

Ask the Lawyer: Breaking Lease Agreements a Delicate Matter

By Mathew Tully

Question:

My landlord has made it impossible for me to run my business at its current location. He's not answering my calls and is not holding to his end of the bargain. Can I just stop paying rent and relocate to a new location?

Answer:

Walking away from a commercial lease is a delicate matter, even if your landlord is being obstinate and obstructive. When it comes to breaking contracts, such as lease agreements, two wrongs do not make a right. Courts will acknowledge, however, that the actions or inaction of a landlord can sometimes result in untenable situations that leave a tenant no choice but to vacate the leased premises and stop paying rent in violation of the lease's terms. Such predicaments are referred to as "constructive eviction."

Constructive eviction occurs when a "landlord's wrongful acts substantially and materially deprive the tenant of the beneficial use and enjoyment of the premises," said the New York Supreme Court, Appellate Division, 1st Department, in *West Broadway Glass Co. v. I.T.M. Bar Inc.* These wrongful acts could include failures to address major structural issues that prevent a commercial tenant from operating the tenant's business or that substantially interfere with the tenant's business to the same result. *West Broadway*, for example, involved a new bar that was not able to open for business due to extensive renovation delays and severe water leakage and sewer backup problems.

A tenant who has been constructively evicted may be able to sue the landlord for compensatory as well as punitive damages. Any tenant who vacates leased space should be aware that they run the risk of the landlord suing them or countersuing them for unpaid rent. Tenants must be careful to satisfy all the criteria for constructive eviction, such as the tenant notifying the landlord of deficiencies, the landlord's failing to address these deficiencies in a reasonable amount of time, and a direct relationship between the tenant's inability to operate and the deficient conditions attributable to the landlord, the 1st Department noted.

Lastly, and perhaps most importantly to a constructive eviction claim, the tenant must abandon the premises within a reasonable time. As the Suffolk County Supreme Court said in *MB Recording Studios LLC v. Smithtown Bypass Cow*, "a breach of the covenant of quiet enjoyment does not require a physical ouster; rather, a showing of abandonment of the premises under pressure."

As the *West Broadway* case highlighted, abandonment, as it pertains to constructive eviction,

does not necessarily mean physical abandonment; it could also mean the inability of the tenant to open a business.

Ultimately, what tenants can legally do when the beneficial use and enjoyment of the premises is threatened largely depends on the terms of the lease agreement.

If a commercial tenant is having difficulty operating a business due to their landlord's actions or inaction, the tenant should immediately consult with a landlord/tenant lawyer.

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