



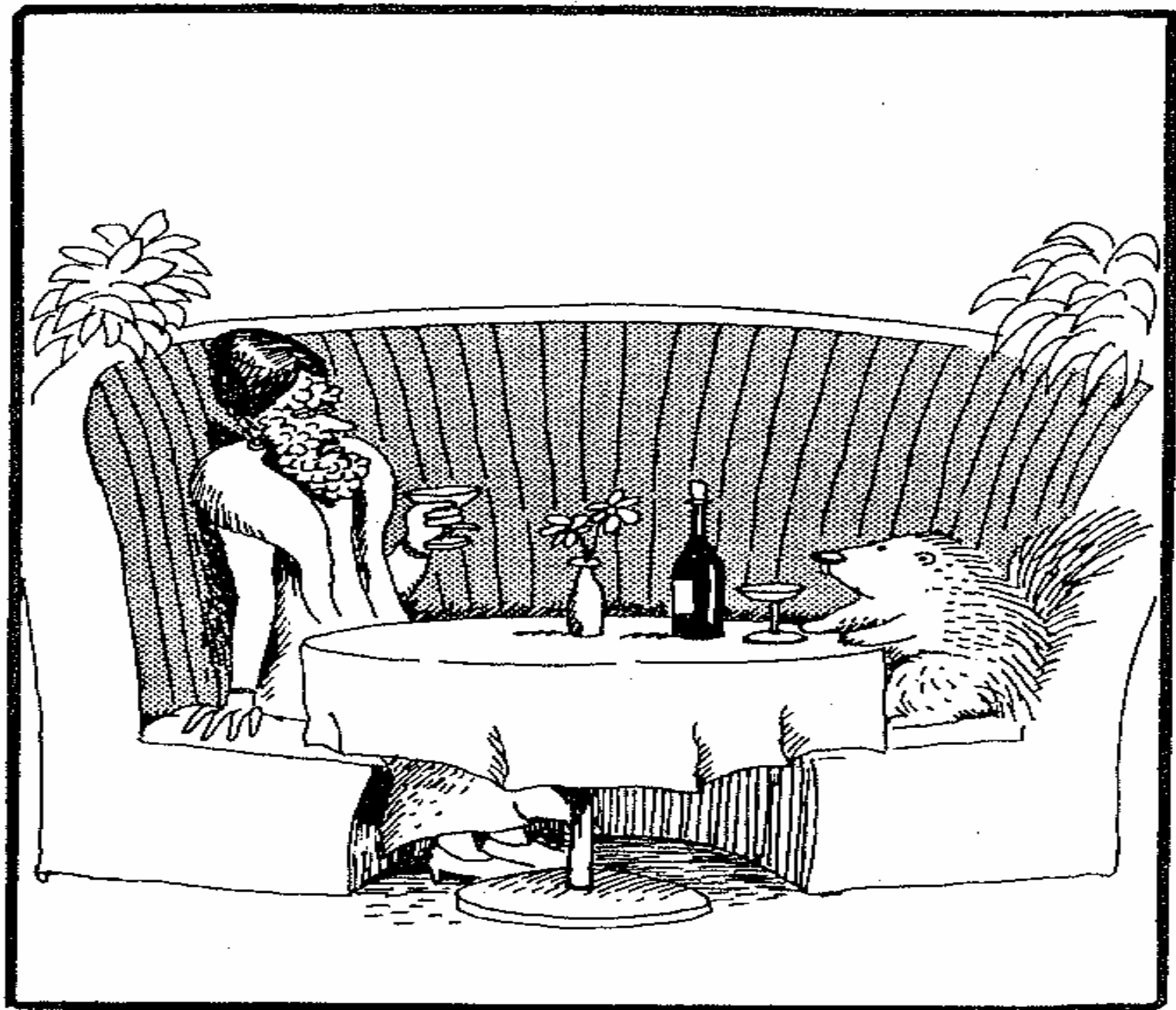
**Why Doesn't My Key Work?**

# **Landlord Commercial Lease Remedies: A Current View**



BOYAR & MILLER

**Presented by:**  
**Lee A. Collins, Shareholder**



**"Look. I just don't feel the relationship is working out."**

# Common Law Remedies

- **Breach of Express Covenant**
  - **Independent covenants unless:**
    1. **remedy expressly in lease, or**
    2. **tenant's anticipatory repudiation**



