

CFC Dismisses Complaint Alleging Government's Failure to Pay Rent Breaches Implied Covenant of Good Faith

In *Dotcom Associates I, LLC v. United States*, the U.S. Court of Federal Claims recently dismissed a complaint by the lessor of a building alleging that the United States breached the implied covenant of good faith and fair dealing by withholding rent and adopting an unreasonable interpretation of its lease.

In *Dotcom Associates*, the owner of a historical building in Tacoma, Washington, leased the building in 2005 to the United States. The lease included terms intended to provide the benefits of historic preservation tax credits to the lessor. In 2006, the City of Tacoma Landmarks Preservation Commission granted the lessor a special tax covenant that exempted the lessor from paying real estate taxes after 2008. While the lessor did not have to pay these real estate taxes, the United States paid base real estate tax on the property from 2006 to 2010. But in 2011, the government's contracting officer unilaterally ceased payment of any real estate taxes and withhold approximately \$145,000 in rent, and also proposed a supplemental lease agreement to reimburse the government \$150,000 for overpayment of real estate taxes.

The lessor sued the United States in the CFC, alleging that the government breached the implied covenant of good faith and fair dealing by withholding rent and adopting an unreasonable interpretation of the lease.

Last week, the CFC granted the government's motion to dismiss the complaint for failure to state a claim upon which relief may be granted under RCFC 12(b)(6). The court stated that, regardless of whether the government's withholding rent was a breach of the lease, "if withholding rental money by itself was enough to establish a breach of the implied covenant of good faith and fair dealing, every breach of contract would also be a breach of the implied covenant." The court also rejected the lessor's legal theory that the government breached the covenant of good faith by adopting a manifestly unreasonable interpretation of key lease terms, stating tongue-in-cheek that "[t]his failure-to-agree-with-plaintiff theory of breach of the implied covenant of good faith and fair dealing is quite novel." The court also noted that the lessor's complaint "did not even mention the . . . relevant contractual provision." The court dismissed the complaint for failure to state a plausible claim for relief.

The opinion can be found [here](#).

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