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Legal-Ease: Do's And Don'ts Of Dealing With Problem Tenants

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While no commercial landlord wants a problem tenant—and most commercial tenants want to avoid problems, too—it's not unusual for issues to arise. Keep in mind the following dos and don'ts to help address issues that may occur during the course of a tenancy.

DO INVEST THE TIME AND MONEY IN GETTING THE LEASE DONE RIGHT.

An essential first step in a new tenancy is documenting the terms of the landlord tenant relationship in the lease. Both sides should commit time and money to getting the lease done right. However, when push comes to shove, lease provisions governing the day-to-day interactions between the parties—such as rent payment, use restrictions and assignment—often get more attention than the doomsday scenarios that no one foresees at the start of the lease: casualty, condemnation and default. A lease should be clear about the rights and obligations of both parties and what happens if the obligations are not satisfied. A default must exist before you get to the remedy. If the lease language is ambiguous about who is responsible for a given cost, then a perfect remedy provision won't help, since you'll spend all your time arguing about whether a default even exists.

DON'T BE TOO FLEXIBLE.

While a good relationship with a tenant is an invaluable asset, it should not replace the default and remedy language in the lease. The lease probably includes "no waiver" language, providing that waiver of a given provision does not imply future waivers, and this language protects the landlord by providing some important flexibility on enforcement of the lease. However, permitting tenant actions in violation of the lease can be a dangerous precedent. Remember that other tenants are watching, and a permissive landlord may see more tenants test the waters.

DO PAY UPFRONT ATTENTION TO LIKELY PROBLEM AREAS.

Be aware of issues with specific tenants that could be red flags, and pay close attention to how such issues are documented in the lease. For instance, if you suspect that a potential tenant will generate more traffic than usual in and to the premises, think through how this may affect parking, electricity usage and after-hours services. The boilerplate lease form language may need to be revised to eliminate as much gray area as possible.

DON'T ADDRESS LEASE DEFAULTS INFORMALLY.

It's not enough to tell a tenant that rent is late or that the tenant's signage is prohibited. Defaults come in all shapes and sizes, and a typical lease outlines different default criteria and remedy provisions for monetary and nonmonetary defaults. Even within those categories, there are likely to be specific provisions for default and notice related to insurance, the security deposit, improvements and so on. Written notice should be provided to the tenant clearly identifying the nature of the default and referencing the specific lease provisions that are being violated. The goal is for the violation to be promptly remedied, and a notice letter is often sufficient to accomplish this. However, it's essential to create a paper trail so that, if compliance is not achieved or if the default repeats or continues, the landlord can prove that notice was provided. It is essential that the landlord provide notice consistent with the requirements in the lease.

DO LOOK FOR THE WIN-WIN.

Even if the tenancy did not go as planned and the tenant has defaulted, leaving the landlord to conclude that removing the tenant is the best move, be aware that there are ways to negotiate an exit short of eviction. If this conclusion is the result of a monetary default, the landlord should consider whether renegotiating the term, rent and premises may be better for both parties. Such an agreement could result in financial benefit to the landlord without the potential uncertainty of a formal eviction process. Landlords and tenants can do their best to reduce potential issues from the start of a new lease, but the gamble remains. By keeping these tips in mind, the landlord may be able to avoid tenant eviction or better navigate the eviction process should it become necessary.

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