



Early lease terminations: There are always exceptions

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The purpose of a lease is to give the tenant and landlord stability covering a fixed space for a fixed time at a fixed price. But there are always exceptions; the two big ones in a standard lease cover casualty and condemnation. There are others that have crept into some leases. Landlords should consider them; tenants and their representatives should be aware of them.

A "demolition" paragraph is often inserted to inform tenants that small buildings can be replaced by a skyscraper. In fact, midtown east Manhattan rezoning now being proposed may make it beneficial to tear down and replace major office buildings. Some office buildings have been converted to residential use after removal of commercial tenants.

Lease provisions should state how much notice the tenant will be given, and whether the unamortized cost of its improvements will be reimbursed. In addition, the tenant will have moving expenses and perhaps a higher rental in a new location. This lease termination provision, if not overlooked, could be a basis for substantial discussion of compensation in addition to out of pocket costs.

The second "relocation" paragraph sometimes found in leases allows the landlord to relocate the tenant to other space in the building. This permits the landlord to create expansion space for an adjoining tenant or a full floor to make a deal with a new tenant.

Since moving a tenant to substitute space is solely at the landlord's option and causes expense and inconvenience to the tenant, the paragraph should cover all of tenant's relocation expenses, including cabling and recreating all of the tenant improvements with an installation equal or better in quality in the new space.

The paragraph should also provide:

- * The new premises shall have approximately the same rentable area as the old space. If the new space is smaller, the rent should be proportionately reduced; if larger, no rent increase.
- * The new premises shall be suitable for the tenant's business.
- * The new space shall have a similar perimeter window line.
- * The new space shall not be on a lower floor and shall have similar views.

Finally, the parties need to determine the time frame for the entire moving process so that sufficient notice is given to the tenant and the move itself is minimally disruptive to the tenant's business. There may be some overlap requiring the tenant or its representative to make sure it will not have to pay rent in two places at the same time.

In either the demolition or relocation case a multi-building owner may offer an alternative to provide substitute space in a similar building. Obviously, this would call for more detailed discussions and lease provisions.

Landlords are not always the lease terminators. On occasion tenants have negotiated lease cancellation or "kick-out" rights. This is separate from a tenant's right to terminate the lease if it

cannot gain occupancy by a certain date. Retail tenants are more likely to seek this option; however some office tenants feel it is necessary for their future flexibility.

Sometimes cancellation is a one-time opportunity, other times it can be ongoing after an initial period. If given, the landlord will want to recover unamortized tenant improvement costs, free rent and brokerage commissions. In addition, the landlord will want to cover the rent or partial rent for some period of time. Between six months and a year is common, with an advance notice requirement of three to six months.

Landlords and tenants and their representatives may not think of these possibilities when negotiating a lease, but in hindsight many can remember where these provisions would have been helpful.

Gerald Morganstern is a managing partner at Hofheimer, Gartlir & Gross, LLP, New York, N.Y.

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