Tenancies at Will and Notice to Quit

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A Tenancy at Will arises "where land or tenements are let by one man to another, to have and to hold to him at the will of the lessor, by force of which lease the lessee is in possession. In this case the lessee is called 'tenant at will' because he hath no certain no sure estate, for the lessor may put him out at what time it pleaseth him."

An estate at will in land is that which a tenant has by an entry made thereon under a demise to hold during the joint wills of the parties to the estate.

Our statutes do not define Tenancy at Will, so that it remains the same as at common law, except where statutes governing other estates have indirectly modified or affected it.

The incidents of such a tenancy are rightful entry or possession, and a holding or holding over with the assent expressed or implied, of the landlord.

It is the holding lawfully, with the consent of the landlord, which distinguishes this estate from an Estate by Sufferance.

In the latter the tenant holds over wrongfully without the landlord's assent or dissent.

The manner in which a Tenancy at Will may arise, apparently is not affected by any statute in our state. The tenancy may be at will from its inception, e.g., by effect of an agreement, express or implied, to hold at the will of the lessor; by permissive

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1 Black's Law Dictionary, p. 1142.
2 24 Cyc. 1036.
3 Sec. 2187, Stats. 1915.
4 46 W. 282.
5 24 Cyc. 1041.
holding with no time limit, and indefinite as to rent periods; by occupancy where it is agreed a lease is to be given, or where the lease or sale is invalid for any reason.

Or the tenancy may grow out of, and follow, another tenancy, i.e., it may be a holding over. This may be when the lease expires by its own limitations, or is terminated by a breach of covenants, and the subsequent holding is with the landlord’s assent. The holding over may be by a grantor or mortgagor after conveyance or foreclosure or by a tenant after sale on execution, but in each case the assent of the true landlord is essential to make such holding a Tenancy at Will.

Our statute provides that a tenant for a year or more who holds over may at the election of his landlord, be considered a tenant from year to year. The earlier cases in our state refer to this section as being in conformance with the common law.

Aside from the effect of local statutes there seems to be a diversity of opinion in this country as to the effect of holding over. But Justice Timlin has said “the weight of judicial authority seems to be that, independent of statute, when a tenant, after the expiration of a term fixed at one year or less, continues to occupy the leased premises without any new contract, this may, at the election of the landlord, be considered a renewal of the prior lease for a like period and upon like terms.”

So it would seem that by statute in one case, and by judicial decisions at least up to 1910 in the other case, the holding over, after a term whether the term be for a year, more, or less, may by the landlord’s election, be taken out of the class of Tenancies at Will and placed in the class of Periodic Tenancies.

The effect of all this would seem to be a tendency to make all such lawful holding over, either tenancies from year to year or

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62 W., 26-44 W. 111.
7 Sec. 2187, Landlord may make it tenancy from year to year, instead of one at will.
8 Sec. 2187, Stats.
9 60 W. 1.
10 142 W. 97.
some shorter period, according to the former lease, leaving as
Tenancies at Will only those which the parties have expressly
agreed shall be such.

The theory of "periodic tenancies" is followed out in the case
of Sutherland vs. Drolet, decided in 1913. This was the case of
an oral lease, void under the Statute of Frauds and the Court here
says that "a tenant entering under such a lease and paying rent
regularly has a periodic tenancy, i. e., 'year to year' 'month to
month' or 'week to week,' according as the evidence shows that
the rent was paid." And here cases are cited to show that the
Court in each such case has determined the nature of such periodic
tenancy according to the intention of the parties. The Court in
this case says also that while we have no statute creating a tenancy
at will from a lease void under the Statute of Frauds, the effect
should be the same in absence of statute since the characteristics
of such tenancy, i. e., permissive taking and lack of understanding
as to duration, are present.

Combining the theory that under such void lease, an estate at
will arises even in absence of statutes, with the prior decisions
establishing "periodic tenancies" the Court says: "While the term
'periodic tenancies' has acquired an independent place in the text
books, it is in fact (in cases where it arises merely as an inference
from the conduct of the parties) nothing more than the name of a
modified form of an estate at will, namely, one which, either by
force or judicial decision, or statute, or both, cannot be terminated
by either party without the giving of a notice of a certain
duration. * * *

"We are fully satisfied, both, historically and logically that
the term 'tenancy at will' in this section12 incudes the so-called
'periodic tenancies,' except those tenancies from year to year
which have been put in a class by themselves by Sec. 2187
Stat." 13 This case sums up the situation in this state.

