A small tip for tenants in leasing disputes: don’t forget to send termination notice

Description

I have been helping a client dealing constantly with lease disputes. I found that due to lack of basic legal knowledge, tenants can find themselves in very unfavorable position.

A typical scenario is like this: in the course of leasing, the tenant decides to cancel the lease and therefor refuses to pay rent and finally may move out of the leased office or residence. But for some reason, the tenant fails to send a notice of termination to the landlord, fearing that the landlord may not be happy with the early termination. On the other hand, the landlord knowing that he may not be able to find replacement tenant immediately may intentionally pretend that the tenant has not really terminated the lease on the ground that the tenant has not served a termination notice on him, but continues to claim rental. It could also be that the landlord (living in another place) is not aware that the tenant has moved out of leased property at all.

Given the early termination without notification, the landlord can claim the rental for the period from tenant moving out to the date when the landlord terminates the lease contract. This is the advice I often give to my landlord client: we will pretend that the tenant has not terminated the lease but we will terminate the contract by sending a notice to tenant when the landlord client finds the replacement tenant. Then legally, we will be able to claim the rental till the date we serve the termination notice to the tenant.

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Well, you may have different ideas about what should be done in that scenario or whether my advice is really good.

Is the lease terminated at the time of tenant moving out?

It depends. Without a clear expression of early termination, the moving out by tenant can be subject to different interpretation. Of course if the landlord is aware of the tenant moving out with everything, it can be well interpreted that the landlord ought to know that the tenant is terminating the lease. On the other hand, the landlord may claim that in the absence of express clear intention of termination, the vacation of the leased property is the legal disposal by the tenant, and the landlord has no reason to discontinue the lease on that account. Sounds a weak argument?

On the other hand if the landlord is not aware of the moving out by tenant, it is quite sure that the landlord is entitled to rental for the period from moving out to real termination by the landlord.

Another related legal issue in respect of the scenario depicted above is whether the landlord can claim real performance of the lease upon early termination by tenant so the landlord can realize the full interests of the lease just as if the lease were not early terminated by tenant.

Real performance is a good remedy for non-defaulting party in the contract dispute. However, in the case of lease dispute where the tenant terminates the lease prematurely, as a matter of law, the landlord may not be able to claim real performance because the enforcement for real performance is

not economically suitable. So in such a case, the landlord is left only with the remedy of claiming damages from the tenant.

Unfortunately, in current Chinese laws, it is not possible for the court to support the claim by the landlord that the tenant should pay an amount of compensation equal to rentals for the unused term even though this is the liquidated damages stipulated in the lease contract. Claim for damages in accordance with Chinese laws is very often a tough task as the party is not able to prove a big amount of damages stemming from the early termination.

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