

Commercial Leases: Getting Rid of the Nightmare Tenant



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A landlord's commercial tenant is habitually late with rent, makes partial payments, fails to make required repairs, and causes disruption to other tenants. How can the landlord get rid of the tenant?

In these circumstances, the landlord can terminate the tenancy without a court order, but must proceed carefully. One wrong move can forfeit the landlord's right to terminate the lease, or cost the landlord time, money, and frustration. BEFORE trying to evict defaulting tenants, commercial landlords should:

1. Determine the required notice for the breach. If the required notice is not specified in the lease, the Commercial Tenancies Act (Ontario) requires 15 days' notice for rental breaches. For other breaches, even if the lease says no notice is required, give reasonable notice and time to cure before trying to terminate the lease.
2. Ensure that the default is clear and provable, otherwise a court may not uphold the termination. For example, if the tenant challenges repair costs and the proper amount is unclear, a court application to decide the matter may be preferable to a unilateral termination notice, to avoid damages and costs being awarded in the tenant's favour.
3. Realize that you may not initially be able to get rid of the problem tenant who is prepared to pay, unless you have evidence of similar repeated breaches over time. A court will likely reinstate the lease by granting the tenant "relief from forfeiture" if the tenant pays up rental arrears or repair costs.
4. Refuse to accept late or partial payments of rent. If you have decided to terminate the lease, all of your actions must be consistent with that decision. If you have previously accepted late or partial payments, send a letter confirming when the rent is due each month and that you will no longer permit late or partial payments. Then stick by that policy.
5. Act quickly if you think the tenant is insolvent. If the tenant goes bankrupt, you will have to wait to deal with the bankruptcy trustee until a 90-day period has expired. The trustee may wish to control

the assignment of the lease to someone else, and could do so without your consent.

6. Use a bailiff who can properly post the notice of termination, change the locks and re-enter when the tenant is not on the premises. If the tenant is on the premises and is uncooperative, the bailiff should leave and try the termination later. If the tenant breaks back in, apply for a court-ordered writ of possession and enforce it through the bailiff.
7. If you want to terminate the lease, do not keep the tenant's property. The posted termination notice should confirm that the tenant may arrange to retrieve its property by a certain date, after which the landlord can dispose of it. However, even if the lease permits that, you are still obliged to store the tenant's property and could be liable for not doing so.

Ensure that the default is clear and provable

8. In the notice of termination, reserve your right to claim damages for loss of rent for the remainder of the lease. However, if you find a new tenant promptly, you cannot recover damages, because you did not suffer any. To claim damages after leasing the premises again, you would have to sue the tenant.

When dealing with tenants who know how to "play the system," the wrong move can cost landlords time and money. Lawrence's commercial leasing lawyers and litigators can help landlords terminate nightmare commercial tenants promptly.



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