

## COMMERCIAL TENANT FREQUENTLY ASKED QUESTIONS

If you are a commercial tenant the rights that you negotiate into your lease are important to protect your interests, your business, and the entire term of your lease. Below are some tips to help you. This is not intended to provide legal advice on your specific situation, but to guide you as a commercial tenant. To get help from a free high-quality attorney register at [www.nyc.gov/commlease](http://www.nyc.gov/commlease).

## WHAT PROTECTIONS DO COMMERCIAL TENANTS HAVE UNDER NEW YORK LAW

- There is moratorium prohibiting eviction of commercial tenants who submit a hardship declaration to their landlord and/or the Court.
- The right to be free from discrimination.
- The right to be free from harassment by a landlord.
- The right to be free from acts that produce waste or cause urban blight.
- Protection against recurring frivolous legal actions.
- Protection against repeated and unnecessary acts that interfere with a commercial tenant's business.

## WHAT DEFENSES DO COMMERCIAL TENANTS HAVE UNDER NEW YORK LAW

- Lack of proper notice. A landlord must give 60-days notice to vacate to month-to-month tenants who have been in a leased space for more than one (1) year but less than two (2) years, and 90-days notice to vacate to tenants who have been in a leased space for more than two years. The landlord must serve a written 14-day rent demand before starting a summary nonpayment proceeding in court.
- Commercial tenant harassment protection under the Non-Residential Tenant Harassment Law.
- Landlord breached its obligations or failed to fulfil its duties under the lease.
- Landlord intentionally interferes with services that are "proper and customary" use in the building.
- The Federal "Fair Housing Act" is a law that makes it illegal for a landlord to discriminate against a commercial (or residential) tenant due to their race, origin, gender, disability, national origin, etc.

**Ask for help!** If you need assistance speaking with your landlord, or you are having difficulty understanding your lease, or have an oral lease, or have another question about your lease, call/text **347-973-0945**.

## WHAT SHOULD YOU DO IF YOU RECEIVE A NOTICE FROM THE LANDLORD INCREASING RENT

- ✓ Read the notice.
- ✓ If necessary, dispute the notice in writing stating something like, “I dispute the validity, accuracy or enforceability of this notice dated [00/00/0000] and the demands made in this notice are unenforceable, inaccurate, invalid and or erroneous.”
- ✓ Look for these types of provisions in your lease:
  - Lease Term and Rent: The base rent and timeline sections of your lease should state the rent amount. The landlord cannot change this amount unless the lease allows or your lease has expired and there is a new amount due for staying beyond your rental period.
  - Rental Adjustment and Additional Rent: This section of your lease may state whether the landlord is allowed to raise your rent for charges other than the based rent, for example, taxes.
  - Renewal Option: Check to see any changes to your rent if you renew your lease.

**DO NOT** sign and return the notice.

**DO NOT** pay the increased rent amount without reviewing your lease and seeking assistance.

**DO NOT** pay the increased rent amount if you have not signed a renewal lease.

**DO NOT** ignore the notice.

### NEED HELP?

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## WHAT SHOULD YOU IF YOUR BUSINESS IS SUFFERING AND YOU CANNOT AFFORD RENT

- ✓ Consider your goals:
  - Do I want to renegotiate the rental amount?
  - Do I want to sublease the space?
  - Do I want to assign the lease?
  - Do I want to terminate the lease?
- ✓ Look for these types of provisions in your lease:
  - Assignment, Subletting and Transferring: Look to see if you are allowed to have someone take your place. Or Do you have to get permission from your landlord? What are your remaining liabilities if you assign?
  - Termination: Look here to see if you are allowed to end the lease and under what circumstances.
  - Surrender: Look here to determine what you are required to do before leaving the property.
  - Notice: Determine if you have to notify your landlord, when (is there a time period you have to notify by), how (is it in writing), and where (there a specific address to send notices)?
- ✓ Consider approaching your landlord to discuss renegotiating the lease or a payment plan. Make sure any agreement you reach with the landlord is in writing.

**DO NOT** stop paying rent without speaking with an attorney and your landlord.

**DO NOT** abandon the space without speaking with an attorney.

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## WHAT SHOULD YOU DO IF YOU RECEIVE A NOTICE SAYING THERE IS A NEW LANDLORD

- ✓ Read the notice. The new landlord cannot change the terms of your existing lease without negotiating and agreeing with you to amend the existing lease.
- ✓ Look for these types of provisions in your lease:
  - Assignment, Subleasing and Transferring: Landlords usually have the right to sell the commercial property, unless something in the lease says that the landlord cannot.
  - Right of First Refusal: This gives you the opportunity to potentially purchase the property before the landlord can sell to someone else. The provision usually requires the landlord send you a notice that the property is being sold and you can exercise your first right before the property is sold to someone else.
- ✓ Ask if any of the neighboring commercial tenants have received a similar notice.
- ✓ Say hello to your new landlord!

**DO NOT** sign and return the notice.  
**DO NOT** stop paying rent.  
**DO NOT** agree to any new terms or sign a new agreement without seeking assistance.

### NEED HELP?

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## WHAT SHOULD YOU DO IF YOU ARE UNABLE TO OPERATE YOUR BUSINESS BECAUSE THERE ARE DAMAGES AND/OR THE LANDLORD IS REFUSING TO COMPLETE NECESSARY REPAIRS

- ✓ Take pictures and videos of all damages, and keep a record of the dates when the damage happened, when you notified landlord, and the time it took for repairs to start and to be completed.
- ✓ Notify your landlord immediately of the damages and any unsafe conditions. You should generally not make repairs on your own unless it is required for safety or in an emergency, and make sure to keep receipts and proof including photos and recordings.
- ✓ Look for these types of provisions in your lease:
  - Termination: This, if available, gives you the right to terminate the lease under certain conditions.
  - Default: This explains what happens if the landlord defaults on its obligations.
  - Maintenance and Repairs: Determine whether you or the landlord is responsible for specific repairs.
  - Quiet Enjoyment: This provision protects you when the landlord is severely interfering with your ability to use the property and forces you to shut down or otherwise be unable to operate your business.
  - NY law: If the landlord is creating conditions that repeatedly interrupt or discontinue essential services, the landlord may be in violation of the Non-Residential Tenant Harassment Law.
- ✓ File a complaint with a NYC agency like the Department of Building and/or call 311 to find out where and how to report any unsafe or hazardous condition.

**DO NOT** ignore the situation.  
**DO NOT** make repairs without informing the landlord or in violation of the lease.  
**DO NOT** forget to keep records including photographs, videos, and keep all receipts.