

Leasing Insights: Getting the Rent Started

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The income stream generated by tenants paying rent is the life blood of the commercial development. Getting the rent commenced is critical. Most well drafted landlord form leases deal with this issue adequately by requiring rent payments to start upon the earlier of the date tenant opens for business or within a specified number of days after landlord has completed its work and tendered possession of the premises to tenant. This approach works because one of the triggers for rent commencement (completion of landlord's work) is wholly within landlord's control.

Beware of traps for the unwary, however, when dealing with tenant form leases.

In one national tenant's lease form, the rent commenced on the earlier of 120 days after tenant had received its building permit or the date it opened for business. A building permit was duly issued, but tenant wanted to delay opening the store and never went to the building permit office to pick it up. Tenant had not "received" the building permit! The result – after landlord figured this out and delivered the building permit to tenant, rent did not commence until 120 days thereafter.

Another national retailer's lease provided for rent to start 90 days after the "Delivery Date," which was the date that landlord delivered both (a) possession of the premises to tenant and (b) written notice thereof. Landlord completed its work, delivered the premises and tenant opened for business. After 90 days, landlord asked for payment of rent. Tenant declined saying that landlord had never sent written notice of delivery of possession so the Delivery Date (and the rent commencement date) had not occurred!

Moral – be very careful in what the lease provides in regard to the start of the rent payments.

We must point out that Winstead did not represent either of those landlords on those leases. We do now.

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