. Relevant statutory language is:

(1) A landlord may, upon the execution of a writ of restitution by the sheriff, enter and take possession of any property of the tenant found on the premises *and* store the property in any reasonably secure place. If, however, the tenant or the tenant's representative objects to the storage of the property, the property shall be deposited upon the nearest public property and may not be moved and stored by the landlord. If the tenant is not present at the time the writ of restitution is executed, it shall be presumed that the tenant does not object to the storage of the property as provided in this section. RCW 59.18.310 shall apply to the moving and storage of a tenant's property when the premises are abandoned by the tenant. Wash. Rev. Code § 59.18.312(1) (*emphasis added*).

⁸⁴ *Parker*, 150 P.3d at 128-29.

⁸⁵ *Id.* at 127.

⁸⁶ See Letter, *supra* note 1.

Her personal items, family photos and memorabilia are gone forever.⁸⁷

B. Washington State Legislature Reaction to the *Parker* Decision

The *Parker v. Taylor* case was decided on January 4, 2007⁸⁸. Two weeks later, statutory amendments in both the Washington State House and Senate were introduced that were designed to overturn the Court of Appeal's decision.⁸⁹ House Bill 1865, and the companion Senate Bill 5800, made it clear that the original intent of the legislature was to give landlords the option to either store or deposit the evicted tenant's property on the street despite the *Parker v. Taylor* decision.⁹⁰ The amendments retained the existing statutory requirement that if the landlord stores property valued at over fifty dollars, the landlord is required to give the tenant forty-five days notice of the sale of the property.⁹¹ After the notice period, the landlord may sell or dispose of the property, including personal papers, family pictures, and keepsakes, and utilize the proceeds to pay for the storage. Any excess funds shall be returned to the tenant.⁹² The amendments retained the statute's requirement that the landlord cannot utilize the proceeds to pay for the judgment for back rent and court costs.⁹³

⁸⁷ Declaration of Irene Parker in Regards to Personal Property Loss, *Parker v. Taylor*, No. 04-2-04709-3 (Wash Dist. Ct. 2007)(on file with author).

⁸⁸ *Parker*, 150 P.3d at 127.

⁸⁹ H.B. 1865, 60th Leg., Reg. Sess. (Wash. 2007); S.B. 5800, 60th Leg., Reg. Sess. (Wash. 2007).

⁹⁰ *Id.* The proposed text was as follows:

A landlord may, upon the execution of a writ of restitution by the sheriff, enter and take possession of any property of the tenant found on the premises and either store the property or deposit the property on the nearest public property. If the tenant or the tenant's representative objects to the storage of the property, the landlord shall deposit the property on the nearest public property and shall not store the property. If the tenant is not present at the time the writ of restitution is executed, it shall be presumed that the tenant does not object to the storage of the property.

⁹¹ Wash. H.B. 1865; Wash. S.B. 5800.

⁹² Wash. Rev. Code § 59.18.312(3) (2007).

⁹³ *Id.* at § 59.18.312(4) (specifying that nothing in this section shall be

HB 1865 was unanimously passed in the House but the companion bill SB 5800 found more difficulty in the Senate.⁹⁴ During the hearings of the Washington State Senate Committee on Consumer Protection and Housing, testimony for and against the bill was heard.⁹⁵ Proponents of the bill argued that the bill clarified that it was not the intent of the Legislature that landlords be required to store an evicted tenant's property.⁹⁶ In practice, storing an evicted tenant's belongings has been optional and storing an evicted tenant's property can be very costly and a landlord is not likely to ever recover the costs.⁹⁷ Supporting the bill at the hearing were the Washington Multifamily Housing Association, the Rental Housing Association and the Manufactured Housing Communities of Washington.⁹⁸

The individuals and groups testifying against the bill stated that the bill changes the intent of the law as enacted and affirmed by the *Parker v. Taylor* decision.⁹⁹ They testified that the bill does not state what happens to the property when a landlord puts it out on the street and proposes a major change in the law that really only applies in the worst case scenarios.¹⁰⁰ Finally they addressed the fact that the bill disproportionately impacts the elderly, disabled and vulnerable adults.¹⁰¹ Testifying against the bills were the Washington State Coalition for the Homeless, Tenants Union of Thurston County, Columbia Legal Services, and the Washington Low-Income Housing Alliance.¹⁰² The representative of the Association of Washington Cities testified that cities and counties should be provided with some sort of notice and a clarification as to who is responsible for the costs of hauling the belongings away.¹⁰³

construed as creating a right of distress for rent).

