

Call All Monies Owed by Tenant ‘Additional Rent’ to Speed Up Nonpayment Proceedings

Many owner and tenant lease forms we’ve looked at have a big loophole: They don’t classify all of the tenant’s lease costs—other than base rent (and for retail tenants, percentage rent)—as “additional rent.” Typically, a lease requires the tenant to pay many costs in addition to its base rent and percentage rent. For example, some tenants make separate payments toward electricity, taxes, and other operating expenses or CAM costs. The tenant may be obligated to pay for certain repairs, too. If these costs aren’t defined in the lease as “additional rent” and the tenant fails to pay any of them, you may have to go through a lengthy and costly lawsuit to collect them, warns New York City attorney Adam Leitman Bailey.

Tenants may balk at defining these costs as “additional rent.” But the definition is worth fighting for because it makes it easier for you to collect what’s due to you.

Use Summary Proceedings to Collect ‘Additional Rent’

If a lease cost is defined as “additional rent” and a tenant doesn’t pay that cost, you can often use a fast legal remedy known as a “summary proceeding” to collect payment—as you would if the tenant doesn’t pay its base rent, explains Bailey. Summary proceedings, available in most states, save you the hassle of having to collect payment through a regular, lengthy lawsuit.

Add Definition to Lease

The best way to ensure that lease costs will count as “additional rent” is to add the definition of “additional rent” to the miscellaneous section of the lease, says Bailey. The definition should say that all money due to you from the tenant under the lease, other than base rent or percentage rent, will be “additional rent.” This approach is safer than separately defining each cost in the lease as “additional rent,” because you could inadvertently miss a cost, he notes. And then the tenant could dispute whether that cost

is part of its additional rent, undermining your fast rent-nonpayment procedures.

It’s also smart to say in the lease that, unless you’ve agreed otherwise, all the money owed to you will be due within a set number of days—say, 10—after the tenant gets your bill, says Bailey. This ensures a fast, simple collection procedure and avoids disputes with the tenant over when it’s obligated to pay a lease cost.

Model Lease Language

For the purposes of this Lease, “Additional Rent” shall mean all sums, charges, or amounts of whatever nature (other than Annual Base Rent [*if applicable*] and Annual Percentage Rent) to be paid by Tenant to Landlord in accordance with the provisions of this Lease (including, without limitation, taxes, water, sprinkler, electricity, security deposits, late charges, insurance premiums, repairs, security services, fees and expenses incurred by Landlord as a result of instituting, prosecuting, or defending any action or proceeding, and [*insert any other monies owed under the lease*]), whether or not such sums, charges, or amounts are referred to as “Additional Rent” and, except as otherwise set forth herein, are due [*insert #, e.g., 10*] days after Tenant’s receipt of an invoice therefor. Landlord shall have the same remedies for default in the payment for Additional Rent as for default in the payment of Base Rent.

PRACTICAL POINTER: Take a look at the lease’s default clause, too. Make sure it says that nonpayment of “additional rent”—along with “base rent” or “percentage rent”—is a lease default, Bailey adds. State laws vary and may change. If your state doesn’t have a quick rent-nonpayment procedure to help you collect additional rent, you’ll want to take advantage of the remedies you have in the lease for dealing with a lease default. ▲

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