Resolving a Commercial Lease Dispute: The Basics

Commercial lease disputes come in many different forms. Disputes may relate to payment issues, evictions, CAM calculations, property conditions, surrender obligations, maintenance and repairs, COVID-19 issues, noncompetition, purchase options, hours of operation, bankruptcy and a host of other issues. And that's just the tip of the iceberg.

So what happens if you find yourself in a commercial lease dispute? The correct answer is rarely to jump headfirst into litigation. Disputes can often be resolved by exchanging correspondence that outlines each party's respective legal and factual positions. This correspondence may involve a formal notice of default. In many instances, one party may realize it failed to comply with the lease or took a position inconsistent with the lease. Effective correspondence often requires a detailed review of the lease and any amendments to ensure the best arguments are made and that lease requirements and formalities are followed.

However, all too often, tenants and landlords make avoidable mistakes when disputes arise. One mistake is not getting legal counsel involved at the beginning of the dispute. Without legal counsel, it's easy to overstate your position, fail to meet a lease-based deadline, miss an opportunity to cure a default, send a defective notice or make assertions that later come back to be self-defeating.

Another mistake is making inflammatory remarks out of frustration or in an attempt to appear aggressive. These types of remarks are almost never effective and can be detrimental if litigation ensues. Additionally, given that the landlord-tenant relationship often continues following the dispute, unnecessarily abrasive communications are frequently unproductive and damage important business relationships.

Yet another mistake is ignoring creative solutions that may be acceptable to all parties. Legal counsel with experience resolving these disputes can provide valuable options.

Unfortunately, resolutions cannot always be reached. As a result, it's imperative for lease parties to approach disputes on parallel tracks—i.e., seeking a resolution in good faith while simultaneously preparing for litigation. Each party should be fully prepared to litigate and should ensure that all steps are taken to put that party in the best possible legal position. As an example, if a commercial landlord has a tenant that failed to pay rent, the landlord should typically explore options

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on how to resolve the payment dispute. However, at the same time, the landlord should issue a notice of default, typically with the assistance of counsel, to ensure the landlord can immediately bring legal action if negotiations are unsuccessful. This approach maximizes the landlord's legal options while maintaining the opportunity for an amicable resolution. Similarly, filing a lawsuit does not have to end in an extensive jury trial. Cases frequently settle before trial, often during mediation or earlier. Filing a lawsuit, however, may be necessary to get the ball rolling.

Reinhart has a team of attorneys that focus on commercial leasing and lending, including transactional work, litigation and dispute resolution. If you have any questions or need assistance, please contact Joshua Taggatz or a member of Reinhart's Real Estate Litigation practice.

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