⁹⁴ S. B. REP. SHB 1865 (Wash. 2007).

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ S. B. REP. SHB 1865 (Wash. 2007).

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

Written objection to the bill was also provided by the Northwest Fair Housing Alliance in Spokane and the Aging and Long Term Care of Eastern Washington.¹⁰⁴ In a letter to Senator Lisa Brown, the Senate Majority Leader, Marley J. Eichstaedt, Executive Director of the Northwest Fair Housing Alliance stated:

I am writing on behalf of Northwest Fair Housing Alliance (NWFHA) to express our opposition to SHB 1865.... The largest number of complaints we receive come from individuals with disabilities, many of them elderly (this is a nation-wide trend). Unfortunately, many of these individuals find themselves evicted and homeless because they are unable to pay their rent due to large medical bills... When these evictions occur, disabled tenants are not always able to immediately move their possessions from the rental unit. Often it takes a few additional days to obtain assistance from physically able individuals and/or financial support from the community service organizations to transfer their belongings. Temporarily storing a tenant's personal belongings is not a hardship for the landlord since storage or drayage costs can be recouped from the tenant, or the items sold if not collected by the tenant within 45 days of notice of the landlord's intent to sell.

Too often we at NWFHA hear about disabled individuals, now homeless, also losing everything they own after a landlord puts the tenant's belongings on the street, or even tosses them into a dumpster, immediately following the service of a writ of restitution. NWFHA supports the status quo, as articulated in *Parker v. Taylor*, which requires that a landlord store a tenant's belongings for a reasonable time following an eviction.¹⁰⁵

Toward the end of the legislative session, numerous amendments were submitted that probably contributed to the demise of the bill on the Senate floor.¹⁰⁶ One amendment provided that a landlord did have an obligation to store an evicted tenant's property

¹⁰⁴ Letter from Marley J. Eichstaedt, Northwest Fair Housing Alliance, to Senator Majority Leader Lisa Brown (March 30, 2007) (on file).

¹⁰⁵ *Id.*

¹⁰⁶ Full history of HB 1865 and SHB 1865, <http://apps.leg.wa.gov/billinfo/summary.aspx?bill=1865&year=2007> (last visited Jan. 26, 2008).

and that it was always the intent of the legislature that landlords have a duty to do so, as determined by the court in the *Parker v. Taylor* case.¹⁰⁷ Another amendment provided that the landlord shall send notice by certified mail indicating that the property will either be stored or deposited on the nearest public property if a tenant does not respond in writing within seven days.¹⁰⁸

Two amendments were submitted to provide that if the cumulative value of the property subject to eviction is \$300 then the landlord must store the property.¹⁰⁹ And still another amendment¹¹⁰ provided that if the value of the tenant's property is over \$500 (as determined by the landlord) after deduction of the landlord's estimated reasonable costs of moving, storing, and selling the property, the property shall be stored by the landlord unless the tenant objects. Property with a cumulative value of less than \$500 can be deposited on the nearest public property.¹¹¹

Finally, State Senator Kline, submitted an amendment that if a landlord opts to leave a tenant's property on the nearest public property, the landlord is to provide the local municipality with advance written notice.¹¹² The local municipality may charge the landlord for any costs the municipality incurs in moving the property.¹¹³ The bill was passed by the Senate Committee but it failed

¹⁰⁷ S. SHB 1865-S AMD 466, 60th Leg. (as amended by Sen. Kline, Wash. 2007), <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Amendments/Senate/1865-S%20AMS%20KLIN%20S3469.1.pdf>.

¹⁰⁸ S. SHB 1865-S AMD 536, 60th Leg. (as amended by Sen. Kline, Wash. 2007), <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Amendments/Senate/1865-S%20AMS%20KLIN%20MEND%20040.pdf>.

¹⁰⁹ S. SHB 1865-S AMD 467, 60th Leg. (as amended by Sen. Kline, Wash. 2007), <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Amendments/Senate/1865-S%20AMS%20KLIN%20S3471.1.pdf> ; S. SHB 1865-S AMD 550, 60th Leg. (as amended by Sen. Franklin, Wash. 2007), <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Amendments/Senate/1865-S%20AMS%20FRAN%20S3505.1.pdf>.

