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I. Introduction

In the approximately eighteen years since the publication of *Pennsylvania Landlord Remedies: Collection of Rent & Recovery of Possession*,[1] there have been numerous changes in the law of landlord's remedies. Some have been helpful to the landlord, such as the recent amendments to the Landlord and Tenant Act of 1951. Others have been harmful to the landlord, such as distraint being declared unconstitutional by the Pennsylvania Superior Court. This article is intended to serve as a comprehensive update of the previous article constituting a complete survey of recent developments in landlords' remedies in Pennsylvania.

II. Preliminary Matters

A. Mitigation of Damages

In the 1882 case of *Auer v. Penn*,[2] the Pennsylvania Supreme Court held that landlords did not have a duty to mitigate their damages when tenants abandon leased premises.[3] Then in 1979, in *Pugh v. Holmes*,[4] the court held that leases were in the nature of contracts and are, therefore, controlled by principles of contract law.[5] It was, therefore, expected by many commentators that when the issue reached the supreme court again, the historic rule would be reversed and landlords would be held to

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1. Ronald G. Backer, *Pennsylvania Landlord Remedies: Collection of Rent & Recovery of Possession*, 89 DICK. L. REV. 53 (1984).
2. 99 Pa. 370 (1882).
3. *Id* at 375-76.
4. 405 A.2d 897 (Pa. 1979).
5. *Id.* at 903.

have a duty to mitigate their damages.

However, in *Stonehedge Square Ltd. Partnership v. Movie Merchants, Inc.*,[6] the court defied the commentators' expectations by holding that landlords in commercial leases are not required to mitigate their damages when tenants have breached their lease agreements by moving out before the end of the term.[7] The court gave five reasons for its decision: (1) the rule is firmly established in Pennsylvania and leases have been drafted and bargained for in reliance on this rule; (2) the established rule has the virtue of simplicity and will not result in litigation as to whether or not the landlord appropriately mitigated its damages; (3) the Landlord and Tenant Act of 1951 did not modify the landlord's non-duty to mitigate damages; (4) there is a fundamental unfairness in requiring the landlord to mitigate, forcing the landlord to expend time, energy and money to respond to the tenant's breach; and, (5) under the assignment and subletting clause in the lease, the tenant had the ability to find a substitute tenant.[8]

Despite the fact that *Stonehedge* is a unanimous decision (with three justices concurring), the reasoning is flawed. If the non-mitigation rule was simple and would not result in litigation over whether or not a landlord has properly mitigated and a contrary rule would be fundamentally unfair to a landlord, the same argument would apply to any contract that is breached. Yet, as the Pennsylvania Supreme Court once said in *Henry Shenk Co. v. Erie County*:[9] "The rule that a party cannot recover damages from a defaulting defendant which could have been avoided by the exercise of reasonable care and effort is applicable to *all* types of contracts."[10]

The fact that *Auer v. Penn* is an old case is not a reason to overrule it. Indeed, the court should have followed another edict of the *Pugh* case, which was that "[c]ourts have a duty to reappraise old doctrines in the light of the facts and values of contemporary life—particularly old common law doctrines which the courts themselves have created and developed."[11] Furthermore, it is unlikely that many commercial leases were drafted in reliance in *Auer v. Penn*, since most attorneys already assumed that a landlord had a duty to mitigate its damages. While the

6. 715 A.2d 1082 (Pa. 1998).

7. *Id.* at 1084.

8. *Id.* at 1084-85. There is a split of authority on this issue outside of Pennsylvania. *See* Christopher Vaeth, Annotation, *Landlord's Duty, on Tenant's Failure To Occupy, or Abandonment of, Premises, To Mitigate Damages by Accepting or Procuring Another Tenant*, 75 A.L.R.5th 1 (2000).

9. 178 A. 662 (Pa. 1935).

10. *Id.* at 666 (emphasis added).

11. *Pugh*, 405 A.2d at 904 (citations omitted).

Landlord and Tenant Act of 1951 does not address mitigation of damages, that statute is mainly concerned with landlords' procedural remedies, not tenants' rights. It has no relevance to the issue of mitigation of damages. The fact that the defaulting tenant had an ability to find a substitute tenant should not relieve the landlord of also attempting to locate a new tenant. A landlord would likely have more resources available to locate a new tenant than a defaulting tenant would. It is hard to justify the *Stonehedge* decision in light of *Pugh v. Holmes*.[12]

Although the reasoning of the *Stonehedge* decision applies equally as well to a residential lease as a commercial lease, the first line of the decision and the concurring opinion by Justice Zappala make it clear that the case is limited to a commercial lease.[13] Yet *Auer v. Penn* involved a residential lease of a house for five years.[14] For the supreme court to have been consistent, it should have found no duty to mitigate in all types of leases, rather than limit the holding of *Stonehedge* to commercial leases. In failing to so hold, perhaps the court silently recognized the unfairness of its position.

Prior to the Pennsylvania Supreme Court decision in *Stonehedge*, a trial court in *Essex House Apartments v. Keyser*[15] held that a residential landlord had a duty to mitigate damages upon a default by the tenant.[16] The court's analysis was based upon the recognition that the law no longer characterizes a leasehold interest as a property right, but, rather, that the landlord-tenant relationship is now a contractual one. It is unknown whether *Essex House* has any validity since the *Stonehedge* decision. There are no reported decisions addressing a residential landlord's duty to mitigate damages since *Stonehedge*. Until the law is clarified in this case, careful Pennsylvania residential landlords should continue to mitigate their damages.

Although the *Stonehedge* decision is not clearly written, the court appears to conclude that, if there is a specific clause in the lease requiring landlords to attempt to mitigate their damages, that clause will be enforced by the courts.[17] A tenant negotiating a commercial lease should

12. *See supra* note 4 and accompanying text.
13. *Stonehedge*, 715 A.2d at 1082, 1085.
14. Auer v. Penn, 99 Pa. 370, 375-76 (1882).
15. 22 Pa. D. & C.4th 253 (Allegheny 1994).
16. *Id.* at 257.
17. The supreme court said: "[I]nsofar as the law of contracts is applicable, the non-breaching party must mitigate his damages." *Stonehedge*, 715 A.2d at 1084. The superior court decision is clearer, since it reviewed the lease and found that "nowhere in the thirty-seven page lease is there a mitigation clause imposing on the Landlord a duty to mitigate the tenant's damages if the tenant breaches the lease." *Stonehedge Square P'ship v. Movie Merchs., Inc.*, 685 A.2d 1019, 1025 (Pa. Super. Ct. 1996), *aff'd*, 715

therefore always request that mitigation language be inserted into the default clause of the lease, thus avoiding the *Stonehedge* ruling on a lease-by-lease basis. In many cases, a landlord will want to mitigate damages, no matter what the lease says. A tenant who abandons property is often unlikely to be able to pay a large judgment for rent, and the landlord would not want to risk losing a rental stream from a new tenant based upon the hope of collecting rent from the defaulting tenant. In a shopping center situation, a landlord would not want an empty storeroom, even if the rent were collectible from the defaulting tenant.

