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## When a Tenant Sues

**Do you have the procedures and insurance in place if a tenant sues? Make sure you know how to proceed if you receive notice of a lawsuit.**

*by Kate Hand*



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You've been served. One of your commercial tenants has hired a lawyer and is holding you responsible for a problem in your building. What now?

### Don't Panic

Attorney Michael L. Hermes, of Metzler, Timm, Treleven & Hermes in Green Bay, Wis., says the first step is not to panic.

"If you haven't been sued or you haven't been through this before it can be overwhelming," he says. "Don't evict them, don't change the locks and don't turn the heat down. Keep in mind you still have a lease and it's a legal agreement you have to follow—even if they're suing you."

### Document the Situation

The second step is to pull together any relevant documents. Make sure you have leases, letters of requests, receipts and any documentation of your actions with regard to the issue.

### Call Your Lawyer

Next, consult a lawyer. "You don't want to be navigating the statutes and the code sections by yourself," Hermes says. He warns, however, that the same lawyer who drew up your will may not be the one who can best guide you in the case of a real estate lawsuit.

Attorney Zachary D. Schorr, of Los Angeles-based Schorr Law, works on large commercial real estate cases, representing both tenants and landlords. He says you only have a certain amount of time to answer the lawsuit, even if it's meritless.

"You need to file some response," he says. "The sooner you can get it to your lawyer the better, so you can develop a strategy and analyze things. If you contact an attorney even two weeks in, you're limiting the ability of the attorney to do the work."

### Repair Those Stairs

The fourth step is to pick up the phone and see if you can rectify the situation. Hermes says that in real estate cases the most common offense is unfulfilled promises.

Put simply: If you haven't repaired something, repair it.

"Most of the time people just want stuff fixed," Hermes says. "They're not looking to go to court to get money or to have to find another place. The reason they are suing is because of a lack of communication."

If you have been notified of a problem that is your obligation, you have a duty to mitigate the damages, "Meaning you should jump on it as soon as possible," Schorr says. "You should not wait until the resolution of the lawsuit to figure it out, otherwise you can incur additional damages as the case goes on."

Be careful not to admit fault or implicate yourself in a way that could be used against you in court. Simply resolve any issues that you can upfront.

#### **Solicit a Neutral Third Party**

If you can't fix the problem by making repairs or fulfilling promises, look into mediation. Some municipalities offer, or even require, mediation services between tenant and landlord disputes, Hermes says.

If both you and your tenant agree to arbitration or mediation, the process is usually much faster and less expensive than a formal hearing. Administrative fees are typically shared equally, but the services also may be available without charge from city or county agencies.

If either you or your tenant is dissatisfied with the outcome of the mediation, or mediation isn't an option, you can take the case to court still. If this happens, you already have taken the proper steps with your lawyer to ensure the fairest trial possible.

#### **Avoid Future Lawsuits**

Once you've resolved the dispute, the best thing you can do is prevent the situation from arising again.

"One of the biggest things is to know the law," Hermes says. "It's not like a lot of other areas of law, it's highly regulatory and you may have many levels of laws that you need to look at—state statutes, administrative code sections, local ordinances, and to top it off there are probably federal regulations as well."

You should also research potential clients, Schorr says. "See if they have a history of problems with prior landlords, and ask if they've ever been evicted."

The single best thing you can do to protect yourself in commercial real estate leasing is to make sure you have a good lease.

Hermes cautions against downloading forms off the Internet as well. Draft a lease specific to your property and to your geographic location.

Above all, Schorr says, it's about "knowing where the obligations lie."