

# Landlord-tenant relations

How to deal with a commercial landlord and what to do if you end up in a dispute **Interviewed by Heather Tunstall**

**C**ommercial landlords are generally attentive, sophisticated people that are in the business to rent space. They have a reputation at stake and want to keep their tenants happy. However, because accidents happen or people make bad decisions either intentionally or negligently, you, as a commercial tenant, always have to be aware of potential issues.

“If you can’t make amends and resolve things informally, which you should always attempt first, then you have legal rights that you should not be afraid to exercise,” says Todd Wenzel, a partner at Ropers Majeski Kohn & Bentley PC.

*Smart Business* spoke with Wenzel about what issues might arise and how you can address them should you find yourself in a dispute.

## How can commercial tenants avoid common problems with their landlord?

The main thing a commercial tenant can do to avoid difficulties with his or her landlord is to identify common problems that arise most frequently. Most common problems can be addressed during the lease negotiation. Therefore, the best practice to avoid them is to anticipate and ensure expectations are met, and these potentially problematic areas are addressed in the lease. For instance, with regard to building maintenance, tenants should demand assurances that the building premises and public areas will be adequately maintained by the landlord, while at the same time limiting their repair and maintenance obligations under the lease.

## Do you have any tips for negotiating a lease?

In negotiating contracts or leases, be firm in your demands while acting professionally. There may be sticking points in the lease, but if they are important enough for your protection, make sure you deliver that message in a professional manner.

Commercial landlords typically require tenants to enter triple net leases, usually on large business leases. Among other things, these require the tenants to pay a portion of the taxes on the building, pay for their own utilities, pay a portion of improvements and pay for a portion of the landlord’s property insurance. For



**Todd Wenzel**  
Partner  
Ropers Majeski Kohn & Bentley PC

small and medium-sized businesses, they should try to negotiate out of some of the obligations contained in a traditional triple net lease.

Secondly, the commercial tenant should confirm that the landlord has a maintenance program for the building. Commercial tenants should request that the lease contain indemnity clauses in the tenant’s favor should the tenant be faced with a claim caused by the landlord’s active or passive negligence. The lease should also provide a remedy for business interruption should the landlord’s negligence or lack of timely maintenance cause a disruption of business.

Lastly, it’s important that the lease contain insurance provisions stating that the building has sufficient insurance to cover any sort of catastrophe that may hit the building. If possible, it should include a provision requiring the landlord to name the commercial tenant as an additional insured on the insurance policy covering the property.

## How do you suggest the tenant review the lease prior to signing it?

Unless the commercial tenant has signed and negotiated many leases, then he or she should have counsel analyze it to spot

problem provisions or missing terms and to recommend alternative provisions. This could make a huge difference down the road. So unless the tenant has a wealth of experience in negotiating leases, he or she would be wise to have counsel review it before execution.

## How often do these disputes go to the point of litigation?

It’s more the exception than the rule. If you’re in business, you’re usually sophisticated enough to keep the lines of communication open so that if any problems do arise they are communicated and addressed promptly. The potential is there, but it’s not a common occurrence.

## If it does become a significant dispute, what should the tenant do to prepare a case against the landlord?

Documentation is key. If numerous maintenance requests go unaddressed, have all of those requests in writing. Email requests are great because they are date- and time-stamped, but even the old-fashioned way of faxing or writing letters will do the trick. If it is a maintenance issue, it is also important to take photographs or video of the conditions before they are repaired; that way, you preserve your evidence, which is critical.

Also, I recommend to my clients to display a willingness to try to resolve disputes before it becomes a legal claim. Documenting those attempts to resolve disputes makes the case that much stronger for anyone in litigation — especially a commercial tenant. If good faith attempts to resolve matters go ignored or are rejected, the tenant can look like the good guy in court.

## If a commercial tenant is at an impasse in a dispute with his or her landlord, what’s the first step?

If the tenant hasn’t already, he or she should contact counsel and have his or her attorney analyze the circumstances. Counsel can provide a risk/benefit analysis to give the tenant information as to his or her rights, estimated litigation costs and the potential outcomes of the dispute. <<

**TODD WENZEL** is a partner at Ropers Majeski Kohn & Bentley PC. Contact him at (415) 972-6316 or twenzel@rmkb.com.

**Insights Legal Affairs** is brought to you by Ropers Majeski Kohn & Bentley PC