B. Rent Due After Termination of the Lease

One of the most difficult issues in landlord-tenant law arises when the landlord terminates the lease for non-payment of rent and evicts the tenant. Is the tenant liable for the rent due, after the termination, until the end of the original term of the lease? Obviously, to make the landlord whole, after a default by the tenant, the landlord should be entitled to all of the rent that is due after termination, at least until such time as the landlord re-rents the premises.

The Pennsylvania law on this issue is not helpful for the landlord. Numerous cases, such as *Mack v. Fennell*,[18] have held that, once a lease is terminated as result of an eviction, the tenant is not liable for any further rent due under the lease.

This issue was addressed in a recent ruling by the Pennsylvania Superior Court on confessions of judgment.[19] Rule 2972 of the Pennsylvania Rules of Civil Procedure, which relates to confession of judgment for possession of real property, states: "If an instrument authorizes judgment to be entered in ejectment and for money, the entry of judgment for money shall not prevent the entry of judgment in ejectment."[20] It has always been the common practice of landlords in Pennsylvania, who had a confession of judgment clause in a commercial lease, to confess judgment for accelerated rent through the end of the term, along with a judgment for possession. The accelerated rent judgment was often in such a large amount that it could not practically be collected, but the landlord hoped to evict and then eventually to collect some rent from the tenant for the time period after the tenant had been

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A.2d 1082 (Pa. 1998). Of course, if the court is willing to enforce a mitigation clause in a lease, most of the reasons for not requiring mitigation when there is no clause in the lease make little sense.

18. 171 A.2d 844 (Pa. Super. Ct. 1961); *see* Backer, *supra* note 1, at 59-62.

19. *See* Homart Dev. Co. v. Sgrenci, 662 A.2d 1092 (Pa. Super. Ct. 1995).

20. PA. R. CIV. P. 2722.

dispossessed from the premises.[21]

Homart Development Co. v. Sgrenci[22] put a stop to that practice. In that case, the landlord had confessed a judgment for possession, along with a judgment for accelerated rent through the end of the term.[23] In disapproval of that practice, the superior court held that a "landlord must elect whether to confess judgment for possession and for all monies then due, or to confess judgment for all monies for the entire term."[24] The court further held that the accelerated rent judgment, in that case in the amount of $234,900, should be stricken, because it was grossly excessive.[25] The judgment for possession was not stricken, although it was opened so that factual issues could be resolved in the lower court.[26]

Based upon this ruling, a landlord may confess a judgment, in one complaint, for possession of premises and for overdue rent as of the date of the confession, but not for any rent due after the date of the confession. The *Homart* decision thus limits the use of confessions of judgment by landlords.

There appears to be, however, significant good news for landlords in the *Homart* decision. Although the language is somewhat unclear and is dictum, the court also said: "When the judgment is entered for possession, the landlord is, of course, entitled to recover, *as damages in a civil action*, those losses which he suffers in attempting to relet the premises for the term of the lease."[27] The court appears to be saying that rent due after an eviction is collectible as damages for breach of contract, not as rent, until such time as the landlord mitigates damages. The court approved at least one calculation of those damages, as set forth in the lease at issue in the case.[28]

The *Homart* case, and prior cases cited therein, gives some guidance to landlords. First, whenever landlords desire to dispossess a

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21. *Homart*, 662 A.2d at 1097-1102.
22. *Id.*
23. *Id.* at 1097.
24. *Id.* at 1101.
25. *Id.* at 1102. The court could not actually strike the judgment, because no petition to strike had been filed in the lower court.
26. *Id.*
27. *Id.* at 1101.
28. *Id.* (emphasis added). The lease language that the Pennsylvania Superior Court approved in this case is not very helpful to the landlord. Upon termination, the landlord was entitled to the difference between the rent through the balance of the term and the fair rental value of the lease through the end of the term. *See id.* If the fair rental value of the lease is subtracted from the rent due under the lease, before the landlord has found a substitute tenant, the landlord will not be made whole. Thus, if the damages that the landlord is permitted to collect, after termination of the lease, is limited to those damages, the *Homart* decision is of little value to the landlord.

tenant, the landlords should never state or use the word "termination" or concede that they are terminating the lease. Landlords should simply be attempting to recover possession. Second, the lease itself should always have language in it stating that, even if the lease is terminated, the tenant shall remain liable for all damages under the lease as a result of any breach of lease by tenant, including damages in the nature of rent due through the end of the term of the lease. In this way, landlords have a better chance of collecting the rent due under a lease even after the tenant has been evicted from the premises.

Stonehedge Square Ltd. Partnership v. Movie Merchants, Inc. is also relevant to the issue as to whether tenants are liable for rent after they have been evicted from the premises. If a tenant who abandons the property is liable for the rent through the end of the term,[29] surely a tenant who defaults in the payment of rent and must be legally evicted should also be liable for the rent through the end of the term. The logic of *Stonehedge* requires such a ruling. Why give greater rights to tenants who refuse to vacate voluntarily the leased premises for which they are not paying rent?

III. Collection of Rent and Other Damages

A. Suit Before District Justice

The main development in actions for rent before a district justice is the increase in the jurisdictional limit. In 1992, the jurisdictional limit of actions for damages before a district justice, including those based upon leases, was increased from $4,000 to $8,000.[30] As will be discussed later in this article, in 1995, there were a number of changes made in the procedures before a district justice involving an eviction of a tenant. However, if the landlord's claim is for rent only, there has been no change in the procedures. A tenant, under either a residential or commercial lease, would still have thirty days to appeal a judgment involving money only, and an appeal will operate as an automatic supersedeas.[31]

29. *See* Stonehedge Square Ltd. v. Movie Merchs., Inc., 715 A.2d 1082, 1084 (Pa. 1998).

30. *See* Act of Dec. 16, 1992, P.L. 1089, 1992 Pa. Laws 167 (codified as amended at 42 PA. CONS. STAT. § 1515(a) (2001)).

31. *See, e.g.*, PA. R. CIV. P.D.J. 1002(a), 1008(a).

B. *Confession of Judgment for Rent and Possession*

1. Execution

The most significant changes regarding confessions of judgment involve execution on judgments. In *Jordan v. Fox, Rothschild, O'Brien & Frankel*,[32] the Court of Appeals for the Third Circuit called into question the constitutionality of the Pennsylvania Rules of Civil Procedure allowing execution on confessed judgments as to a debtor who did not knowingly waive his constitutional rights to notice and a hearing.[33] As a result of that decision, several rules were amended or added.