¹¹⁰ S. SHB 1865-S AMD 525, 60th Leg. (as amended by Sen. Tom, Wash. 2007), <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Amendments/Senate/1865-S%20AMS%20TOM%20S3504.1.pdf>.

¹¹¹ *Id.*

¹¹² S. SHB 1865-S AMD 469, 60th Leg. (as amended by Sen. Kline, Wash. 2007), <http://apps.leg.wa.gov/documents/billdocs/2007-08/Pdf/Amendments/Senate/1865-S%20AMS%20KLIN%20S3473.1.pdf>.

¹¹³ *Id.*

to reach the Senate floor for a vote by the end of the legislative session.¹¹⁴ In March, 2008 the Washington State Legislature passed a bill that seemed to satisfy both the interests of the landlords and tenants.¹¹⁵ The bill gives the option to landlords to store an evicted tenant's property or deposit it on the nearest public property.¹¹⁶ However, the landlord must store the tenant's property if the tenant makes a written request for storage no later than three days after service of the writ of restitution.¹¹⁷ When serving the writ of restitution, the sheriff must provide the tenant with a form provided by the landlord that can be used to make the written request for storage.¹¹⁸ The statute also includes a suggested form for the request for storage.¹¹⁹ The landlord must store the evicted tenant's property if the landlord knows that the tenant is disabled and the disability impairs the tenant from making a written request for storage.¹²⁰

The statute further provides that the landlord must notify the tenant of the pending sale of the property after thirty days notice for property with a cumulative value of over \$100 and seven days notice for property valued under \$100.00.¹²¹ After the proscribed notice period, the landlord can sell the property and apply any income from the sale of the property to pay for the storage costs with any excess returned to the tenant.¹²² Regardless of the value of the property, the landlord cannot sell the tenant's personal papers, family pictures, and keepsakes.¹²³

IV. Conclusion

The response by landlord groups, and the intense lobbying effort that followed the *Parker* decision, is not an isolated occurrence.

¹¹⁴ *Id.*

¹¹⁵ SHB 1865, Wash. Rev. Code § 59.18.312 (2008).

¹¹⁶ *Id.* at § 1.

¹¹⁷ *Id.* at § 5.

¹¹⁸ *Id.*

¹¹⁹ *Id.* at § 6.

¹²⁰ SHB 1865, Wash. Rev. Code § 59.18.312 (2008) at § 1.

¹²¹ *Id.* at § 3.

¹²² *Id.* at § 3.

¹²³ *Id.* at § 3.

Legal commentators and courts have noted the ability of landlords to influence statutory procedures governing the eviction process through lobbying efforts.¹²⁴

The attractiveness of depositing a tenant's property on the sidewalk lies in the simplicity of the solution and in the low cost of doing so.¹²⁵ Where the eviction process has progressed to the point that a tenant is actually forced off the premises by an officer, a landlord will likely have already lost a sizable amount of money due to unpaid rent, legal fees, and court fees.¹²⁶ It has been argued that requiring landlords to pay for storage that probably will not be recouped is unfair and overly burdensome.¹²⁷

Reforms imposing a duty to store on landlords are sure to face opposition from landlord groups and others who complain that current laws are already one-sided in favor of the tenant.¹²⁸ Some assert that increasing the costs of landlords also has a negative effect on tenants because landlords will either raise the cost of rent or convert the rental housing to other uses.¹²⁹ Others maintain there is no evidence to support this assertion.¹³⁰ Indeed, during the Washington state legislature session debating the duty to store, the landlords asserted that obligating the landlord to store property will increase the costs of rentals and decrease the profit value of their rental property. However, during the session the landlords did not provide any evidence or studies to support these assertions.¹³¹ Indeed, none of the

¹²⁴ See *Statewide v. Diggs*, 62 P.3d 1105, 1110 (Kan. 2003) (noting that landlords were able to successfully lobby state legislatures to make changes to the eviction process that was more favorable to them); See also Gerchick, *supra* note 24 (stating that "landlords have waged intense lobbying efforts to obtain greater protections from eviction delays and costs.").

¹²⁵ See Gibbons, *supra* note 19, at 378 (arguing that curbside drop is a simple solution for landlord).

¹²⁶ See *id.* at 378.

¹²⁷ *Id.* at 380.

¹²⁸ See also Rabin, *supra* note 11 (stating that "almost all changes [to landlord-tenant laws] have favored the tenant as against the landlord.").

¹²⁹ See, e.g., Steven Gunn, *Eviction Defense for Poor Tenants: Costly Compassion or Justice Served?*, 13 YALE L. & POL'Y REV. 385, 385-86 (1995).

