

Holdover Rent

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As the end of a commercial lease approaches, it is common for landlords and tenants alike to consider whether to renew the lease or part ways. But what happens when a tenant remains in possession after the final date of the lease term? Depending on the applicable state law, the terms of the lease, and the interactions between the landlord and tenant, the landlord may have the right to charge the “holdover” tenant up to 200% of the last known rental rate.

While lease provisions vary in addressing the issue of holdover; most leases include a provision which declares a tenant to be a tenant at sufferance and subject to holdover rent in the event that the tenant remains in possession beyond the lease terms. If the lease is silent regarding the issue of holdover, state law will dictate the status of the tenant.

Under Section 83.04 of the Florida Statutes:

When any tenancy created by an instrument in writing, the term of which is limited, has expired **and the tenant holds over in the possession of said premises without renewing the lease by some further instrument in writing then such holding over shall be construed to be a tenancy at sufferance**. The mere payment or acceptance of rent shall not be construed to be a renewal of the term, but if the holding over be continued with the written consent of the lessor then the tenancy shall become a tenancy at will under the provisions of this law.

Once the tenant holds over, the landlord, under Section 83.06, Florida Statutes, has the right to charge up to 200% of the last known rental rate to the holdover tenant. That Section specifically provides that “When any tenant refuses to give up possession of the premises at the end of the tenant’s lease, the landlord . . . may demand of such tenant double the monthly rent, and may recover the same at the expiration of every month . . .”

In the event that the landlord accepts holdover rent from a tenant and also consents in writing to the continued occupancy, the tenant then becomes a tenant at will. This change in tenancy status carries with it

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distinct steps a landlord must take in order to terminate the tenancy.

Section 83.03, Florida Statutes, provides the following with regard to terminating a tenancy at will: “A tenancy at will may be terminated by either party giving notice as follows: . . . (3) Where the tenancy is from month to month, by giving not less than 15 days’ notice prior to the end of any monthly period . . .” In the event that the tenant remains a tenant at sufferance following the expiration of the lease term, Section 83.20, Florida Statutes, provides that the landlord may cause the removal of the tenant from the premises upon providing certain statutory notice and filing for an eviction action with the court.

It is important for commercial landlords to be mindful of these issues both when entering into a lease and when considering their course of action in dealing with a holdover situation. Understanding the type of tenancy relationship dictates the steps necessary for a landlord to terminate the lease or remove the tenant. Furthermore, failure to properly draft or scrutinize a holdover provision may result in a missed opportunity to collect additional rent.