The Pennsylvania Rules of Civil Procedure relating to confessions of judgment for money no longer permit a confession of judgment for money pursuant to an instrument executed by a natural person in connection with a consumer credit transaction.[34] A "consumer credit transaction" is defined as a credit transaction primarily for personal, family or household purposes.[35] The complaint in confession of judgment must contain a separate averment that the case does not involve a consumer credit transaction.[36]

A residential lease clearly involves a consumer credit transaction. However, if there was any doubt, rule 2970, which relates to confession of judgment for possession, clearly prohibits a confession of judgment pursuant to "a residential lease executed by a natural person."[37] Although some federal courts had previously outlawed confessions of judgment for possession in some counties in Pennsylvania,[38] these amendments to the confession of judgment rules are new law in Pennsylvania.[39]

Prior to the 1995 amendments to the Pennsylvania Rules of Civil Procedure, a landlord could confess judgment for rent and immediately have the sheriff execute on the tenant's assets, or, the landlord could confess a judgment for possession and immediately have the sheriff start

32. 20 F.3d 1250, 1271 (3d Cir. 1994).
33. *Id.* at 1271.
34. PA. R. CIV. P. 2951.
35. *Id.* 2950.
36. *Id.* 2952(a)(3).
37. PA. R. CIV. P. 2970.
38. *See* Backer, *supra* note 1, at 93.
39. In *Federman v. Pozsonyi*, 529 A.2d 530 (Pa. Super. Ct. 1987), the Pennsylvania Superior Court held that a confession of judgment for possession arising under a residential lease was appropriate where there had been a knowing, voluntary and intelligent waiving of due process rights. *Id.* at 533.

eviction proceedings.[40] Those practices have been halted by the additional notice provisions in the Rules of Civil Procedure.

For a confession of judgment for money, the landlord must give one of three notices to the tenant: a thirty-day notice prior to the filing of the praecipe for execution, a different notice given at least thirty days prior to the sale of real property, or a notice served with the writ of execution.[41] For a confession of judgment for possession, the landlord must give one of two notices: a thirty-day notice prior to the filing of a praecipe for a writ of possession or a notice served with the writ of possession.[42] The Rules of Civil Procedure should be consulted as to the form of a notice, and the procedures subsequent to giving the notice.

The net result of these 1995 amendments is to limit confessions of judgment to commercial transactions, and to delay the landlord in executing or evicting on a confessed judgment in a commercial transaction. These results are all the more reason why a landlord will want to start an eviction action before the district justice.

2. Miscellaneous Cases Addressing Confessions of Judgment in Leases

In *Homart Development Co. v. Sgrenci*, the Pennsylvania Superior Court confirmed prior law and held that, where a judgment was entered pursuant to a lease that contained a confession of judgment clause, but the judgment was for an excessive amount, the court will correct the judgment pursuant to a petition to open judgment.[43] However, where the judgment is for a grossly excessive amount, such as for accelerated rent when authorized by the law or the lease, the judgment will be stricken.[44]

In *Perry Square Realty, Inc. v. Trame, Inc.*,[45] the superior court held that a warrant of attorney to confess judgment in a lease which had been executed by the tenant, but not the guarantor, could not be used against the guarantor.[46] In *Federman v. Pozsonyi*,[47] the superior court found that where a tenant had employed an attorney to negotiate a lease on the tenant's behalf, the tenant would have difficulty proving that the tenant did not knowingly and voluntarily waive the tenant's due process rights

40. *E.g.*, PA. R. CIV. P. 2958.1 cmt.
41. PA. R. CIV. P. 2958.1-.3.
42. *Id.* 2973.2-.3.
43. 662 A.2d 1092, 1101-02 (Pa. Super. Ct. 1995); *see also* PA. R. CIV. P. 2983.2.
44. *See also* Riley v. Raudeski, 23 Lebanon Co. Leg. J. 58, 59-61 (1985).
45. 693 A.2d 1320, 1321-22 (Pa. Super. Ct. 1997).
46. *Id.* at 1321-22.
47. 529 A.2d 530 (Pa. Super. Ct. 1987).

in executing a lease containing a confession of judgment clause.[48]

C. *Distraint and Related Remedies*

As noted in the previous article,[49] during the 1970s and 1980s, the federal courts of Pennsylvania raised serious questions about the constitutionality of the distraint procedures in the Landlord and Tenant Act,[50] although they never completely abolished the practice. However, the Pennsylvania Superior Court abolished the process in 1986 with its decision in *Allegheny Clarklift, Inc. v. Woodline Industries of Pennsylvania, Inc.*[51]

In that decision, the court carefully reviewed all of the federal court decisions addressing the constitutionality of the distraint procedures. The court stated: "[T]he state having once authorized private action in conjunction with its own officials, must ensure at the outset that the procedural scheme to be followed is beyond (constitutional) reproach."[52] The court found distraint to be "nugatory," that is, of no force or inoperative.[53]

In the *Allegheny Clarklift* decision, the superior court never stated clearly that the entire distraint procedure is unconstitutional.[54] Any ambiguity however, was resolved by later court decisions. In *Langley v. Tiberi*,[55] the superior court confirmed that distraint was declared unconstitutional in *Allegheny Clarklift*,[56] and, in *Smith v. Coyne*,[57] the Pennsylvania Supreme Court recognized that distraint had previously been declared unconstitutional by the superior court.[58]

A distraint is very similar to a self-help repossession, which is discussed later in this article.[59] In a distraint action, the landlord levies on personal property, posts a notice of levy on the door, and asserts some control over the personal property on the premises. In most cases, the landlord padlocks the premises.[60] If the landlord now conducts an unconstitutional distraint or something similar to the tenant's goods on

48. *Id.* at 533.
49. Backer, *supra* note 1, at 78-79.
50. PA. STAT. ANN. tit. 68, §§ 250.302-.404 (West 2001).
51. 514 A.2d 606, 609 (Pa. Super. Ct. 1986).
52. *Id.* at 609.
53. *Id.*
54. *See id.*
55. 528 A.2d 207 (Pa. Super. Ct. 1987).
56. *Id.* at 210 n.3.
57. 722 A.2d 1022 (Pa. 1999).
58. *Id.* at 1025.
59. *See infra* notes 155-59 and accompanying text.
60. Backer, *supra* note 1, at 77.

the leased premises, does the tenant have a remedy against the landlord?

