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“If A Tree Falls In The Forest . . .”: If A Tenant Has Yet To Be Evicted, Do They Still Possess The Premises?

By Jana Contreras

“If a tree falls in the forest with no ears to hear does it make a sound?” While the answer to that riddle still remains elusive to many, a recent California court of appeal decision did succeed in answering another riddle: “If a tenant has yet to be formally evicted, but the lease is terminated, do they still lawfully possess the premises?” According to the court in *Multani v. Knight*,¹ the answer is “no.” Once a commercial tenant under a periodic tenancy fails to pay rent and is served with a three-day notice, the tenant becomes a “tenant at sufferance” with no lawful right to possession of the premises. The court then reasoned that because the tenant was not “lawfully” possessing the premises, the landlord could not be liable for damage to the tenant’s property that occurred *after* the tenant stopped paying rent and was served with a three-day notice to pay rent or quit, but *before* the tenant was formally evicted following the conclusion of the landlord’s unlawful detainer action. Although the *Multani* decision is heavily dependent on the specific facts of that case, it nonetheless raises a number of questions that could have significant implications for commercial tenants and landlords in the future.

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