# Common Law Remedies

- **Anticipatory Breach**
  - **Maintain lease and sue for rent\***
  - **Treat as anticipatory repudiation**
  - **Repossess and release**
  - **Forfeiture**

*\*abrogated for mitigation requirement*



# Modern Day Remedies

- Landlord's election
- Mitigation



- Austin Hill Country Realty Inc. v. Palisades Plaza, Inc., and
- Section 91.006 of T.P.C.



DEAR TENANT:  
WE'RE DOUBLING YOUR  
RENT. SEND MORE \$\$\$.  
MEET OUR DEMANDS  
OR ELSE. WE KNOW  
WHERE YOU LIVE.

# Landlord's Right to Damages

- **Suit for Rent**
- **Mitigation required if:**
  - **Landlord re-enters**
  - **Lease allows re-entry without surrender, forfeiture or eviction**



# Landlord's Right to Damages

- **Anticipatory breach without reletting**
  - **Damages = PV of contracted rent and reasonable cash market value of the lease over unexpired term**

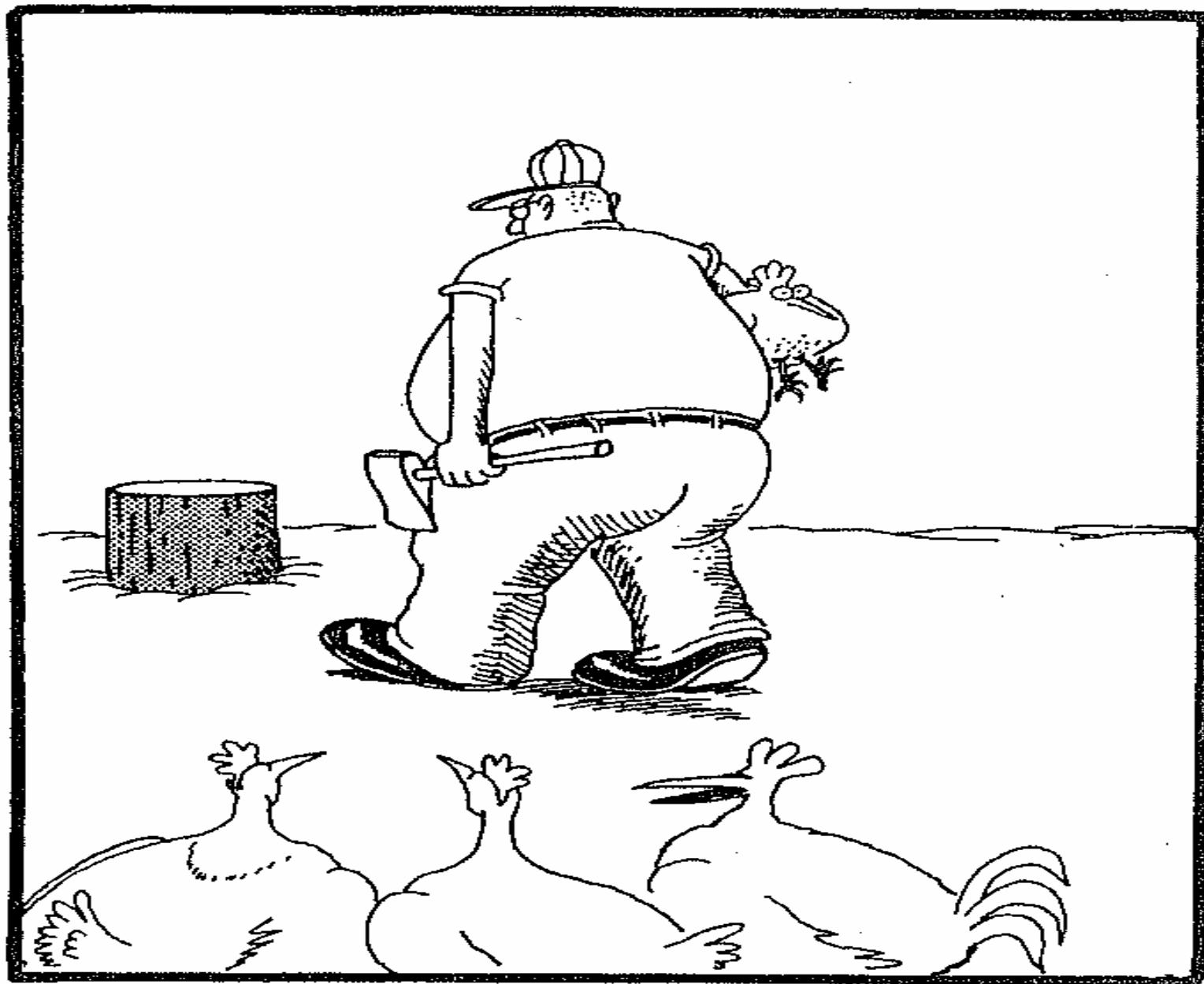




# Landlord's Right to Damages

- **Liquidated Damages**
  - **Enforceable if:**
    - Harm is incapable or difficult to estimate, and**
    - Amount is reasonable forecast of just compensation**





"Well, when it's my turn, I just hope I go quietly . . .  
Without a lot of running around."

# Repossession

- **Common law self-help**
  - **Must have express remedy in lease**
  - **Must be exercised peaceably and without force or violence**



# Repossession

- **Statutory - Chapter 93 of T.P.C.**
  - **Authorizes change of door lock**
  - **Delinquent in paying “rent”**
  - **Requires posting of written notice**



# Repossession

- **Judicial Eviction - Chapter 24 of T.P.C.**
  - **Authorizes suit in Justice Court for possession**
  - **Appropriate when tenant holdover after termination of:**
    - **right to possession after expiration of lease term**
    - **right to possession for default**



# Repossession

- **Judicial Eviction - Elements**
  - Default gave rise to landlord's right to terminate tenant's possession
  - Landlord gave notices required under lease



# Repossession

- **Judicial Eviction - Elements (cont.)**
  - **Proper notice to vacate and quit under Section 24.005**
  - **Landlord had right to terminate and exercised it**
  - **Tenant's refusal to surrender**