Hoyt v. Christoforou[61] involved a situation where a landlord unilaterally took possession of the tenant's equipment by physically barring the tenant from entering the premises.[62] No official distraint was conducted, although the effect was the same. The landlord then sold the goods to a new tenant.[63] The superior court held that this action by the landlord "constitutes an unauthorized exercise of dominion and control over the property [restaurant equipment] and, thus, a conversion."[64] Although this case did not involve an action for damages, the superior court clearly authorizes a damage action by the tenant in the appropriate circumstances. Thus, a landlord should never attempt an illegal seizure of a tenant's property because a landlord who is owed money would prefer to be a plaintiff in a collection action against the tenant rather than a defendant in a conversion action brought by the tenant.[65]

Since distraint is unconstitutional, there is no longer any landlord's lien in Pennsylvania. The landlord does not have a landlord's lien in the absence of a distraint.[66] However, the landlord's preference in the proceeds of an execution sale taking place on the demised premises is still valid, since that preference is not based upon a prior distraint.[67]

D. Garnishment of Wages for Tenant Damages

There is a little-known remedy available to the landlord when the tenant has caused damages to portions of a residential property, such as abusing the walls, floors, ceilings or other physical makeup of the demised premises. If a court or a district justice enters a final judgment against the tenant, the landlord has the right to garnish the tenant's wages to satisfy the debt.[68] This remedy applies only to collection of a judgment for damages to the demised premises and not for overdue rent.[69] The maximum amount that may be garnished in a pay period is ten percent of the tenant's wages or a sum that does not place the debtor's income below the poverty income guidelines, whichever is

61. 692 A.2d 217 (Pa. Super. Ct. 1997).
62. *Id.* at 220.
63. *Id.*
64. *Id.* at 223.
65. In the body of the *Hoyt* decision, the superior court seems to have forgotten that it declared distraint unconstitutional in the *Allegheny Clarklift* case. *See id.*
66. *In re* Uni-Lab, Inc., 282 F.2d 123, 124 (3d Cir. 1960); Rager v. Elias, 6 Pa. D. & C.4th 582, 584 (Fayette 1989)
67. *See* Backer, *supra* note 1, at 83.
68. 42 PA. CONS. STAT. § 8127(g)-(h) (2001).
69. *Id.* § 8127(a).

less.[70] The money is to be paid by the employer to the prothonotary on a periodic basis and the prothonotary is to forward the proceeds to the landlord.[71]

While the statute gives some guidance for the procedures to be used in the garnishment process, the statute specifically states that, to implement the wage garnishment, the landlord "shall comply with the Pennsylvania Rule of Civil Procedure and any applicable local rules."[72] Unfortunately, for the landlord, there are no rules that deal with garnishment of wages in a civil action.[73] There are general execution rules in Pennsylvania that govern garnishments, but these are used for fixed judgments against a fixed asset such as a bank account.[74] There is no procedure for periodic payments to the prothonotary.

Unless a county has enacted local rules to deal with the situation, there is no appropriate method for garnishing the wages of a tenant to satisfy a judgment for damages to the premises. Until new rules of civil procedure are enacted, this section of the Judicial Code will be used rarely by landlords.

III. Evictions

A. Actions Before the District Justice

1. Expedited Procedures Before the District Justice

The 1995 amendments to the Landlord and Tenant Act of 1951, and the related amendments to the Pennsylvania Rules of Civil Procedure for District Justices, have substantially reduced the time involved in an action for the recovery of possession of real property. The periods for the notice to quit are now as follows: for a lease of one year or less or for an indefinite term and where the term of the lease has expired or the tenant has breached a condition of the lease, the notice must be at least fifteen days; for a lease of more than one year and where the term of the lease has expired or the tenant has breached a condition of the lease, the notice must be at least thirty days.[75] In either situation, where the breach

70. *Id.* § 8127(a)(3.1)
71. *Id.*
72. *Id.* § 8127 (a) (3.1)-(3.2).
73. There are rules governing wage attachments in family cases. *See, e.g.*, PA. R. CIV. P. 1910.21. These garnishments are handled by the domestic relations section of the court, *see id.*, which would not handle a landlord-tenant case.
74. *See, e.g., id.* 3140-48.
75. PA. STAT. ANN. tit. 68, § 250.501(b) (West 2001) (amended 1995).

of the lease is the failure to pay rent, the notice need only be ten days.[76] These periods can be reduced or the notice to quit waived in its entirety by the terms of the lease.[77] Service of the notice by certified or regular mail is still not effective.[78]

The procedures before the district justice have also been expedited. The district justice must set the hearing not less than seven nor more than fifteen days from the date the complaint is filed.[79] If the landlord is successful at the hearing before the district justice and the matter involves a residential lease, the landlord may request an order for possession (assuming no supersedeas has been obtained by the tenant) after the tenth day following the date of the entry of the judgment by the district justice.[80] The residential tenant then has ten days to vacate the premises after service of the order for possession or the tenant may be evicted forcibly.[81] In a commercial lease, the order of possession may not be obtained until at least fifteen days after the entry of the judgment by the district justice and the commercial tenant has fifteen days after service of the order of possession to vacate voluntarily the premises before being evicted forcibly.[82]

2. Appeals from the Decision of a District Justice

The most controversial of the 1995 changes to tenant eviction procedures involves appeals from the district justice to a court of common pleas. There is a significant distinction between the procedures applicable to residential tenants and those applicable to commercial tenants, with the rules applicable to residential tenants being much more

76. *Id.* Under the prior law, for example, if the breach was non-payment of rent, the notice was fifteen days between April 1 and September 1 and thirty days during the remainder of the year. *Id.* (West 1994).

77. *Id.* § 250.501(e) (West 2001).

78. *Id.* § 250.501(e)-(f). The notice to quit is jurisdictional and without a properly served notice even an appeal from a district justice judgment will be dismissed. Fulton Terrace Ltd. v. Riley, 4 Pa. D. & C.4th 149, 154 (Fulton 1989); *see also* Gafoor Realty v. Upshaw, 140 Pitt. L.J. 122, 122-23 (1991). For HUD subsidized housing, the notice to quit must be very detailed as to defaults by the tenant or the notice to quit will not be effective as a matter of federal law. Pheasant Hill Estates Assocs. v. Milovich, 33 Pa. D. & C.4th 74, 78 (Dauphin 1996).

79. PA. R. CIV. P.D.J. 504. Prior to the 1996 amendment to Rule 504, the hearing date could be as much as twenty days from the filing of the complaint. *Id.* cmt.

80. *Id.* 515(B).

81. *Id.* 515(B), 519(B). Previously, for both residential and commercial tenants, the order for possession could not be obtained for at least fifteen days from the district justice's judgment and the tenant had fifteen more days to vacate the premises voluntarily after service of the notice of possession.

82. *Id.* 515(A), 519(A).

strict. These rules were held to be constitutional by the Pennsylvania Supreme Court in *Smith v. Coyne*.[83] For a residential tenant, the appeal period was reduced from thirty days to ten days.[84] For a commercial tenant, the appeal period remains at thirty days.[85] For either type of tenant, to obtain a supersedeas on appeal, the tenant must deposit with the prothonotary a sum of money, or a bond, in an amount equal to the lesser of three month's rent or the rent actually in arrears on the date of the filing of the appeal, based upon the district justice's judgment.[86] Thereafter, every thirty days, the tenant must deposit the monthly rent due under the lease with the prothonotary.[87]

With regard to the initial deposit with the prothonotary, a literal reading of rule 1008(B) of the Pennsylvania Rules of Civil Procedure for District Justices indicates that the amount to deposit based on arrears would include the amount on the district justice judgment plus the additional monthly rent that comes due between the date of the judgment and the date of appeal. Most prothonotaries, however, use the amount in arrears as set forth in the district justice judgment, so that prothonotaries do not have to make any calculation on their own.

