

Top 5 mistakes in dealing with delinquent tenants

By: **Martin J. Shuham, Shuham & Shuham, P.A.**

In my experience representing commercial property owners coping with non-paying or delinquent tenants, there are several common mistakes made by landlords that can be easily avoided.

The following steps can lead to more productive negotiations with the tenant, resulting in occupied spaces with a paying tenant or, in the alternative, removing a non-paying tenant quickly allowing the space to be leased to a new tenant.



**Martin J.
Shuham**

Mistake 1: Not moving quickly in giving the tenant written notice of its default

A common scenario is that a tenant falls one month behind on its rent. The tenant contacts you explaining the reason for the non-payment, which may be a personal problem or just hard economic times. The tenant may ask for some time to make up the rent and provide a very plausible plan for its business recovery. One month's default can then quickly turn into two and then three months of non-payment.

Because the Florida Statutes requires that written notice of default be given to a tenant before an eviction action can be filed, it is often effective for you, the landlord, to give prompt written notice of the default at the very beginning of the problem.

The form of that statutory notice, referred to as a "three-day notice" is very specific. A poorly drafted three-day notice may invalidate a later eviction action and even result in you being held liable for damages to the tenant. It is highly recommended that an attorney draft and forward this notice letter to the tenant.

Once the three-day notice is sent to the tenant, you control the timing of the rest of the case. You can negotiate a settlement with the tenant and never file the court eviction action, or move quickly to file suit to take back the property if that is the desired result.

Mistake 2: Accepting rent from the tenant between giving the three-day notice and the filing of a court eviction action

The Florida courts have held that a landlord may not proceed with a court filed eviction if the landlord has accepted partial rent payments from the tenant during the period between giving the three-day notice to the tenant and the filing of the court case.

Accepting rent during this period invalidates the court case and may hold you open to a counter suit and damages by the tenant. If you choose to accept partial rent payments due from the tenant during this period, you must then start over and send a new three-day notice to the tenant with the new past due amount.

Mistake 3: Filing the eviction action in circuit court

You will often have a choice of filing the eviction suit in county court or circuit court. If the tenant owes more than \$15,000 in past due rent, you may choose to sue in circuit court for possession of the property and for recovery of the monies owed by the tenant.

If taking back possession of the space is your primary goal, filing suit for possession only in county court may be the better option. The county court moves quicker on landlord-tenant cases than the circuit court. County court judges are much more familiar with the issues in these cases. An eviction case can usually be completed in 30-60 days in county court, where it may take a year or more in circuit court.

Once you have the space back via a county court action, you can then file suit in circuit court for money damages if the past due rent is over \$15,000.

Mistake 4: Not sending a notice of abandonment to the tenant

At some point in your dealings with a defaulting tenant, they may simply abandon the property. Under Florida law, "abandonment" of a commercial property may be presumed if you reasonably believe that the tenant has been absent from the premises for 30 consecutive days; the rent is due; proper notice has been given and 10 days have elapsed since service of the notice.

Even if you get the space back once the tenant vacates, it is prudent to send a formal notice of abandonment to the tenant confirming that they have in fact abandoned the space as of a date certain and identifying the past due amount that you believe remains due.

Mistake 5: Not retaining an attorney experienced in landlord-tenant law

It will save you time and money to hire an attorney experienced in landlord-tenant law early in the process. As stated before, the initial three-day notice to the tenant must be very specifically drafted according to the Florida Statutes, and if the notice is not properly given, a later court eviction action may be thrown out.

Having an attorney represent you will remove the emotion from the sometimes heated relationship between landlord and tenant and allow you to maintain a good ongoing working relationship with your tenant if a settlement is reached allowing them to stay on the property.

Martin J. Shuham (www.shuham.com) is co-founder of Shuham & Shuham, P.A. in Plantation.