

MIND YOUR BUSINESS – Tia’s Tips for Better Rental Management
Lease Breakers: Landlords’ Rights and Responsibilities
Tia Politi, ROA President

So, you’ve rented your property, signed your new tenants up on a one-year lease and you think, “Great, now I can relax until their lease is almost up.” Not so fast. Just because your tenants have signed a lease doesn’t mean they can’t break it. Lease breaking happens all the time and while the law has established guidelines for this potentiality, the guidelines don’t address every specific circumstance, which can leave you scratching your head wondering what your obligations and rights are. As with many areas of landlord-tenant law, the answer is, “It depends...”

I got a call from a property manager friend last year asking how to deal with a lease-break situation where two young women had leased a campus property. During a party, at which all participants became extremely intoxicated, a friend of one roommate sexually assaulted the other roommate. The victim pressed charges and immediately moved out, notifying the manager of the situation. At this point, the manager knew that the remaining roommate would not be able to pay the full rent and didn’t know what to do. In this case, they followed the statutes for victims of domestic violence and released the victim from the lease with two-week’s written notice, after she provided a copy of her police report. The more difficult issue was what to do with the remaining roommate. She was not a participant to the assault, nor did she encourage it. In fact, she didn’t know it had happened until after the fact. Many times, the statutes do not address the specifics of what can be very confusing situations such as this. When that happens, you must enter the murky realm of the “Reasonable Person of Good Faith Standard.”

This standard asks you, as a reasonable person operating in good faith with your tenant, “What would a reasonable person do?” You might also ask yourself, “What would a judge say?” The answer, of course, can be decidedly unclear. In this case, was it reasonable to expect a college student to be able to advertise and procure another roommate who would qualify to live there? Or would it be reasonable to expect her to be able to absorb the full rent (even though legally she was jointly and severally liable)? That was their decision to make and they ended up allowing both tenants to break their lease and move out, thereby absorbing the loss of rent and the work required to move in new tenants. Would they have made a different decision if they had been operating in a poor rental market? Could the remaining roommate have made a case to a judge in small claims court that she was an unintended victim as well? Did the company want to go to court to find out? Those are the questions they had to ask themselves, and only they could make the decision about which way to go.

In another situation, I got a call from a landlady friend who was dealing with two roommates who had signed a one-year lease and moved in to one of her houses a couple of months before. They were now arguing and one of them wanted to move out. The one who wanted out, however, was the one with the good job and the good co-signer. In this case, she opted to decline that option, which left the tenants to figure out their own solution. If the one roommate then decided to leave, she could still be on the hook financially for the full lease term if both the roommate and the landlady refused to release her. Just because a person wants out of their lease, doesn’t necessarily obligate you to do so.

Other lease-break situations can result from tenants dropping out of school, losing their job, getting a divorce, or dying. The reality is that tenants break leases all the time, and it is still your obligation to do your best to re-rent the property to minimize any financial damage to the tenant. You can't just leave the property vacant and force the departing tenant to absorb the cost of the full lease. You can, however, charge the departing tenant or their co-signer a lease-break fee (not to exceed one-and-a-half times the monthly rent) or "actual damages" for the difference in rental value. So, say your tenant leaves in January and you had rented the property to them for \$1395, but to get the property rented to someone else at that time of year, you had to lower the price to \$1195. In this case, your tenant is liable for the difference in rental value for the entire term of their original lease.

Whatever the lease-break situation, you are still required to send out a security deposit accounting within the 31 days of receiving possession of the property. At that point, you will be forced to choose between charging a lease-break fee as defined in your lease agreement, or actual damages for the term of the lease, if your contract provides for a choice. Obviously, if you have not re-leased the property, your accounting will be incomplete, and follow-up accountings will need to be sent until the final tally of damages is assessed. These charges are in addition to other costs that may lawfully be deducted from a tenant's deposit including carpet cleaning, etc.

Other things to keep in mind are the possibility of actually collecting that money from the former tenant or their co-signer, as well as your one-year statute of limitations for court action to recover monies owed. When these situations drag on, you could have a very short window in which to pursue your former tenant's account, so time is of the essence. While a lease can often be a good guarantee of the length of a tenancy, it can give you a false sense of security. So lease or no lease, always be ready to deal with an unexpected vacancy.

This column offers general suggestions only and is no substitute for professional legal advice. Please consult an attorney for advice related to your specific situation.