If the initial deposit is made, the prothonotary notes that a supersedeas has been granted on notices sent to the landlord and the district justice. If, thereafter, the tenant fails to make the monthly rental payments that are required to be paid, the prothonotary, upon praecipe filed by the landlord, shall terminate the supersedeas. The prothonotary will then give notice of that termination to the tenant and, presumably, the district justice, and the landlord may then proceed to obtain an order of possession from the district justice and proceed to evict the tenant, even though an appeal is still proceeding.[88]

Before the 1995 amendments, the amount that was deposited by the tenant with the prothonotary remained with the prothonotary until a final disposition of the appeal. This could cause serious financial harm to small landlords, who need the monthly rental payments to pay the mortgage and other expenses. This problem is now addressed by Pennsylvania Rule for District Justices 1008, which provides that, upon application by the landlord, the court shall release appropriate sums from

83. 722 A.2d 1022, 1024 (Pa. 1999).
84. PA. R. CIV. P.D.J. 1002.
85. *Id.*
86. *Id.* 1008.
87. *Id.*
88. The statute, PA. STAT. ANN. tit. 68, § 250.513 (West 2001), provides that the tenant must deposit all of the rent that was determined to be due and owing by the lower court, without the limit of three-months rent in arrears. *Id.* The Pennsylvania Rules of Civil Procedure for District Justices have modified the statute.

the escrow account to the landlord while the appeal is pending. It is significant that the release of sums is limited to "appropriate" sums and that is not accomplished by a ministerial duty on the part of the prothonotary.[89] Instead, it must be done on motion to the court.[90] That is because, in certain cases, such as where the tenant's defense is lack of habitability of the leased premises, the landlord may not be entitled to all of the sums in escrow.[91]

3. Appeals from Rent Claims Only

If the landlord files an action for possession and overdue rent against the tenant, and the tenant decides to only appeal the rent portion of the judgment, what is the period for appeal? Logically, the rent portion of the judgment is no different than any collection action filed before a district justice and, therefore, the thirty-day appeal period involving money judgments should apply. The Pennsylvania Superior Court, however, has ruled differently.

In *Cherry Ridge Development v. Chenoga*,[92] the landlord brought an action against a residential tenant for eviction and overdue rent and repairs to the demised premises before the district justice.[93] Judgment was awarded in favor of the landlord for possession of the premises and $297.48 for rent and repairs.[94] The tenant filed a notice of appeal and a petition for supersedeas in court beyond the ten-day appeal period.[95] Although the tenant recognized that the appeal of the possession order was untimely, the tenant argued that, because the notice of appeal was filed within thirty days of the district justice judgment, the appeal from the money portion of the judgment was timely.[96]

The Pennsylvania Superior Court disagreed. It stated that the proper appeal period was ten days because the tenant did not appeal from a judgment only for money, but rather, from a judgment for possession in a residential lease, with an ancillary award for damages.[97] The superior court relied on the language of the statute, not the Rules of Civil

89. PA. R. CIV. P.D.J. 1008.
90. *Id.*
91. Indeed, the statute permits the tenant to apply to court to have sums released while the appeal is pending to compensate directly those providers of habitable services that the landlord is failing to provide under the law and the lease. tit. 68, § 250.513(d).
92. 703 A.2d 1061 (Pa. Super. Ct. 1997).
93. *Id.* at 1062.
94. *Id.*
95. *Id.*
96. *Id.*
97. *Id.* at 1063.

Procedure for District Justices, and gave no explanation as to why a money judgment for rent should be treated differently than any other money judgment.[98]

The official note to Pennsylvania Rule of Civil Procedure for District Justices 1002 was amended, effective as of January 1, 2001, to override, in effect, the *Cherry Ridge* decision. The note now states that, when the appeal is taken "from any judgment for money," the thirty-day appeal period applies.[99] The explanatory note from the Minor Court Rules Committee specifically notes that the changes were made to address the *Cherry Ridge* decision.[100]

In addition, the notice of judgment forms used by the district justice contradicts the *Cherry Ridge* decision. That form states: "If a party wishes to appeal only the money portion of a judgment involving a residential lease, the party has 30 days after the date of entry of judgment in which to file a notice of appeal with the prothonotary/clerk of courts of the Court of Common Pleas Civil Division."[101] With that form in place, and with the revision to the note, a residential tenant could argue that an appeal, after ten days but before thirty days, from the rent portion of a district justice judgment is timely, but, if not, was caused by administrative error and should be permitted.[102] It would also constitute "good cause shown" for a late appeal, pursuant to Pennsylvania Rule of Civil Procedure for District Justices 1002(B).[103]

4. The "Pay and Stay" Rule

Pennsylvania Rule of Civil Procedure for District Justices 518 is known by landlords, without affection, as the "pay and stay" rule. It applies when a judgment for possession has been entered by the district justice solely for the payment of rent. Under those circumstances, the tenant has the right, up until the time that the tenant actually is evicted from the premises, to pay the constable or sheriff who is conducting the eviction the rent actually in arrears and the costs of the proceeding and to put an immediate stop to the eviction proceeding.[104]

The note to the rule 518 makes it clear that the rent in arrears

98. *Id.* at 1062-63.
99. PA. R. CIV. P.D.J. 1002.
100. *Id.*
101. ADMIN. OFFICE OF PA. COURTS, SUPREME COURT OF PA., FORM AOPC 315A-99, NOTICE OF JUDGMENT (1997).
102. *See, e.g., Cherry Ridge*, 703 A.2d at 1063; *see also* McKeown v. Bailey, 731 A.2d 628, 631 (Pa. Super. Ct. 1999).
103. PA. R. CIV. P.D.J. 1002(B).
104. *Id.* 518.

includes only those sums that are shown on the order for possession and does not include any rent that has accrued between the date of the order of possession and the date of the eviction.[105] This has been codified as part of the Landlord and Tenant Act.[106]

The problem with this rule occurs when a tenant habitually pays the rent late, causing the landlord to institute a district justice action, and then the tenant stops the eviction proceeding by paying the rent and other costs to the constable. Although the landlord is reimbursed for out-of-pocket costs and receives payment of overdue rent, the landlord is really not made whole. The landlord is out the administrative costs and the time and aggravation involved in pursuing the tenant. When the same tenant causes this problem repeatedly, there should be some relief for the landlord.

The rules of procedure do not address this problem. However, the issue arose in *Brown v. Williamsport Housing Authority*.[107] In that case, the court held that the pay and stay rule did not apply to tenants who were evicted for repeated failures to make timely payment of rent.[108] However, the court limited its decision to public housing landlords and distinguished the situation of a private landlord.[109]

In *Three Rivers Manor v. Little*,[110] a trial court held that, even where a district justice judgment for possession has been appealed to the court, and the tenant then loses in court, the tenant would still have the right to prevent an eviction by paying the rent in arrears.[111] The court stated that, even after an appeal, "the Legislature determined that fairness dictated that a lease not be forfeited for non-payment of rent if the tenant was able to pay the rent actually in arrears at any time before the execution of a writ of possession."[112]

In that situation, the landlord could be harmed if the appeal has taken some time and the tenant can stay the eviction by only paying the amount of the original district justice judgment. However, if the tenant has received a supersedeas by paying the appropriate sum to the prothonotary and the landlord monitors the subsequent monthly payments of tenant to ensure that they are timely made, then the landlord will have suffered little financial harm. Once again, however, the

105. *Id.*
106. PA. STAT. ANN. tit. 68, § 250.505 (West 2001).
107. 17 Lyc. 292 (1989).
108. *Id.* at 294-96.
109. *Id.*
110. 139 Pitt. L.J. 296 (1991).
111. *Id.* at 297-300.
112. *Id.*

landlord will not have been reimbursed for the administrative costs and aggravation, and, since the matter is now in court, attorney's fees.

