

Risk Management for Rental Properties

By: - M.S.A. Riyad Rooly

BBA (Hons) Spl. Actg (SEUSL), ACMA (SL), ACPM.

This article explains and makes awareness among the Management Accountant/Financial Manager that how they can manage the risks comes from uncertainty in legal liabilities. The Management Accountant/Financial Manager, they mostly focus the uncertainty in financial market, project failures, and credit risk in the organization, but sometimes, they fail to concern the legal liabilities whilst managing the risk. The risk comes from uncertainty in legal liability will also cause an adverse effect in the organization. The article, risk management for rental properties, explains that how landlords can protect themselves legally when renting their land/building to outside groups. In order to earn extra income, the companies who are referred as Landlord rent out their building/spare place/land to outside groups who are referred as Tenants. When they fail to meet the legal liabilities with relevant to renting the property to out side groups, they will face problems with the tenant and it will also make cost to the organization. This article further covers a practical court case which is relevant to rental property and recommended legal liabilities meeting by the organization when they involve in lease rental agreement with tenet to avoid the risk.

Risk Management

Risk is defined in ISO 3100 as the effect of uncertainty on objects (whether positive or negative). Risk management is the process of measuring, or assessing risk and developing strategies to manage it. Strategies include transforming the risk to another party, avoiding the risk, reducing the negative affect of the risk, and accepting some or all of the consequences of a particular risk. Risk can come from uncertainty in financial market, project failure, legal liabilities, credit risk, accidents, natural causes

and disasters as well as deliberate attacks from an adversary.

Risk Management Process

An ideal risk management starts with establishing the content, inclusive of the identity and objectives of stakeholders, the basis upon which risks will be evaluated and defining a framework for the process, and agenda for identification and analysis. The next steps in the process is to identify potential risk events that when triggered, cause problem.

Hence, risk identification can start with the source of problems, or with the problem it self. Once identified, they must then be assessed as to their potential severity of loss and to the probability of occurrence. After while, a decision on the combination of methods to be used for each risk shall be made each risk management decision should be recorded and approval by the appropriate level of management.

Risk Management for Rental Properties

Most property owners and landlords appreciate fully the risk and potential liabilities that can occur when they operate campgrounds, conference centers, business premises, and other facilities open to the public on their property. The same owners and landlords, however, often fail to understand that these risks and potential liabilities still exist when they rent or loan their premises to outside groups. As an owner or landlords, owes a general duty of care to visitors to your sites, whether they can be guests, campers, or outside rental group members. These persons enjoy the legal status of "invitee". An owner must be ordinary care to maintain the premises in a reasonable safe condition for invitees.

The duty of ordinary care requires an owner to look for unsafe or dangerous conditions on an appropriate warning. This duty attaches to both regular invitees and outside rental groups, unless specific affirmative steps are taken to limit that duty.

"...get it in writing, a rental agreement should establish in clear terms, the duties and responsibilities of the owner (landlords) and the rental groups (tenants)".

An owner/landlord can limit, and even eliminate its responsibility (i.e. liability) towards renters through a well-drafted lease or rental agreement. It is most important to consult with an attorney who is familiar with the law of the relevant. An attorney can assist in preparing a contract that will clearly deliver each party's responsibilities.

Damages for Hold-Over Tenant Is Market Value of Rental Property

(Charles Downey Family Limited Partnership v. S&V Liquor, Inc., ---N.E.2d---)

Description

Appeals court held that when a tenant improperly stayed in commercial property beyond the expiration of a lease, the tenant owed the market value of the rental property as damages. Since there was no other evidence about the rental value, the tenant would pay an amount equal to the regular rent.

Topic

Real and Personal Property

Key Words

Commercial Lease; Eviction; Damages

Facts (Case Summary)

Downey leased commercial retail space to S&V Liquor to run for five years at a monthly rent of \$ 3,333.33. S&V could renew for an additional five years if it gave Downey notice of intent to renew no later than 120 days prior to the expiration of the lease. When the lease was nearing an end, and S&V did not send notice of intent to renew, Downey sent a letter offering to renew the lease at a new rate of \$ 9,167.67 per month plus other

charges. S&V did not respond. Five days before the lease was to expire, S&V wrote that it intended to remain as a tenant for another six months. It would move to a new location at that time. Downey refused and sued S&V for damages of \$ 9,167.67 per month during the six month hold over period, rather than the original lease rent at the original rate for the hold over period. Downey appealed, contending it should have been awarded the higher lease rate as damages.

Court Decision

Affirmed. S&V never agreed to pay the higher lease rate. However, since it held over improperly, Downey was due damages based on the fair market rental value of the premises after the expiration of the lease. The measure of damages when a tenant unlawfully holds over, and no special damages are alleged, is the rental value of the premises during the time in question. The damages would be the existing lease rate absent evidence that another tenant was willing to pay a higher lease rate. Downey did not have another tenant ready to occupy the space at the same or higher lease rate.

Risk comes from uncertainty of the operation/activity. It is somehow predictable whilst some are not predictable. Once the risk is identified and assessed, landlord has to take necessary action for potential risk treatment. The potential risk treatments are avoidance that means not performing an activity that could carry risk. In this case, the landlord, Downey should not send the letter to renew the lease, according to the agreement, the tenant; S&V would have sent notice of renewal no later than 120 days prior to the expiration of lease and risk reduction or optimization involves reducing the severity of the loss from the operation/activity. Risk sharing is another potential risk treatment that defines as sharing with another party the burden of loss or benefit of gain from a risk. Accepting the loss or benefit of gain from risk when it occurs is called as risk retention.

