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Landlord Tenant Law: Here's What You Should Know



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I love watching ESPN's "SportsCenter" to keep up with my favorite teams and to see yesterday's great plays. One of my favorite segments which they sadly no longer run was "Did You Know?," where

the anchors provided the viewers with a relatively obscure sports fact.

Lawyers dealing with commercial landlords and tenants often are in the same role as ESPN anchors, educating clients with court decisions or legal positions of which they may not be aware. This article shares some "Did You Know?" facts in the area of Arkansas commercial landlord tenant law.

Did you know if a commercial tenant leaves personal property at the premises after lease termination, that property is deemed abandoned? Arkansas statutes have codified this rule and adds that if a tenant leaves any property on the premises after lease termination, the property is deemed abandoned. And the landlord can

sell or dispose of the property as they desire, and in such event, the tenant has no recourse against the landlord. So, if a restaurant tenant leaves all of their ovens and kitchen equipment in its location after termination, then the landlord can sell all such property as the landlord sees fit. Landlords and tenants frequently will negotiate a period of time past termination in which property may be stored on the premises.

Did you know that, with respect to commercial lease extension terms, a lease can be deemed unenforceable if rent payments are not defined? Under Arkansas case law, the parties to a lease must have a "definite basis" on which to determine the lease terms (for example, the parties, the leased space, and rent amount). If those terms are not included, then courts have voided the contract. So, provisions in commercial leases like "Landlord and Tenant shall agree on the rent amount at the time of renewal" could be deemed vague, which may provide a landlord or a tenant an argument that the extension term of the lease is void. The better practice is for the parties to agree to the exact rent amount for any extension term, at the time the ini-

tial lease is negotiated.

Did you know that landlords in Arkansas have no obligation to mitigate damages? The concept of mitigation of damages in a commercial leasing context means simply that a landlord has a duty to lease the property to another tenant after the initial tenant defaults and vacates the property, to help reduce the initial tenant's damages. Arkansas courts have held there is no duty by landlords to mitigate damages, absent written agreement. For example, if a commercial tenant in a 20-year lease terminates after three years, then they could potentially still be responsible for 17 years of lease obligations, even though they terminate the lease. So, tenants may want to ensure express language exists in the lease requiring the landlord to relet the premises in the event of a tenant default.

Did you know that self-help is prohibited in Arkansas? Many people believe if a tenant has defaulted under a lease, then the landlord can change the locks to evict the tenant and to prevent the tenant from reentry to the premises. This is prohibited in Arkansas, under the rationale that

landlords must resort to the remedies provided by law to evict a tenant. When a tenant has defaulted and refuses to vacate the premises, the landlord must utilize an unlawful detainer suit or other remedies available under Arkansas law for removing the tenant from the premises.

Did you know guarantors should separately execute the lease or a separate guaranty to effectively guarantee lease obligations? I have seen commercial leases where the parties include a provision in the lease that a person or entity agrees to be a guarantor of the lease obligations, but the guarantor is not included as a signatory to the lease. Always make sure that the guarantor signs separately from the tenant. A better practice is to include a separate guaranty as an exhibit to the lease for the guarantor to execute.

While this is not an exhaustive list, hopefully this knowledge will help tenants and landlords be prepared in future commercial lease negotiations. ▀

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