

§6010-A. Landlord's duty to mitigate

1. Scope of section. If a tenant unjustifiably moves from the premises prior to the effective date for termination of the tenant's tenancy and defaults in payment of rent, or if the tenant is removed for failure to pay rent or any other breach of a lease or tenancy at will agreement, the landlord may recover rent and damages except amounts which the landlord could mitigate in accordance with this section, unless the landlord has expressly agreed to accept a surrender of the premises and end the tenant's liability. Except as the context may indicate otherwise, this section applies to the liability of a tenant under a lease or tenancy at will agreement or the tenant's assignee.

[PL 2009, c. 566, §5 (AMD).]

2. Measure of recovery. In any claim against a tenant for rent and damages, or for either, the amount of recovery shall be reduced by the net rent obtainable by reasonable efforts to rerent the premises. "Reasonable efforts" means those steps which the landlord would have taken to rent the premises if they had been vacated in due course, provided that those steps are in accordance with local rental practice for similar properties. In the absence of proof that greater net rent is obtainable by reasonable efforts to rerent the premises, the tenant shall be credited with rent actually received under a rental agreement minus expenses incurred as a reasonable incident of acts under subsection 4, including a fair proportion of any cost of remodeling or other capital improvements. In any case, the landlord may recover, in addition to rent and other elements of damage, all reasonable expenses of listing and advertising incurred in rerenting and attempting to rerent, except as taken into account in computing the net rent. If the landlord has used the premises as part of reasonable efforts to rerent, under subsection 4, paragraph C, the tenant shall be credited with the reasonable value of the use of the premises, which shall be presumed to be equal to the rent recoverable from the defendant unless the landlord proves otherwise. If the landlord has other similar premises for rent and receives an offer from a prospective tenant not obtained by the defendant, it shall be reasonable for the landlord to rent the other premises for his own account in preference to those vacated by the defaulting tenant.

[PL 1985, c. 293, §3 (NEW).]

3. Burden of proof. The landlord must allege and prove that he has made efforts to comply with this section. The tenant has the burden of proving that the efforts of the landlord were not reasonable, that the landlord's refusal of any offer to rent the premises or a part of the premises was not reasonable, that any terms and conditions upon which the landlord has in fact rerented were not reasonable and that any temporary use by the landlord was not part of reasonable efforts to mitigate in accordance with subsection 4, paragraph C. The tenant shall also have the burden of proving the amount that could have been obtained by reasonable efforts to mitigate by rerenting.

[PL 1985, c. 293, §3 (NEW).]

4. Acts privileged in mitigation of rent or damages. The following acts by the landlord shall not defeat his right to recover rent and damages and shall not constitute an acceptance of surrender of the premises:

A. Entry, with or without notice, for the purpose of inspecting, preserving, repairing, remodeling and showing the premises; [PL 1985, c. 293, §3 (NEW).]

B. Rerenting the premises or a part of the premises, with or without notice, with rent applied against the damages caused by the original tenant and in reduction of rent accruing under the original lease or tenancy at will agreement; [PL 2009, c. 566, §6 (AMD).]

C. Use of the premises by the landlord until such time as rerenting at a reasonable rent is practical, not to exceed one year, if the landlord gives prompt written notice to the tenant that the landlord is using the premises pursuant to this section and that he will credit the tenant with the reasonable value of the use of the premises to the landlord for such a period; and [PL 1985, c. 293, §3 (NEW).]

D. Any other act which is reasonably subject to interpretation as being in mitigation of rent or damages and which does not unequivocally demonstrate an intent to release the defaulting tenant.

[PL 1985, c. 293, §3 (NEW).]

[PL 2009, c. 566, §6 (AMD).]

SECTION HISTORY

PL 1985, c. 293, §3 (NEW). PL 2009, c. 566, §§5, 6 (AMD).

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