

What Landlords and Tenants Need To Know After Superstorm Sandy

By Jacqueline Hlavenka



Bailey says if a commercial tenant has structural damage, the landlord must fix it.

NEW YORK CITY—It's been one week since super-storm Sandy ripped through the five boroughs, and even though the flood waters have receded, Lower Manhattan-based real estate attorney **Adam Leitman Bailey** has seen a surge of phone calls from landlords, tenants—even regular everyday folks—about how their properties can recover from flood and electrical damage. GlobeSt.com talked with Bailey about what commercial landlords and their tenants can do on the legal front.

GlobeSt.com: Let's say I'm a tenant in a New York City apartment building who was displaced due to storm damage. Do I have to pay rent?

Bailey: The warranty of habitability, which state law controls, says you don't have to pay your rent no matter what the cause of why you were out. However, if you are living there, it doesn't apply. This is only if you are displaced and unable to return to your apartment. If you are at a stage where you can't move back in and you are out, you don't have to pay any rent. But let's say things aren't 100% and you are living there, then you might get an abatement, but you do have to pay your rent. You may get a discount.

GlobeSt.com: So how do tenants negotiate these discounts?

Bailey: It is very difficult. We represent hundreds of landlords in hundreds of buildings. They all know they can't charge rent if they can't get their people in. But it gets more difficult. For example, we have one building where there is no power, but people are living there, so the state law pretty much goes anywhere between 5% to 15% for rent discounts.

GlobeSt.com: Do the same laws apply to commercial tenants in office buildings affected by power outages?

Bailey: Office is completely different. With commercial tenancies, it depends on the lease. If you are out because of utility power, you still have to pay your rent, and most leases say that.

GlobeSt.com: *What about damage to commercial space?*

Bailey: If it is a commercial space and there is damage, the commercial landlord would say review your insurance policy, contact them and have proof of insurance. However, if it is structural, the landlord has to fix it.

GlobeSt.com: *What if the commercial tenant wants to cancel the lease? Is that possible?*

Bailey: It depends on what the lease says. Most commercial leases don't let you cancel easily. A lot of them have if you can't get in for a long period of time, whether 30, 60 or 90 days, you turn it over to the landlord. The landlord then gives notice and then has to write back to you declaring that they are going to rebuild and fix. If they don't do that, you can cancel, and if they do that, you have to wait. That's a typical commercial lease.

GlobeSt.com: *Let's say a commercial building has power but no heat. Would there be a discount in the rent?*

Bailey: The landlord could be nice and give it, but most commercial leases say if you have a utility problem, it is not their fault.