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12 154 W. 619.
13 Section 2183, Stats.
13 See Hunter v. Frost, 47 Minn. 1, 49 N. W. 327, quoted from by the
Court.
The case of *Leshin vs. Routt*, decided in 1916, was a case where the lessee subleased, representing to the sublessee that he had the lessor's consent as provided in the lease, and the lessor on learning of the sublease notified the sublessee that he would consider him his tenant at will. The case holds that the lessor by such action, did not waive his right to forfeit the original lease for breach of the covenant against subleasing.

The authorites seem to agree that in the absence of statutory requirements a notice to quit is unnecessary in case of tenancy for a term of years, but is necessary in case of a tenancy from year to year, month to month, or other periodic tenancies.

The general rules as to the notice apply, with regard to sufficiency, service, and proof. The notice must be given by the lessor or his agent, in general for that purpose, and service on the lessee binds an undertenant.

At common law a verbal notice was sufficient, though the rule was generally adopted that where the lease was in writing, a written notice was necessary.

And as in other cases requiring notice, either party may in the usual manner waive necessity of notice—for example, a landlord may, by accepting a surrender of the premises when the tenant vacated, waive the giving of written notice by the tenant.15

Before statutes provided for the length of notice necessary the rule was that a reasonable time was necessary. The common law requirement for notice to terminate a tenancy from year to year was six months and the early wording of our Statutes16 which made a tenant holding over a tenant from year to year did not alter this rule.17

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14 157 N. W. 524.
15 116 W. 124.
16 Sec. 2187, R. S. 1878.
17 60 W. 1.
However the amendment, later added to that Section\textsuperscript{18} fixed the time in such a case at thirty days, and this notice, it was held, can terminate the tenancy only at the end of some year after the expiration of the term.\textsuperscript{19} The same rule is followed out in the late case of Sutherland vs. Drolet, supra, where it was held that the notice to terminate a month to month periodic tenancy must fix the time for removal at the end of a rent-paying month.

Our statutes provide for a thirty-day notice to terminate such tenancies.\textsuperscript{20} Similar statutes have been construed to require such designated notice only in case the tenancy is terminated by the direct act of either party; and they do not alter the effects of circumstances, which in themselves would end the estate at common law. Thus, the death of the landlord or tenant, the landlord’s conveyance of the land, or his leasing it to another, terminates the estate immediately, or the tenant’s commission of waste does so (at the landlord’s option) even though the statute prescribes notice of a month or more.\textsuperscript{21}

The necessity of notice in tenancies at will, as in other tenancies, applies of course only to rightful holding and once the holding becomes wrongful the need of notice ceases.\textsuperscript{22}

Since our Court has held that “periodic” tenancies are forms of tenancies at will, and included under the provisions of Section 2183, and since Section 2187 provides for year to year tenancies, we have statutory provisions for notice in all tenancies up to the year to year class.

The manner of service is also defined by statute\textsuperscript{23} which also provides for re-entry by the landlord, or action to regain possession or to remove the tenant, after service of the notice.

And under this statute it has been held that if the notice be given as many days before action brought as there are days in

\textsuperscript{18} Laws of 1885, Chap. 109-99 W. 62.
\textsuperscript{19} 99 W. 62.
\textsuperscript{20} Sec. 2183.
\textsuperscript{21} Vol. II, Reeves on Real Prop., pp. 938-9 and cases cited.
\textsuperscript{22} 70 W. 345, 81 W. 182.
\textsuperscript{23} Sec. 2184, Stats.
the calendar month in which it is given it is sufficient. And a notice given a sufficient time in advance of the termination of a year to year tenancy stating that after the term the tenant would be considered a tenant from month to month, was held sufficient to terminate the year to year tenancy.

The tenancy at will in its strict sense has practically disappeared, and our Supreme Court has saved the usefulness of Section 2183 by doing what the Legislature evidently intended they should do—including all periodic tenancies not otherwise cared for, under that section.

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24 83 W. 267.
25 156 W. 615.
26 154 W. 619.