B. Commercial Eviction Actions Before the District Justice

As other remedies, such as confession of judgment, distraint, and self-help repossessions, have either been eliminated, or at least, had their effectiveness limited,[113] it makes sense for commercial landlords to commence their eviction actions with the district justice. The proceedings have been expedited while the case is before the district justice, and, even though there is still a thirty-day appeal period for the commercial tenant, a case commenced with the district justice can be resolved finally, even if there is an appeal, faster than if an ejectment complaint had been originally filed in court. More importantly, a tenant must deposit rent into escrow during any appeal, in order to maintain a supersedeas. There is no such requirement if the action is originally commenced in court, and a tenant may remain in possession during the pendency of any original court proceeding without any security being posted.

1. Jurisdictional Limit

There is no jurisdictional limit on the type of lease that may be subject to a landlord-tenant action before the district justice. The statute which sets forth the jurisdiction of the district justice confers jurisdiction for "[m]atters arising under . . . the Landlord and Tenant Act of 1951 which are stated therein to be within the jurisdiction of a district justice."[114] The Landlord and Tenant Act provides for hearings, judgments and writs of possession in eviction actions.[115] Thus, if the landlord is seeking only an eviction, there is no jurisdictional problem with the district justice.

If the landlord includes a rent claim with the eviction claim, the maximum amount of rent that can be claimed is $8,000.[116] If a claim is made for more than $8,000, the entire complaint will be dismissed. In *Ryder v. Prospect Park Realty Co.*,[117] the Pennsylvania Superior Court specifically held that the monetary limits of the district justice's jurisdiction applied to claims for rent that were joined in an eviction

113. *See generally* Smith v. Coyne, 772 A.2d 1022 (Pa. 1999).
114. 42 PA. CONS. STAT. § 1515(a)(2) (2001).
115. PA. STAT. ANN. tit. 68, §§ 250.502-.504 (West 2001).
116. 42 PA. CONS. STAT. § 1515(a)(3).
117. 211 A.2d 53 (Pa. Super. Ct. 1965).

action.[118] The court appears to have stricken both the judgment for rent and the judgment for possession.[119]

If the landlord seeks possession and has a claim in excess of $8,000 in rent, the landlord may waive the portion of the claim in excess of $8,000 and bring the entire matter before the district justice. The statute specifically states that an appeal by the defendant of the judgment by the district justice automatically revokes the waiver.[120] When the tenant appeals, the landlord must file a new complaint in court. In that complaint, the landlord may seek both possession and damages in excess of $8,000.

In the event the landlord prevails against the tenant and the district justice awards a judgment for possession and for back rent of $8,000, may the landlord bring a separate cause of action against the tenant for any additional rent that is overdue? That difficult question can only be answered in the context of Pennsylvania's common law rule against splitting causes of action.

2. Splitting Causes of Action

It is well settled in Pennsylvania that the "law does not permit the owner of a single or entire cause of action to divide or split that cause so as to make it the subject of several actions."[121] For example, if a plaintiff is involved in an automobile accident, that party may not bring one action for damage to the car and a later action for personal injuries. Both claims must be brought in a single action or the second action will be dismissed.[122]

In a contract setting, where the contract is entire and not severable, only one lawsuit may be brought on it. However, where the contract is divisible, separate actions may be brought on each part of the contract, without running afoul of the rule against splitting causes of action.[123] The test for determining whether a contract is entire or severable depends upon the consideration to be paid.[124] If the consideration is apportioned to a particular item, the contract is severable.[125]

118. *Id.* at 54.
119. *Id.* at 55.
120. 42 PA. CONS. STAT. § 1515(a)(3).
121. 3 STANDARD PENNSYLVANIA PRACTICE 2D § 18:1 (West 2002).
122. Kessler v. Old Guard Mut. Ins. Co., 570 A.2d 569, 573 (Pa. Super. Ct. 1990).
123. Fitzpatrick v. Branoff, 470 A.2d 521, 524 (Pa. 1983). *See generally*, 3 STANDARD PENNSYLVANIA PRACTICE 2D §§ 18:1-:17 (discussing splitting causes of action).
124. Bryen & Weil v. French & Keeley, 157 A. 367, 368 (Pa. Super. Ct. 1931).
125. *Id.*

Leases are considered to be divisible contracts in Pennsylvania. In *Pennsylvania Turnpike Commission v. Atlantic Richfeld Co.*,[126] the Pennsylvania Commonwealth Court held, in a statute of limitations case, that, as to each payment due under a lease, "a separate and distinct cause of action would accrue."[127] Thus, a landlord may bring a separate cause of action against a tenant for each installment of rent as it becomes due, provided that the landlord brings "his suit for all the instalments [sic] which have accrued at the time of the bringing of his action."[128] Put another way:

> It is undoubtedly true that all installments that are due when an action is brought must be included in the one action; and if an action is brought when more than one is due, a recovery in such action will be an effectual bar to a second suit brought to recover installments which were due when the first action was brought.[129]

Thus, if the landlord reduces a rent claim to $8,000 on an eviction action before the district justice and the tenant does not appeal, the landlord will have waived the right to bring a later suit for rent that had accrued as of the filing of the district justice action, but not for rent that subsequently accrues.

3. Eviction Action Only Before the District Justice

Another strategy would be for the landlord to bring only an eviction action before the district justice, and then bring a separate rent collection action against the tenant after the tenant has been evicted. Would this violate the rule against splitting causes of action? There are no cases on point. However, logically, the action for possession should not bar any subsequent action for rent.

Section 250.301 of the Landlord and Tenant Act specifically states that a "landlord may recover from a tenant rent in arrears in an action of assumpsit as debts of similar amount are by law recoverable.[130] There is no requirement that the action for overdue rent be joined with the district justice action in ejectment. It may be argued that the inclusion of that section in the Landlord and Tenant Act was done specifically to reserve the right of a landlord to bring a separate action for breach of contract, without being required to employ the other remedies in the Landlord and

126. 375 A.2d 890 (Pa. Commw. Ct. 1977), *aff'd*, 394 A.2d 491 (Pa. 1978).
127. *Id.* at 892.
128. Stiles v. Himmelwright, 16 Pa. Super. 649, 652 (1901).
129. *Bryen*, 157 A. at 363-69 (citations omitted).
130. PA. STAT. ANN. tit. 68, § 250.301 (West 2001).

