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Appeals Court Rules Owners Needn't Try to Re-Rent Apartment When Tenant Breaks Lease

If one of your tenants breaks his lease by moving out of his apartment before the lease ends, he's technically responsible for continuing to pay the rent until the end of the lease or until you re-rent the apartment for the same or a higher rent, whichever comes first. But some confusion has existed over whether you're obligated to try to re-rent an apartment where the tenant has moved out early, so that tenant won't be on the hook for the rest of the rent until the lease ends (this is known legally as a duty to mitigate damages). Although the Court of Appeals, the state's top court, previously had ruled that an owner has no duty to mitigate damages by trying to find another tenant when the tenant broke a commercial lease, some lower courts wouldn't apply this ruling to residential leases.

But a recent appeals court ruling has clarified that owners with residential leases, like owners with commercial leases, aren't required to seek out a new tenant to re-rent the unit in order to keep the prior tenant on the hook for the remaining rent [Rios v. Carrillo: NYLJ 7/10/08, p. 26, col. 1 (App. Div. 2nd Dept.)].

In the recent ruling, the court noted that the ruling in the commercial lease case had used broad language so as not to confine the ruling to commercial leases. The recent ruling also pointed out that the tenant's lease specifically said that the owner was under no duty

to mitigate damages and the tenant would remain liable for the rent upon cancellation of the lease.

TIP: Check your leases to make sure they have a provision that says the owner has no duty to mitigate damages, says Adam Leitman Bailey of the Manhattan law firm of Adam Leitman Bailey P.C. For example, the lease published by BlumbergExcelsior, Inc., for rent-stabilized apartments (Blumberg form M56), which Bailey co-drafted, says that “The Landlord has no duty to mitigate the landlord’s damages for nonpayment of rent for any reason whatsoever.” If your lease doesn’t have this clause, add it to the vacancy leases for rent-stabilized tenants and to the renewal leases for unregulated tenants.

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