# Repossession

- **Judicial Eviction — Appeal**

- **Trial de novo to County Court**

- Not limited to jurisdictional limits of Justice Court

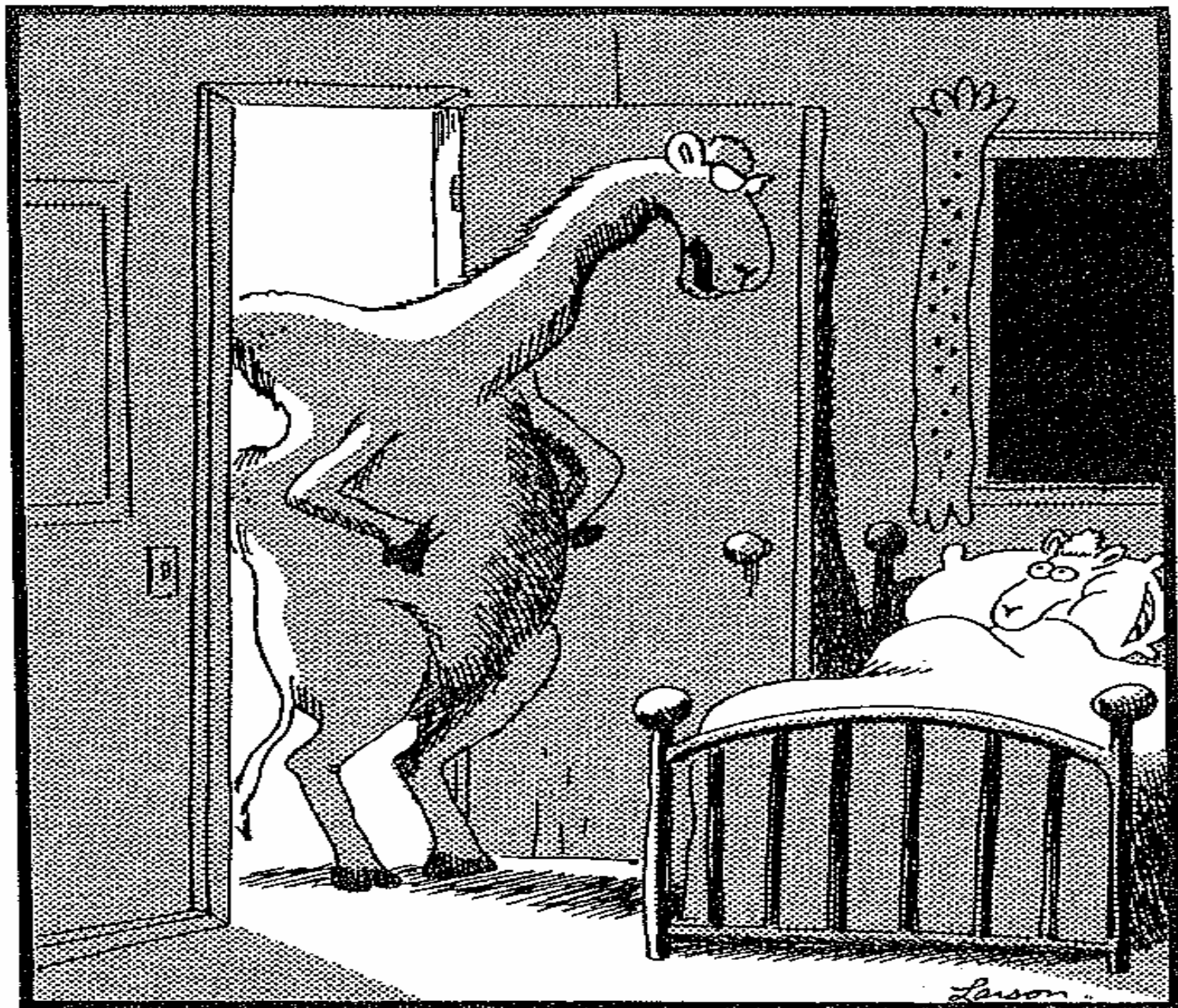
- Award of attorneys' fees



- **No further appeal unless residential**







**"Again? You just had a  
glass of water 12 days ago."**

# Res Judicata & Collateral Estoppel

- **General Rule**
  - Prevents relitigation of claims that have been or should have been litigated
  - Prevents relitigation of issues that have been resolved in prior suit



# Res Judicata & Collateral Estoppel

- **Exception**

- **Forcible detainer does not bar subsequent claims between landlord and tenant, other than possession**



# Liens

- **Contractual Liens**
  - **Must be in lease and meet requirements of Section 54.043 of the T. P.C.**
  - **Subject to Article 9 of T.B.O.C.**
  - **May foreclose without judicial proceedings and lack of personal property exemptions**



# Liens

- **Statutory Liens**
  - **Statutory lien to secure payment for rent due or to become due**
  - **Attaches to all non-exempt personal property of tenant in the building**
  - **Must be enforced by distress warrant**



# Abandoned Property

- Writ of possession
- Section 93.002 of T.P.C.
  - Presumption of abandonment
  - 60 days from date property is stored



# Contact Information



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