

## LOOK TO THE LEASE Understanding your agreements can help resolve commercial tenant issues



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THERE ARE NO BLACK AND WHITE RULES WHEN IT COMES TO DEALING WITH PROBLEM TENANTS. OBVIOUSLY MUCH DEPENDS ON THE MARKET and whether it is better to have a continually late paying tenant or an empty space. Often, the only hope landlords have to receive payments owed is to bend the rules. The important part, however, is that they keep up with “work out” agreements which are mutual agreements between landlords and tenants to reschedule payments or modify payment terms. Landlords should document these agreements and make sure the lease provisions are adhered to in all respects.

The inclusion in a commercial lease of a clause permitting the property manager to terminate a lease due to a breach of contract is no assurance that a court will enforce the clause. Under most state laws, “forfeitures” of leases are not favored and judges are normally reluctant to terminate leases. To justify termination, the general rule is that a breach by the tenant must be a substantial violation. Abandonment, failure to pay rent and property taxes always justify termination.

It goes without saying that landlords must read the lease and comply with the default provisions before placing a tenant in default or terminating the lease. Any court, in a subsequent action, will look favorably toward the tenant, and construe the lease (usually drafted by the landlord) against the landlord. This includes, but is not limited to, giving notice to the proper

people at the proper address in the lease, specifying the section of the lease which the tenant has violated and giving the tenant the requisite time to correct the violation called for within the lease. If a “default” notice does not clearly state that the lessee is in default, a court may hold the notice as insufficient. Some courts hold that an improper and premature default letter can be a constructive eviction of the tenant, ending any future liability for rent.

All commercial landlords have had situations where a tenant “goes dark.” If landlords are concerned about collecting damages in the form of future rent, then they must be very careful in an abandonment situation. If they unqualifiedly accept such surrender, then the general rule is that liability for future rent and damages is terminated. To constitute abandonment of premises, there normally must be an absolute relinquishment of the premises by the tenant and intent to abandon.

Landlords should always proceed according to the terms of a lease. They should notify a tenant in writing that they are accepting possession after abandonment, for the benefit of the tenant only. Leases should contain “survival clauses,” which allow the landlord to re-let and retain liability in cases of abandonment. Without such a letter, or such a provision, the general rule is that a landlord releases the tenant from all future liability by accepting the abandonment. ■



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