

# Use Get-Tough Lease Clause to Discourage Chronic Late Rent Payments

It's exasperating when a tenant repeatedly violates the lease by failing to pay its rent on time but then cures—that is, fixes—each violation by paying the late rent before it becomes a lease default. The worst thing is that you can't break the cycle: You waste time and money sending the tenant violation notices and hounding it to pay you the rent. But you can't get damages from the tenant or evict it, because the tenant pays the rent it owes before or during the lawsuit or before the eviction proceeding has been scheduled.

To help break the cycle of chronic late rent payments or to prevent it from ever starting, add a clause to each tenant's lease that gives you four tough remedies against the tenant if it chronically pays its rent late. These remedies are in addition to any other remedies that the law or the lease may give you. Adding these remedies to your lease will most likely make a tenant think twice about paying its rent late. And if it does so anyway, you'll have both flexibility and strength in dealing with the problem.

With the help of commercial leasing experts, we'll tell you about these four remedies. And we'll give you a Model Lease Clause, on page 3, that includes these remedies and that you can adapt and use in your lease.

## Four Get-Tough Remedies

In your lease clause, set out the circumstances that trigger your right to take tough action against a chronic late payer. Like our Model Lease Clause, your clause can say that this right is triggered if the tenant fails to pay its rent or any other lease charges on time more than a certain number of times—for example, more than two times—within a 12-month period. Then, you can use one or more of the following four remedies, whether or not the tenant cures the late payment violation:

**Lease terminated.** Give yourself the right to terminate the lease and kick the tenant out of its space if the tenant chronically pays its rent late, advises New York City attorney Adam Leitman Bailey [Clause, par. a]. This is a tough remedy, but that's the point, he says. The tougher the remedy, the greater the incentive for the tenant to pay its rent on time, he explains. This remedy should also reduce the amount of time and money you spend chasing a tenant for any rent owed, Bailey notes. Plus you can terminate the lease before a tenant accumulates a huge rent debt that you may never be able to collect because the tenant goes out of business, has no assets, or skips out, he adds.

**Advance rent payments required.** Get the right to require the chronic late payer to pay you base rent in advance—say, in quarterly installments on the first day of the quarter, recommends New Jersey attorney Marc L. Ripp [Clause, par. b]. This remedy has the effect of getting you one month's base rent on time and two months' base rent paid in advance. Getting advance rent payments even lets you earn additional interest (if you promptly deposit the payments in the bank) and pay off building costs or loans sooner, he explains.

**Automatic rent payment program imposed.** Get the right to require the tenant to pay base rent, additional rent, and any other lease charges by automatic transfer, says Toronto attorney Harvey M. Haber [Clause, par. c]. With automatic transfer, the base rent, additional rent, and other charges are automatically deducted from the tenant's bank account on a specified day—say, the first of the month—and automatically transferred to a bank account that you've chosen, he explains. You'll need to give the tenant information about that bank account so that the tenant's bank knows where to send the rent money, adds Bailey.

**PRACTICAL POINTER:** If you include this remedy in your lease, also include an automatic transfer clause in the lease to set up the automatic rent payment program, notes Ripp.

**Security deposit increased.** Get the right to increase the security deposit, says Haber. To add teeth to this remedy, don't put a specific dollar increase in the lease, says Ripp. Instead, get the right to increase the security deposit up to, say, three times the current monthly base rent, he says. Require the tenant to pay the security deposit increase on your demand, adds Haber [Clause, par. d].

**PRACTICAL POINTER:** If you use this security deposit increase remedy, check with your attorney before you set it up, Ripp says. If the increase is too high, a tenant could avoid paying it by arguing that it's really an illegal penalty that you can't enforce. ▲

---

## CLLI SOURCES

**Adam Leitman Bailey, Esq.:** Adam Leitman Bailey, PC, 26 Broadway, 21st Fl., New York, NY 10004; (212) 825-0365; alb@alblawfirm.com.

**Harvey M. Haber, O.C., LSM:** Partner, Goldman Sloan Nash & Haber LLP, 250 Dundas St. W., Ste. 603, Toronto, ON M5T 2Z5; (416) 597-3392, haber@gsnh.com.

**Marc L. Ripp, Esq.:** Counsel, The Gale Company, 100 Campus Dr., Ste. 200, Florham Park, NJ 07932-1007; (973) 301-9500; MRipp@TheGaleCompany.com.

### Get Four Tough Remedies Against Chronic Late Payer

The following lease clause was drafted with the help of New York City attorney Adam Leitman Bailey, Toronto attorney Harvey M. Haber, and New Jersey attorney Marc L. Ripp. Use it to discourage tenants from chronically paying rent late.

The clause gives you the right to use one or more of four remedies (in addition to any other legal or lease remedies you may have) if the tenant fails to pay its rent on time more than

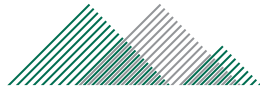
a set number of times during a 12-month period. Paragraph a lets you terminate the lease. Paragraph b lets you choose to have the tenant pay rent in advance, in quarterly installments. Paragraph c lets you demand that the tenant pay rent and other charges by automatic transfer. And paragraph d lets you increase the security deposit.

Show this clause to your attorney before putting it into your lease.

#### CHRONIC LATE PAYMENTS OF RENT

Notwithstanding anything in this Lease to the contrary, and without limiting Landlord's other rights and remedies provided for in this Lease or at law or equity, if Tenant fails to pay by the due date any Base Rent, Additional Rent, or any other charges owing under this Lease more than *[insert #, e.g., 2]* times within any twelve (12)-month period, then Landlord, at its sole election and in its sole and absolute discretion, may do one or more of the following:

- a. If Landlord shall elect, Landlord shall have the right to terminate the Lease in accordance with the provisions of Clause *[insert # of termination clause]* hereof and evict the Tenant from the Premises;
- b. Require that, beginning with the first monthly installment of Base Rent next due, the Base Rent shall no longer be paid in monthly installments, but shall be payable in advance on a quarterly basis, on the first day of the first month of the quarter (or three-month period);
- c. Require Tenant to have its bank automatically transfer, in accordance with Clause *[insert # of automatic transfer clause]* of this Lease, all Base Rent, Additional Rent, and other charges due under this Lease into a bank account chosen by Landlord. Landlord, at its option, shall send Tenant notice, in writing, of the bank and bank account information needed to effectuate the transfer; and
- d. Increase the Security Deposit by an amount that Landlord determines, in its sole and absolute discretion, is necessary to protect its interests; provided that such amount does not exceed *[insert #, e.g., 3]* months of the then-applicable monthly Base Rent. Such increase shall be paid by Tenant immediately upon demand by Landlord.



# COMMERCIAL LEASE LAW INSIDER®

---

[www.vendomegrp.com](http://www.vendomegrp.com)

THE LAW FIRM OF  
**ADAM LEITMAN BAILEY, P.C.**

---

26 Broadway, 21st Floor, New York, NY 10004 • T (212) 825-0365  
[www.alblawfirm.com](http://www.alblawfirm.com)