

Appeals Court Issues Important Decision for Georgia Landlords

The Georgia Court of Appeals recently issued an important decision for landlords. A landlord who allows a tenant to pay less rent than due or to skip a rent payment entirely must immediately inform the tenant that the landlord is going to require strict compliance with the terms of the lease from that point on if the landlord wants to make sure that the lease remains enforceable as written.

In the case, a commercial tenant named Atlanta Life Financial Group (“Atlanta Life”) leased office space in downtown Atlanta. Atlanta Life in turn subleased some of its space to two law firms. After a few years, the subtenant law firms began to pay less than the full amount of rent due under the sublease. Later, the subtenant law firms stopped paying any rent to Atlanta Life.

After several months went by, Atlanta Life sent its subtenants a letter demanding the unpaid rent. The subtenants failed to pay, and Atlanta Life filed a lawsuit against the subtenants, claiming that the subtenants breached the sublease by failing to pay past due rent. The subtenants denied Atlanta Life’s allegations.

The subtenants did not argue that they paid the full amount of rent due under their sublease for the 16-month period in question. They admitted that they paid only partial rent to Atlanta Life for ten months and then failed to pay any rent at all to Atlanta Life for six months. They argued that Atlanta Life waived the terms of the sublease by not sending them a demand for the unpaid rent until over 15 months after they first paid less than the full amount of rent due.

The Court of Appeals held that by repeatedly accepting less rent than the sublease required or no rent at all, Atlanta Life opened the door to the possibility that a de facto new agreement had been created with its subtenants. Specifically, Atlanta Life did not object to the subtenants’ partial payment or non-payment until 16 months after the subtenants failed to pay the rent in full. This allowed the subtenants to argue that the parties had mutually agreed to suspend the terms of the written sublease and replace it with a new agreement under which the subtenants owed less rent or no rent until Atlanta Life demanded they comply with the original sublease’s terms.

Even the fact that the sublease had an anti-waiver clause did not help Atlanta Life because its conduct in accepting less rent or no rent sent the message that it was not going to enforce that provision of the sublease, either. The Court of Appeals held that Atlanta Life would have to prove to a jury at trial that the sublease was not replaced by a new, different agreement created by the parties’ conduct over the 16-month period.

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The bottom line is that a landlord who accepts a partial rent payment or allows a tenant to skip any rent payment entirely must therefore immediately inform the tenant in writing that the landlord intends to enforce the exact terms of the lease as written going forward. The failure to do so can allow a tenant to argue that terms of the lease were changed by the parties' course of conduct.



The case is The Hatchett Firm, P.C. v. Atlanta Life Financial Group, Inc., No. A20A1723 (Ga. Ct. App. March 1, 2020).

For more information about this matter or to discuss any landlord-tenant issue, please contact Simon Bloom (sbloom@bloom-law.com) or Adam Nugent (anugent@bloom-law.com) by email or by telephone at (404) 577-7710.