Lasser Law Group | Real Estate, Construction & Litigation Attorneys

Taking Matters into Your Own Hands: When Commercial Landlords Should Consider Self-Help

alma · Friday, October 2nd, 2020

When a commercial tenant defaults under its lease, New York commercial landlords may have the option to use self-help to evict the tenant from the premises without going to court or obtaining a warrant of eviction. Given the current moratorium on evictions due to COVID-19, commercial landlords might want to explore the option of self-help as a way of removing their tenants and re-letting the space.

In order for a commercial landlord to use self-help, a specific protocol must be followed. First, the lease should be reviewed to make sure that it contains a provision authorizing the landlord to re-enter and regain possession of the premises upon the tenant's monetary default or abandonment of the premises. Second, if the lease allows for such re-entry and self-help to regain possession, then the landlord should send a formal notice to the tenant prior to re-entering the premises in order to give the tenant notice that the landlord intends to re-enter and use self-help. The landlord should consult with an attorney to make sure that they provide the tenant with the proper notice. Once these initial steps are taken, the landlord can undertake the last step: peaceably re-entering and securing possession of the premises.

Peaceably re-entering and securing the premises is not as simple as it sounds and is determined on a case by case basis. Under appropriate circumstances, a landlord can change the locks or keycode for the premises and courts will consider this a peaceable re-entry. If a landlord's behavior in re-entering the premises is considered a "breach of the peace" or is otherwise unlawful, the tenant can sue the landlord and collect damages. Actions such as threatening to call the police if the tenant attempts to re-enter and placing a private security guard to prevent a tenant's access have been considered a breach of the peace by courts and made the landlord liable for extensive damages to the tenants.

Using self-help to re-take the premises might be a viable alternative to filing an eviction proceeding, especially in cases where the tenant has either vacated the premises or has manifested an intent to do so. Landlords should always consult with their attorneys prior to undertaking self-help to determine whether it is an appropriate remedy.

Download PDF

This entry was posted on Friday, October 2nd, 2020 at 7:40 pm and is filed under Landlord-Tenant Litigation

You can follow any responses to this entry through the Comments (RSS) feed. Both comments and pings are currently closed.