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J. David Aiken
University of Nebraska–Lincoln, daiken1@unl.edu

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Farm Lease Termination

J. David Aiken
Extension Water and Agricultural Law Specialist

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Author's note: The Need for Personal Legal Advice. Farm leases require a consideration of law and facts unique to each case. The information provided in this NebFact is for educational purposes. It is **not** a substitute for competent legal advice.

Many farm leases, especially those between family members, are not written but are verbal "handshake" agreements. Because nothing is in writing, the parties may have different recollections of their agreement, making lease disputes more difficult to resolve.

In legal terms, verbal farm leases in Nebraska may be either "year-to-year" leases or "holdover" leases. Holdover leases result when a written lease terminates but the landlord and tenant continue the lease with an oral agreement, either directly or implied, without entering into a new written lease. The most common legal issue associated with verbal farm leases is how a lease may legally be terminated. For both year-to-year leases and holdover leases, six months advance notice must be given to legally terminate the lease. However, the lease date (the date from which the six months is counted) is different. In contrast, the termination of a written lease is determined by the terms of the written lease.

Oral (Unwritten) Year-to-Year Leases

Oral (i.e. unwritten) leases are legally presumed to be year-to-year leases. A year-to-year lease has no fixed time period and is automatically renewed for another year until proper notice has been given to the tenant by the landowner (or vice versa) that the lease is terminated. Most farm leases in Nebraska are unwritten year-to-year leases. Oral year-to-year lease termination. For year-to-year leases, the Nebraska Supreme Court has ruled that the lease year begins on March 1. Moudry v. Parkos, 217 Neb. 521, 349 N.W.2d 387(1984). Notice to a tenant to vacate under an oral year-to-year lease (legally referred to as a "notice to quit") must be given six months in advance of the end of the lease, or no later than August 31.

For example, for the lease year beginning March 1, 1991, and ending February 29, 1992, notice from the land-lord that the lease will be terminated would have to be given to (and received by) the tenant no later than August 31, 1991. The lease would then expire February 29, 1992, with the new tenant (or new buyer) able to take over the lease March 1, 1992. If, however, the notice to quit were given (or received) after August 31, 1991, the existing tenant would have the lease until February 28, 1993.

Written Leases

Written leases are in effect only for the period specified in the lease itself, which could be one year, five years, etc. For written leases, no notice is required from the landlord to the tenant that the lease will not be renewed unless the lease specifically states that notice of termination is required. Unless it contains a renewal clause, the lease automatically terminates at the end of the lease period. The tenant generally has no right to have a written lease renewed unless the lease contains a renewal clause. For example, if a written lease stated nothing at all regarding renewal, the lease would automatically terminate at the end of the lease period and would not be renewed. A written lease could, however, state that the lease was automatically renewed unless either party notified the other (usually by a certain date) that the lease would not be renewed.

Holdover Leases

If a tenant "holds over" by not leaving after a written lease has ended, the tenant is legally considered to be a trespasser whom the landlord may remove by going to court. If the landowner does not remove the tenant, however, a year-to-year lease is automatically established by implication. If a holdover tenant begins work and incurs expenses for the next year's crop, the courts generally have ruled that the landowner has agreed by implication to the tenant's holding over.

Holdover lease termination. On holdover leases, the lease date is established by when the lease began in the original written lease rather than automatically being March 1. If the original written lease began January 1, the notice to quit from the landlord to the holdover tenant would have to be given at least six months in advance of the end of the lease, or no later than June 30.

For example, if the written lease ran from January 1, 1989 to December 31, 1989, and the tenant held over for 1990 and 1991, the landlord would have to give the tenant notice by June 30, 1991, in order to lease the land to a new tenant beginning January 1, 1992. If no notice to quit were given by June 30, 1991, however, the existing tenant would automatically have the lease through December 31, 1992.

Notice to Quit

The notice to a tenant (or landlord) that a lease is terminated should be written and possibly sent registered mail (consult your attorney). A copy of the written notice should also be kept. A verbal notice to quit might be adequate, but could be difficult to prove in court if litigation were necessary to enforce the lease termination. The six month prior notice deadline for oral leases applies to the date the notice is received by the tenant, not the date the notice is sent by the landlord.

Oral Pasture Lease Termination

The six-month notice of termination required for unwritten cropland leases is not required for unwritten pasture leases where the pasture leases are only for the normal pasture season, May 1 to October 1. Barnes v Davitt, 160 Neb 595 (1955). If the pasture were leased a year at a time under an unwritten lease, however, the tenant would likely be entitled to six-months notice of termination.

Oral Wheat Ground Lease Termination

Where a tenant has been properly notified of lease termination but the tenant goes ahead and plants a crop that will mature after the lease is up, the tenant does not have the right to come back and harvest the crop after the lease is terminated. For example, a tenant is notified in August 1, 2002 that the lease will

not be renewed for the following year. The tenant plants a wheat crop in September 2002. The lease terminates February 28, 2003. The tenant attempts to harvest the wheat crop June 2003. The tenant is trespassing and has no right to harvest the wheat crop planted September 2002 because the tenant knew that the lease would end before the tenant could harvest the crop. The new tenant (or whomever is farming the land) has the right to harvest the wheat crop, or can destroy the growing wheat crop in order to plant a new spring crop. Fisher v Stuckey, 201 Neb 439 (1978); Peterson v Vak, 160 Neb 450 (1955).

However, if the landlord and tenant make an agreement that the tenant can harvest the "going way" crop, the tenant can return and harvest the crop after the lease has terminated. Schuler-Olsen Ranches Inc v Garvin, 197 Neb 746 (1977).

Voluntary Modification of Legal Rules

All the legal rules about lease termination discussed above may be changed through negotiation and voluntary agreement of the parties. For example, a landlord would like to lease to a new tenant but fails to tell the existing year-to-year tenant that the lease is terminated until after August 31, 1991. The existing tenant is, therefore, entitled to lease the property from March 1, 1992, to February 28, 1993. However, the tenant could voluntarily agree to give up the 1992-93 lease, either for no compensation, or after compensation for surrendering the lease has been paid by the landlord.

Conclusion

A written lease generally is preferable to a verbal lease because it provides a written record of the lease provisions. In addition, the March-to-February lease year for year-to-year leases may not be appropriate for fall-planted crops. However, written leases for farmland under Nebraska law are not required to contain advance notice of termination, as is required in some midwestern states. Because a verbal lease does require six months advance notice of lease termination, it may provide more legal protection for the tenant than a written lease, at least for one additional crop year. If you have legal questions regarding a farm lease, contact an attorney.

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