
Renew Your Knowledge Before Renewing Your Lease

Introduction

Exercising a right to renew or extend a lease may seem like a simple administrative procedure but, in fact, it is an important legal process that should be performed with due care. It is prudent to take the time to fully review the terms of the lease before proceeding. In today's busy world, this essential step is often neglected, at great risk. As the old adage goes, "a stitch in time saves nine," and here is why.

If there is any doubt as to the manner of notice or the intended address, multiple notices (both in respect of the method and the address) should be considered.

Exercising renewal rights

The law regards an option to renew as a privilege attached to the original lease. As a result of its privileged status, the tenant must strictly comply with the terms and conditions of such renewal in order to obtain its benefit. This includes compliance with all stipulations as to time, place and procedure. If an option is exercised in compliance with all

Relief available for defective notices

As with every rule, there are exceptions. Even where a tenant does not strictly comply with the lease requirements, there may be relief available in some limited situations. Under the principles of equity, Courts have the power to exercise discretion and allow a renewal despite a tenant's error in exercising its option and despite the landlord's desire to end the lease. Courts will exert this power by using the legal doctrines of estoppel, waiver and relief from forfeiture.

The principle of estoppel applies where one party has made a representation to another which affects the legal relations between them. If the second party acts on the representation to its disadvantage, the party making the representation cannot revert back to its earlier position as if the representation had not been made. For example, if a tenant is late in exercising its option but the landlord responds by beginning to negotiate terms of renewal, depending on the extent of negotiation, a Court may find the landlord's actions represented to the tenant that its renewal was accepted. Based on this representation, if negotiations later break down, the landlord would not be entitled to refuse the renewal on the ground that it was exercised late.

In order to prevent unnecessary complications, a tenant should review the lease and exercise its option strictly in accordance with the terms provided.

Similar to the idea of estoppel is the concept of waiver, which is applied between two parties of a contract. When a contract provision has been inserted specifically for the benefit of one party, that party has a right to waive compliance with the provision. Once waiver has been established, the provision cannot be suddenly reinstated and insisted upon.¹ A waiver may be found to exist where a tenant has established a practice of giving notice in a modified way. If the landlord previously accepted this modified notice, it cannot refuse a renewal by suddenly demanding strict compliance with the notice provisions of the lease.

the requirements, the lease is automatically extended or renewed. However, a landlord is not required to renew or extend a lease on any terms other than those which are specifically provided.

Take, for example, the situation where a tenant exercised its option by faxing a letter to the landlord's property manager instead of sending it by registered mail directly to the landlord – as was spelled out in the notice section of the lease. In the event of a dispute, the tenant in this situation would be seen to have not properly exercised its option and may not be entitled to renew, even if the landlord received the notice in time.

Similarly, if a tenant sends the landlord a notice using the address provided by the lease while being aware that the landlord had subsequently moved, the tenant's renewal may not be considered valid. In one case with this type of circumstance, a tenant's renewal was rejected despite the landlord's flawed method for providing an updated address.

These examples show the importance of checking the terms of the lease. In addition, relevant files should be reviewed to see if any change of address has been received from the other party. If there is any doubt as to the manner of notice or the intended address, multiple notices (both in respect of the method and the address) should be considered.

Finally, under its power of discretion, the Court may grant a tenant with relief from forfeiture. This may be awarded where a tenant has diligently attempted to comply with the terms of the lease but was unable to do so, or where there was improper conduct on the part of the landlord. Improper conduct includes having lulled the tenant into a false sense of security with regard to the lease. For example, if a tenant exercised its option in an incorrect way but the landlord gave no response, it may be said that the tenant was lulled into a false sense of security that the renewal was approved. In this instance, the Court will consider any prejudice suffered by the tenant and may grant relief. Among the factors to be considered is the amount of time remaining before the original lease expires, any possible interruption in business and whether the tenant has spent money preparing for the renewal term.

The availability to a tenant of the principles of estoppel, waiver and relief from forfeiture show that a landlord must also be alert to the lease in order to enforce strict compliance with its terms. If a tenant has improperly exercised its option and the landlord does not wish to renew the lease, the landlord should inform the tenant and reject the renewal in a timely fashion. If a landlord does not directly notify the tenant and a legal conflict later develops, the landlord may be surprised and disappointed with the results.

Conclusion

As you can see, the exercise of a lease renewal option is a highly defined legal process with many potential outcomes. If one is not careful in the process, the results may be disappointing and expensive. In order to prevent unnecessary complications, a tenant should review the lease and exercise its option strictly in accordance with the terms provided. Similarly, when a landlord receives a tenant's notice of intent to renew, it should review the lease to ensure the validity of the renewal and respond to the tenant accordingly. By double-checking with the lease in advance, both parties can best protect the outcome of their choice.

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¹ A waiver may be retracted by providing reasonable notice.