¹³⁰ See Glendon, *supra* note 10, at 561 (stating that "empirical studies have been able to find little discernable impact of the changed law...on the cost, quality and supply of rental housing.").

¹³¹ See *Bank of Am. Nat'l Trust & Sav. Ass'n v. Taliaferro*, 301 P.2d 393, 396

states that do provide a duty to store have reported a difficulty in maintaining profitability in the residential landlord business.¹³²

Over the last forty years the policy of modern eviction laws recognized and preferred the possessory interests of tenants in their homes rather than property owners in their investments.¹³³ The loss of a tenant's property and the class demographics of the typical evicted tenant should override the consideration of cost of storage to the landlord.¹³⁴ As Ms. Parker's situation exemplifies, failure to store property during eviction may result in the theft or destruction of the tenant's property and leaves little or no recourse available to tenants.¹³⁵ This seems like a high price to pay for what essentially involves a breach of contract. Landlord-tenant statutes that do not provide a duty to store create a unique contract in which the law allows, upon breach of the contract, the non-breaching party to categorically sell or dispose of the personal property of a breaching party. In addition, a price cannot be placed on the loss of one's family pictures, mementos and other items of sentimental value. The monetary loss to the landlord in an eviction process has to be balanced to the great emotional and financial harm to the tenant.

Most evictions occur because of the failure to pay rent.¹³⁶ Many have noted that laws that fail to protect tenants' property have a disproportionate impact on poor, elderly and disabled¹³⁷ who are

(1956).

¹³² Real Facts, <http://realfacts.com/7262006.html> (July 26, 2006) (reporting that occupancy rates climbed across the boards and rents have increased); Real Facts, <http://realfacts.com/1192007.html> (Jan. 19, 2007) (reporting in that overall occupancy rates have declined and annual rent growth has increased).

¹³³ Karl Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 WIS. L. REV. 925, 927 (1989).

¹³⁴ See Fitzpatrick, *supra* note 20, at 1124.

¹³⁵ In *Conroy v. Manos*, 679 S.W. 2d 124, 127 (Tex. App. 1984) (denying the tenant's claim against the landlord because it found the landlord did not have a duty to store the tenant's property when the tenant's property was removed and placed in a public area during the eviction process. The property was subsequently stolen while the landlord's employees watched. Justice Whitham stated in his dissent that the court "approve(d) distribution of the tenant's property to the human vultures gathered along the street awaiting the constable's departure.").

¹³⁶ See Fitzpatrick, *supra* note 20, at 109 n.1.

¹³⁷ See, e.g., Laurence E. Norton, *Not Too Much Justice for the Poor*, 101 DICK. L. REV. 601, 603 (1997) (stating that recent changes in Pennsylvania landlord-tenant law adversely affect the poor).

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unable to afford new shelter for themselves or pay for storage of their possessions.¹³⁸ Storage of evicted tenants' property for a fixed period provides tenants with a second chance of redemption.¹³⁹

The duty to store a tenant's property rests on public policy concerns of public welfare, law and order.¹⁴⁰ Leaving property on the public sidewalk is a public nuisance and increases the costs of the municipality who eventually has the responsibility to remove the property.¹⁴¹ It encourages theft, causes environmental damage and infringes upon quality of life in the neighborhood.¹⁴² In addition, it violates municipal laws with respect to unlawfully encumbering or obstructing a street or littering.¹⁴³

Although landlord-tenant law has progressed to provide increased protection to tenants, many jurisdictions still differ as to the duty to store a tenant's property in the eviction process. In a modern civil society the law needs to protect citizens such as Irene Parker from the loss of all of their worldly possessions.

¹³⁸ See Fitzpatrick, *supra* note 20, at 1124.

¹³⁹ See *id.*

¹⁴⁰ See *Finnigan v. Hadley*, 190 N.E. 528, 529 (Mass. 1934) (stating public welfare, convenience, and safety requires storage of tenant's goods on eviction).

¹⁴¹ *Id.*

¹⁴² *Merritt v. Harris County*, 775 S.W. 2d 17, 22 (Tex. App. 1989).

¹⁴³ *Matter of 667 E. 187th St. Corp. v Lindsay*, 54 Misc. 2d 632, 634-35 (N.Y. Sup. Ct. 1967) (stating the municipal code required the city to protect the property of the tenant's property left on the curbside).