

# Unpacking tacit relocation of a contract to lease

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WHEN a person hands over money to a shopkeeper who gives his regular customer a loaf of bread and litre milk without speaking to each other, there is a tacit or unspoken contract. The parties understood by their conduct what each one had to do.

When a lease contract comes to an end, the tenant is required to move out of the dwelling. Take a written lease of one year that started on the first day of February, the lease period comes to an end on the 31<sup>st</sup> of January the following year by which date the tenant is expected to vacate.

If neither the tenant nor the landlord indicates that the tenant is to move out at the end of the lease period and no action is taken against the tenant, a new lease then comes into place.

Should the tenant continue to occupy and pays the rental for the following month (February) and the landlord accepts the rental, the parties' conduct, by their silence, implies that they agree to a new lease period.

In other words, the landlord is content to have the tenant and the tenant is satisfied to continue occupation of the dwelling. This is referred to as a tacit or implied agreement to a new lease and is not a continuation of the old lease.

The written lease contract had certain terms and conditions: the rental amount, the dwelling to be let, what the tenant had to do or must avoid and similarly the rights and obligations of the landlord.

Q: The original lease was for one year (definite / fixed period), so what happens to the provisions of that lease now that the parties continue their relationship beyond the one year period?

The lease period, for example, will be for an indefinite period: month to month if rental is paid monthly and was paid monthly on the original one year lease, unless parties agree to a specified period.

The rental will also remain the same unless parties mutually agree to change it. The *essential* elements relating to landlord-tenant relationship in the original lease will apply during tacit relocation of the lease.

The landlord's right to attach the tenant's goods for non-payment of rental (lien, hypothec) will apply but no action can be taken against a person who provided surety.

Surety was for a specified period (i.e. 1 year in the above example) and will not apply when tacit relocation occurs unless a new suretyship contract is concluded.

If parties do not want to continue the lease after the agreed period, they must be clear and take appropriate measures to end the lease.

Should they want to renew the existing lease, this must be done before the lease ends and parties could change the conditions in entering into a renewed lease.