

## HOLDOVER TENANTS: MANAGING END OF LEASE LIABILITY

Real Property Probate & Trust Section

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**Sometimes the most peaceful landlord/tenant relationships lead to the largest holdover liability.**



The end of the lease term may be the last thing on your client's mind when negotiating a commercial lease, but standard holdover provisions that double, or otherwise increase, rent for holdover tenants can create substantial liability for tenants, as well as headaches for landlords.

Section 83.06, Florida Statutes, gives a landlord a statutory right to demand double rent as a penalty if a tenant refuses to surrender possession at the end of the lease term. In *Lincoln Oldsmobile, Inc. v. Branch*, 574 So. 2d 1111, 1113 (Fla. 2d DCA 1990), the Second DCA affirmed that notice was required before a tenant could become liable for double rent under section 83.06.

But *Lincoln Oldsmobile* only applies to a demand for double rent as a penalty under section 83.06. Commercial leases with terms lasting for more than a few years almost universally provide for an automatic increase in rent over the term of the lease, and frequently provide for an additional automatic increase or a penalty rental rate for the holdover tenant. *Lincoln Oldsmobile* does not address

automatic increases that are built into the lease.

Section 83.06 is not a bar on the parties setting their own lease terms to govern holdover: "The character, terms, and conditions of a holding over may be governed by an express provision in the original lease." *Rosamond v. Mann*, 80 So. 2d 317, 319 (Fla. 1955) (quoting 32 Am. Jur. *Landlord & Tenant* § 948).

So what happens when a tenant holds over after the expiration of the lease term, sometimes for years? Take a hypothetical lease that provides for an annual increase in rent at a set rate for each year of a ten-year term. Our hypothetical lease further provides for an automatic 25 percent increase in rent if the tenant holds over. Is the automatic increase a penalty that requires notice or is it an increase in rent that the tenant is automatically liable for without notice from the landlord? Case law does not provide a standard to determine when an automatic increase becomes a penalty and therefore subject to the statutory notice requirements.

Further, the tenant cannot rely on landlord's acceptance of the

tendered amount as a defense to liability for the increase. See *Tropical Attractions, Inc. v. Coppinger*, 187 So. 2d 395, 396 (Fla. 3d DCA 1966). Most leases provide that acceptance of partial payment does not constitute waiver of all amounts due under the lease.

When negotiating, drafting, and litigating rent due from a holdover tenant, parties need to consider whether the lease language provides a penalty for a holdover tenant or merely an automatic increase. Because this issue can arise after a tenant has held over for a long period of time, sometimes the most peaceful landlord/tenant relationships lead to the largest holdover liability. Ultimately, signing a lease renewal with defined rent terms is a tenant's best defense, and a landlord will be best positioned if they give notice of any rent increases — even automatic increases built into the lease.



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