

Look To The Lease For Answers

By Judith I. Johannsen

Two main reasons that real estate transactions are put into writing are so that the parties involved can refer back to their contract to affirm their rights and responsibilities and so each party can enforce the agreement against the other. This is true whether the contract is a purchase and sale agreement or a lease.

A lease is a contract between a landlord and a tenant and includes the names of the parties, the length of time the lease is in effect, the amount of rent that is due and when it is to be paid.

Apart from how much the monthly rental payment is, tenants also want to know if there is a grace period for paying the rent after the due date – for instance, when the rent is due on the first of the month, can the tenant pay the rent after the first without being “late”?

Fortunately, our general statutes have answered that in Section 47a-15a, which says if the tenant does not pay the rent due within nine days after it is due (by the tenth), the landlord can terminate the rental agreement. A tenant needs to understand that that could mean eviction.

Recently, there was an appellate court decision that addressed a tenant's appeal from a trial court decision about non-payment of rent that went against the tenant and in favor of the landlord.

In this case, the tenant received a “rent policy reminder” letter from the landlord stating that the rent had not been paid, that he was giving the tenant a grace period in which to pay the rent, and if the rent was not paid by the end of the grace period, there would be a \$75 late fee. Furthermore, if payment was not received, he would take legal action against the tenant, the fees for which would be charged to the tenant.

That payment was late, so the landlord served the tenant with a Notice to Quit for non-payment of rent, started the eviction process, which he later withdrew, and then the tenant vacated the premises before the end of the lease term. The landlord then returned the tenant's security deposit with an accounting of the amounts that had been deducted as required by law.

The tenant brought suit against the landlord for the landlord's breach of lease by what the tenant believed was the landlord's unlawful deduction from the security deposit for legal costs and fees.

At trial, the court found that the tenant could not really afford the apartment and should not have been surprised when the landlord began the eviction process for non-payment of rent because the language in their lease was clear and unambiguous – the tenant had agreed to pay the landlord all costs and fees the landlord incurred in enforcing the landlord's rights under the lease.

The tenant argued that since the landlord withdrew the eviction action, there were no legal fees and costs; however, the trial court record showed that the landlord had sought legal counsel regarding this tenant more than once. Therefore, the tenant got a one-two knockout punch by the trial and appellate court - the trial court held in favor of the landlord and the appellate court affirmed the trial court's holding.

The lesson? If you're a tenant or a landlord with questions about your agreement, look first to your lease for your answers - the provisions regarding late payments, grace periods and late fees are in there.

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