

Clients save millions in defense of commercial lease dispute

Imagine that you timely pay your rent for several years for commercial space leased for your business. Later, after your landlord sells the property, the new owner claims that your monthly rent is actually much higher than you have been paying, and that you are now hundreds of thousands of dollars in arrears.

When you receive a notice stating that if you do not pay “your back rent” your lease will be terminated and you will be summarily evicted, what do you do? Couldn’t happen? It did... to one of Plunkett Cooney’s clients.

The client had a five-year lease, with two five-year options. The lease provided for fixed annual rent, with rent increases each year, including the option periods, under a rent escalation clause. However, the client had exercised its right under the lease to cap its annual rent by agreeing to pay additional percentage rent on the basis of its annual sales.

When the building was sold, the new owner claimed that the percentage rent clause was invalid, and that the client owed hundreds of thousands of dollars in back rent, potentially millions in future rent, under the terms of the original lease’s rent escalation clause.

Faced with the choice of eviction or agreeing to take on significant additional fixed costs in higher rent, the client tried to negotiate a new deal with the landlord. When that failed, the client turned to Plunkett Cooney’s commercial litigation group. The firm’s litigators, and real estate experts devised a litigation strategy, gathered the necessary evidence across several states, narrowed the issues through various creative pre-trial motions, and later tried the case to a successful conclusion.

All of the new owner’s claims were eventually dismissed. In fact, the landlord was later ordered to pay our client’s attorney fees to try the case.

Litigation of claims can, and often should, be avoided when attempting to solve businesses disputes. However, when negotiations end without an agreement, heading to court with a prepared and aggressive legal team may be your next best choice.