Precautionary action and set of documents work would be evidence to the landlord when they involve in the rental property and managing the risk.

Rental Agreement

A rental agreement in between landlord and tenants should be clearly defined and established the duties and responsibilities of the parties involved in the set operation/activity. The following clauses, terms and conditions should be considered when writing a rental lease agreement to avoid the risk in future. It is not common for all operation, business or premises; it may vary depending on the circumstances. The landlord should predict and assess the risk that may occur in future.

Payment Terms and Maturity Period of the Lease: The payments terms and mode of payments should be indicated in the written agreement whether the rental payment is monthly or quarterly, or fully paid in advance and reduction on monthly basis, or initial refundable deposit and payment on monthly basis. It should be clearly defined in the rental agreement and if there is any increment in the rental payment after a particular period till the maturity, it should also be mentioned in the agreement. The period of occupancy by the tenants and the procedure of renewal should be established. If there is any reduction on payment receipt such as With Holding Tax reduction, etc, it has to be negotiated with each party and defined in the agreement in advance. In the vent of neglecting and failing to pay the monthly rent by the tenant, the landlord rights to take necessary action should be mentioned in the agreement.

Sublet or Sublease the Premises: If the tenant wishes to sublet or sublease or part of the possession of the premises to other group or its

subsidiary/associates company, it should be informed and get the concern of the landlord. And also they should furnish a certified copy of the Memorandum and Articles of Association of such subsidiary or associate company (where such subsidiary or associate company is a company incorporated under the companies Ordinance or Act)

Maintenance and Upkeep: The rental agreement should be contained the responsibilities of the landlord and tenant with regard to the maintenance and upkeep of the premises such as trash pickup, repairing broken steps, color corn, clearing snow and ice, etc whilst the owner remains responsible for any hazardous condition on the property in existence at the time of the lease.

Indemnification Clause: The agreement should include a provision holding the landlord harmless for any negligence acts or omissions by the rental group during the term of the lease.

Instruction on Use of Property and Facilities: It has to be clearly mentioned in the rental agreement by the landlord the instructions on how its facilities operate or what to do if problems arise.

Limits on Accessible Areas: The boundary line or the areas of the occupancy of the property should be clearly indicated in the rental agreement. If the tenant tries to occupy the inaccessible areas during the lease period, it will cause problem and risk to the landlord and could not be used by other party when he plans rent-out later on.

Potential Hazards: Specific warnings dangerous or hazardous conditions on the premises should be provided.

Delegation of Supervision: It is depending on the situation of the operation of the premises or property. If the owner wishes to appoint the supervisor to assist for the supervision, if swimming is available on the premises, additional lifeguards may be required or to enter upon the demised premises or any part thereof to view the state of repair and condition. After the negotiation with the tenant, the particular clause should be included in the rental agreement to avoid the risk.

Alcohol Consumption: If alcohol is part of the rental group's activities, it may be necessary to obtain a temporary liquor license and. The lease or rental agreement should require the rental group to obtain both the license and, if available, liquor liability insurance, adding the landlord as an additional insured.

In addition to the above terms and conditions to avoid and manage the risk, and to reduce the liability of the landlord, another way of limiting the liability of the landlord is to require the tenant to obtain its own liability insurance cover to provide coverage for accidents resulting in bodily injury or property damage.

In conclusion, the best way to prevent risk and protect against the possibility of a lawsuit when renting property to an outside group is to get everything in writing. With the assistance of a good attorney, an owner/landlord can obtain a well-drafted rental agreement clearly limiting its exposure. Finally, the written rental agreement should be acknowledged by both parties signing on it along with the two witnesses from each side, landlord and tenants, and it should be registered. Therefore, it is advisable to landlord that not to work out the written rental agreement based on the standard format with the assistance of the attorney, it is essential to predict the risk with relevant to the existing operation/activity

and make necessary action to avoid/prevent the risk in future through defining a workable written rental agreement.

References:

1. Article Source: Wikipedia, The Free Encyclopedia,
(http://en.wikipedia.org/wiki/Risk_management)
2. Aweng Moral-Basco, "Risk Management"
(<http://risk-management.bestmanagementarticles.com/a-389-risk-management.aspx>)
3. Article Source: "Why Risk Management Plan"
(<http://www.nonprofitrisk.org/library/articles/rmbasics091005.shtml>)
4. Stanley P. Wellman, Esq. and Stephanie P. Karn, Esq. "Risk Management for Rental Property"
(<http://www.nonprofitrisk.org/library/articles/facility09001998.shtml>)
5. Article Source: "Damages for Hold-Over Tenants is Market Value of Rental Property"
(http://www.swlearning.com/blaw/cases/topic_real.html)
6. **Internal Control & Risk Management**, Study Text, Publishing by Institute of Certified Management Accountant of Sri Lanka - November/December 2008, Pgs 97-212.
7. **Financial Management**, Magazine, Publishing by Chartered Institute of Management Accountant - December/January 2008/2009, Pgs 44-45.
8. **Financial Management**, Magazine, Publishing by Chartered Institute of Management Accountant - May 2009, Pgs 38-39.