



Evicting a Tenant in Michigan: Tips for First-Time Commercial Landlords

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There are abundant opportunities in commercial real estate, but these don't come without challenges, such as dealing with problem tenants. We advise all first-time commercial real estate landlords to run their property like a business (see Part 1), and part of doing that is being prepared to evict tenants.

With some planning and foresight, landlords can reduce risks related to tenant evictions. Here's what you need to know.

1. Do Your Due Diligence

If you want to avoid the hassle and expense of evicting tenants, do business with the types of tenants who are unlikely to default on their obligations. This sounds obvious, but in our experience, many first-time landlords skip this crucial step. As part of your due diligence (you're vetting your prospective tenants, right?), ask for financials and conduct a credit check, contact former landlords, and run a background check on the business owner. If you see any red flags, think twice before renting to the tenant — and at a minimum, seek counsel from a third party such as your attorney or CPA before entering into a lease.

2. Document Terms and Procedures in the Lease

There should not be any ambiguity in your lease as to (1) the circumstances under which you can evict a tenant and (2) the procedures that must be followed in order to do so. This includes documenting what constitutes a breach of the lease, required notices, and the opportunities, if any, for the tenant to "cure" a breach (e.g., pay back rent within a 30-day period). It's far better to work out these issues in advance, instead of fighting about them later in the heat of an eviction battle.

3. In the Event of a Breach, Follow the Procedures

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The types of circumstances that typically give rise to a landlord's rights to commence an eviction process include the tenant conducting illegal activity on the property, failure to pay rent, interference with other tenant's rights, and damage being done to the property. In the event of a breach, if a landlord decides to evict a tenant, it's critical that the relevant lease terms — as well as state and local laws — are closely followed.

One of the most important terms is the notice that must be given to a tenant before a landlord can seek to evict the tenant. Under Michigan law, before a court will issue an Order of Eviction, a landlord must serve the tenant with a proper notice. After serving notice, a landlord must wait either 7 or 30 days, depending on the reason for an eviction, before seeking relief from a court.

There are many aspects to notice — including what it says and how it's served — that will impact whether it's effective, so it's best to consult with legal counsel rather than trying to do it yourself.

4. Seek a Non-Judicial Resolution, if Possible

It's best not to allow issues with tenants, such as chronic late payments (on non-payments) on a lease, to linger. However, if possible, it's typically best to seek a resolution that doesn't involve running to the courthouse, which can get messy and expensive very quickly.

This doesn't mean that a landlord should passively sit by in the face of a tenant's failure to pay rent. Indeed, the taking of aggressive action is often required to get a tenant to the negotiating table. For example, having a lawyer serve the required notice can be the impetus to constructive discussions that lead to a resolution that avoids litigation.

5. Don't do a Self-Help Eviction

Even if you receive an Order of Eviction from a Michigan court authorizing you to evict a tenant, it's best to avoid trying to do a "self-help" eviction, such as locking the doors and/or turning off the utilities to a tenant's space. Michigan law sets forth the procedures for physical eviction, which should be closely followed. It's best to consult with legal counsel before taking any steps to deprive a tenant — even one in breach of their lease obligations — of their ability to occupy a space. The last thing you want to do as a landlord is to compound your damages from a deadbeat tenant by exposing yourself to liability.

Eviction: It's Not if, it's When

The unfortunate truth is, if you're a commercial real estate landlord, at some point you're going to have to deal with eviction issues. To avoid having to deal with eviction as much as possible, do the work at the front end to find good tenants and execute a well-crafted lease. If problems with a commercial tenant arise during a lease term, know your rights and work with legal counsel to determine the best course of action. And if there is no other option, take decisive steps to enforce your rights, including evicting a tenant if necessary.

If you have questions or need assistance regarding any commercial real estate issues in Michigan, please contact Steve Smith at 269.983.1400 or ssmith@fosterswift.com.