Tenant Act, such as distraint or an action before the district justice.

In fact, prior to the Landlord and Tenant Act of 1951, a district justice (or justice of the peace) could not award rent in an action for the recovery of possession.[131] "It was necessary, therefore, for a landlord to collect rent due and unpaid at the expiration or termination of a lease in a separate proceeding."[132] Historically, then, the causes of action for eviction and rent were split into two proceedings. The Landlord and Tenant Act of 1951, as amended, changed the historical procedure, but only to a limited extent. The maximum rent claim that can be brought is now $8,000, which may not provide a full and complete remedy for the landlord.[133] Thus, the right to split the causes of action into two proceedings should still apply at the present time. There is nothing in the language of the Act that leads to a contrary conclusion.

The proceedings before the district justice were designed to provide a speedy remedy for landlord evictions. A landlord who invokes that remedy should not also risk the opportunity to collect the rent that is due, just because of the $8,000 jurisdictional limit for money actions brought before a district justice. Thus, the courts should affirm the right of a landlord to commence an eviction action before the district justice, and delay the rent collection action until such time as the tenant appeals or the tenant is evicted from the leased premises.

C. *Materiality of Breach*

Whether the landlord first brings an eviction action before the district justice or in court, the landlord must prove a material and substantial breach on the part of the tenant to justify a forfeiture of the lease.[134] The case of *Cimina v. Bronich*[135] is illustrative.

That case involved a lease that was in existence for many years, pursuant to which the tenant was to pay the real estate taxes.[136] Nevertheless, for eleven years, the landlord paid the real estate taxes and never billed the tenant.[137] When the landlord realized the mistake, the landlord served a notice to quit upon the tenant, ordering the tenant to vacate because the tenant had allegedly breached provisions of the

131. 2 M. STERN, TRICKETT ON THE LAW OF LANDLORD AND TENANT IN PENNSYLVANIA § 4701 (3d ed. 1973); *see also* Ballou v. Mehring, 28 Pa. Super. 156, 160 (1905).

132. Ryder v. Prospect Park Realty, 211 A.2d 53, 55 (Pa. Super. Ct. 1965).

133. *See supra* notes 114-20 and accompanying text.

134. *See* Backer, *supra* note 1, at 89-91.

135. 503 A.2d 427 (Pa. Super. Ct. 1985), *rev'd on other grounds*, 537 A.2d 1355 (Pa. 1988).

136. *Id.* at 428.

137. *Id.*

lease.[138] The trial court found, however, that the tenant's failure to pay the real estate taxes was not a material breach of the lease as would justify a forfeiture of the lease. On appeal, the Pennsylvania Superior Court affirmed.

The superior court first stated the general rule as follows: "Equity does not favor forfeiture and courts greatly hesitate to enforce one, especially when the contract has been carried out or its literal fulfillment has been prevented by oversight or uncontrollable circumstances."[139] The court then set forth some of the tests for determining materiality of breach, as follows:

> (a) the extent to which the injured party will obtain the substantial benefit which he could have reasonably anticipated; (b) the extent to which the injured party may be adequately compensated for damages for lack of complete performance; (c) the extent to which the party failing to perform has already partly performed or made preparation for performance; (d) the greater or less hardship on the party failing to perform in terminating the contract; (e) the willful neglect or innocent behavior of the party failing to perform.[140]

In finding a lack of materiality of breach, the court emphasized that the tenant complied with all other provisions of the lease and the landlord would be made whole when the tenant paid the taxes.

Other cases have held that an action in ejectment may not be based upon the tenant's criminal conviction for activities unrelated to the leased premises[141] or upon the violation of a statute by the tenant in the absence of an express statutory provision to that effect[142] or upon implied covenants in a lease.[143] However, in *Cambria-Stoltz Enterprises v. TNT Investments*,[144] the superior court held that the tenant's failure to obtain insurance listing the landlord as a co-insured was a material breach of the lease, justifying a forfeiture.[145] The court noted that the tenant's act was willful, having ignored a letter from the landlord requesting the same and that not designating the landlord as a co-insured on an insurance policy could result in dire consequences for the landlord.[146]

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138. *Id.*
139. *Id.* at 429.
140. *Id.*
141. Highland Glen Ltd. v. Hawkins, 25 Lebanon Co. L.J. 193, 194-95 (1988).
142. Ross v. Gulf Oil Corp., 76 Luz. 128, 129-31 (1986), *aff'd*, 522 A.2d 97 (Pa. Super. Ct. 1981).
143. 202 Marketplace v. Evans Prods. Co., 824 F.2d 1363, 1367 (3d Cir. 1987).
144. 747 A.2d 947 (Pa. Super. Ct. 2000).
145. *Id.* at 951.
146. *Id.*

Nonpayment of rent is a breach of the lease that is material, and justifies a forfeiture of the lease. This principle was confirmed by the Pennsylvania Supreme Court in *Goodwin v. Rodriguez*, where the court said: "[F]orfeiture for non-payment of rent has always been permissible under our law."[147] Perhaps more importantly, the court stated: "The landlord is not obliged to subsidize or 'carry' delinquent tenants with all of the risks that that involves, indefinitely into the future."[148] Impliedly, the landlord may bring an action for eviction, even if the tenant has missed only one month's payment of rent.

D. Eviction of Drug Traffickers

In 1998, the legislature enacted the Expedited Eviction of Drug Traffickers Act.[149] Because this Act is located in Title 35 of Purdon's Statutes, in the Health and Safety Volume, and not with the Landlord and Tenant Act, in Title 68, landlords may overlook this new statute. The purpose of the Act is "to ensure the swift eviction and removal of persons who engage in certain drug-related criminal activity on or in the immediate vicinity of leased residential premises."[150]

If drug-related criminal activity has occurred on or within a rental unit, the landlord may file a complaint for immediate eviction with the court, which shall set a hearing on the matter on an expedited basis and within fifteen days following the filing of the complaint.[151] If the court finds that drug-related criminal activity has occurred, and the tenant has been unable to prove an affirmative defense or an exemption to complete eviction, an eviction shall be ordered.[152] In some circumstances, there will be an order for a partial eviction of only the individual who was involved in the criminal activity. The eviction order is to be enforced by the appropriate law enforcement agency.[153] The Act is limited to criminal activity, that is, the manufacture, sale, distribution or possession with the intent to sell a drug, and not simply the use of an illegal drug on the leased premises.[154]

147. 554 A.2d 6, 9 (Pa. 1989).
148. *Id.*; *see also* Vill. Beer & Beverage, Inc. v. Vernon D. Cox & Co., 475 A.2d 117, 121 (Pa. Super. Ct. 1984); Edison Vill. v. White, 112 Dauphin Rep. 344, 346-48 (1992).
149. Expedited Eviction of Drug Traffickers Act, PA. STAT. ANN. tit. 35, §§ 780-151 to -179 (West 2001).
150. *Id.* § 780-152(3).
151. *Id.* § 780-164.
152. *Id.* § 780-156 to -157.
153. *Id.* § 780-160.
154. *Id.* § 780-153.

