

Ten Steps to Protect Landlord in Tough Economic Times

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GR Review



In this economy, many tenants are struggling not only to pay their bills but also to stay in business. Summarized below are ten steps landlords can take to enforce their rights and preserve rental income in today's economy.

1. Know Your Tenants' Financial Status. Meet with tenants to review their financial strength. Many leases require tenants to submit financial statements upon request.
2. Insurance Certificates. Make sure all tenant insurance certificates are current and consistent with the lease.
3. Interest and Late Fees. Bill and collect late fees and interest on late payments or risk waiving the right to collect these amounts at a later date. If Landlord has not collected these amounts in the past, notify tenants in writing that interest and late charges will be billed and collected per the lease on future late payments.
4. Default Notices. Promptly issue default notices. Certain tenant rights are conditioned upon default including rights to rent abatement, work allowances, lease assignments, subleases, and options to extend, renew or expand. Loss of these rights may further incentivize the Tenant to cure the default.
5. Security Deposits and Letters of Credit. Request and enforce security deposits. An irrevocable letter of credit from a financially solvent bank in lieu of a cash security deposit may provide better protection in a tenant bankruptcy. The letter of credit should automatically renew unless Landlord receives notice from the issuing bank. Negotiated reductions in the letter of credit should be in the lease and not part of the letter of credit with a reduction occurring by means of an amendment approved by Landlord.
6. Retail Tenants. Enforce the permitted use and hours of operation provisions. Review the gross sales reports as a reduction in sales may provide an early alert to potential problems. Consider auditing gross sales to determine whether tenants are reporting all gross sales.
7. Operating Expenses and Tax Billings. Accelerate tax and operating expense estimates and reconciliations, and consider midyear adjustments, to avoid large lump sum billings to tenants. Review expense and tax exclusions in leases in anticipation of increased tenant audits to reduce costs.
8. Subleases. Use a separate consent agreement to set forth the rights and obligations of the parties. The

consent should permit Landlord to continue the sublease as a direct lease with the subtenant if the lease is terminated and to collect rent directly from the subtenant in the event of a default under the Lease.

9. Partial Rent Payments. If Landlord accepts a partial rent payment, Landlord should send a notice of default or advise tenant that partial payment is not a waiver of the tenant's obligation to pay the full rent amount or an accord and satisfaction.

10. Termination of Possession or Lease. If Landlord intends to terminate a lease or the tenant's possession of the premises for failure to pay rent, use the statutory notice of default. The default notice should be delivered in accordance with the notice provisions of the lease.

During the cure period, Landlord may accept partial rent payments without invalidating the default notice. After expiration of the cure period, Landlord's acceptance of partial rent payment will invalidate the default notice. Notify the bank maintaining any lockbox to hold any checks from tenants who have received a default notice.

In Illinois, unless the tenant has vacated the premises or cannot be located, Landlord may only obtain possession of the premises by a forcible detainer action. Entry by force or changing locks is not permitted.

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