V. Repossession and Abandonment

A. Self-Help Repossession

The most influential common pleas court decision in landlord-tenant law is *Wofford v. Vavreck*,[155] written by President Judge Thomas of Crawford County in 1981. This was the first reported decision outlawing self-help repossessions in Pennsylvania, at least as to residential tenants. The *Wofford* decision has been almost uniformly followed in Pennsylvania.[156]

A self-help eviction constitutes any acts undertaken by a landlord that prevents a tenant from using the leased premises, other than by judicial process. It is not limited simply to barring the tenant's access to the leased premises. A self-help eviction may include removing the tenant's personal property, using or threatening to use force or violence, reducing or disconnecting utility services, or removing parts of the structure itself, such as doors or windows.[157]

Although *Wofford* and many of the other decisions in this area arose in the context of residential leases, the language of the decisions is usually not limited to residential leases. For example, in *O'Brien v. Jacob Engle Foundation, Inc.*,[158] a lower court specifically enjoined a self-help repossession in a commercial setting.[159]

B. Abandonment

Sometimes a tenant will abandon the leased premises but leave personal property on the site. This presents a dilemma for the landlord, who would like to clear the premises and rent to a new tenant, but does not want to be sued for conversion of the tenant's property by disposing of it.

Bednar v. Marino[160] did not make matters any easier for landlord. In that case, the Pennsylvania Superior Court stated:

> As a general rule, a tenant does not forfeit or lose title to his personal

155. 22 Pa. D. & C.3d 444 (Crawford 1981).

156. *But see* Edmonds v. Donald, 40 Pa. D. & C.3d 220 (Phila. 1984), in which the lower court stated that self-help eviction procedures are not prohibited where the default is something other than the non-payment of rent. *Id.* at 221-23. This decision is outside the mainstream of most court decisions on self-help evictions.

157. Lenair v. Campbell, 31 Pa. D. & C.3d 237, 240 (Phila. 1984).

158. 47 Pa. D. & C.3d 557 (Cumberland 1987)

159. *Id.* at 558-59; *see also* Macaluso v. Macaluso, 12 Carbon Co. L.J. 128 (1989), *aff'd mem.*, 588 A.2d 568 (Pa. Super. Ct. 1994).

160. 646 A.2d 573 (Pa. Super. Ct. 1994).

> property by neglecting to remove it from the leased premises after the termination of the lease. This is so even if the tenant fails to remove his personalty within a reasonable time after the expiration of the lease. Any retention, use or disposal of the tenant's property by the landlord, or any other exercise of dominion over it to the exclusion of the rights of the tenant, constitutes a *conversion of the tenant's property by the landlord.*[161]

This strong position taken by the superior court is unfair to the landlord and fails to recognize the landlord's interest in clearing the premises of the tenant's property.

To alleviate the *Bednar* holding, if there is rent that is due from the tenant, the landlord can sue the tenant, obtain a judgment for the overdue rent, and then have the sheriff execute on the personal property at the leased premises to satisfy the debt. The landlord can purchase the property at the sale and, with a valid bill of sale from the sheriff, dispose of the property as the landlord sees fit. Another approach would be to store the goods for a period of time and give notice to the tenant that, after a certain date, the goods will be deemed abandoned and disposed of by sale or other means. Of course, the best solution is to address the issue in the lease, giving the landlord the contractual right to dispose of the goods after notice to the tenant. Or, the lease could grant to the landlord a security interest in all personal property on the leased premises, allowing the landlord to exercise rights under Article 9 of the Uniform Commercial Code.[162]

C. Counterclaim by the Tenant

The landlord should always desire to be the plaintiff in the litigation, either evicting the tenant or collecting overdue rent from the tenant. Furthermore, the landlord should always try to avoid a counterclaim by the defendant. The *Bednar* case suggests one such counterclaim: conversion of the tenant's property by the landlord. Earlier in this article, there was a discussion of *Hoyt v. Christoforou,* which recognized a potential claim by the tenant for unlawful distraint.[163]

Williams v. Guzzardi[164] involved a claim for intentional infliction of

161. *Id.* at 577-78 (emphasis added) (citations omitted). In *Pikunse v. Kopchinski,* 631 A.2d 1049 (Pa. Super. Ct. 1993), the court upheld an award of $7,139 for compensatory damages and $7,500 for punitive damages against a landlord who threw away a tenant's personal property after the tenant failed to pay rent. *Id.* at 1052-53.

162. 13 PA. CONS. STAT. § 9503-04 (2001).

163. 692 A.2d 217 (Pa. Super. Ct. 1997); *see also supra* text accompanying notes 61-66.

164. 875 F.2d 46 (3d Cir. 1989).

emotional distress brought by a tenant against a landlord.[165] In that case, the landlord, in attempting to evict the tenant from the leased premises, removed the door to his apartment, told a police officer that the tenant was a trespasser after tricking the tenant into giving up the apartment key, did not allow the tenant to remove his belongings but, instead, threw them into the street, and publicly announced the tenant was evicted for running a house of prostitution.[166] The Court of Appeals for the Third Circuit affirmed a $25,000 jury verdict in favor of the tenant, stating: "Even a person who is unable to pay his rent is entitled to be treated with minimal human dignity."[167]

In *Kuriger v. Cramer*,[168] the Pennsylvania Superior Court considered whether a landlord's use of self-help to evict the tenant, rather than legal process, gave rise to a trespass action by the tenant against the landlord.[169] While the court did not take a position on that issue, it did note that other jurisdictions, such as the District of Columbia and Delaware, recognized such a cause of action.[170] The superior court also referenced *Wofford v. Vavreck* for the principle that landlords have been enjoined by lower courts in proceeding with a self-help repossession.[171] It seems therefore, that in the appropriate case, the superior court would recognize a cause of action for wrongful eviction by the landlord if the judicial process for eviction is not used.[172]

VI. Conclusion

The past eighteen years have seen a limitation on most of landlord's speedy remedies, such as distraint, self-help repossession and confession of judgment. The result has been to place more importance on landlord-tenant actions before the district justice, a process that has become somewhat expedited with the 1995 amendments to the Landlord and Tenant Act of 1951. So long as the courts do not put unreasonable limitations on a landlord who is seeking eviction through a district justice proceeding, the law today more effectively balances landlords' and tenants' rights when there is a dispute as to tenants' right to possession or liability to pay rent.

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165. *Id.* at 47.
166. *Id.* at 47-48.
167. *Id.* at 52.
168. 498 A.2d 1331 (Pa. Super. Ct. 1985).
169. *Id.* at 1338.
170. *Id.* at 1337 n.14.
171. *Id.*
172. *See* Commonwealth v. Kitchen Appliances Distribs, Inc., 27 Pa. D. & C.3d 91, 91-93 (Somerset 1981) (recognizing, in case involving commercial lease, a cause of action in either assumpsit or trespass for wrongful eviction).

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