

Landlords Beware: Accepting Partial Rent Payments

Posted in Alert on March 23, 2021

Earlier this month, the Georgia Court of Appeals issued an opinion that serves as a stark reminder to landlords of the peril of accepting reduced rent (or no rent at all) for an extended period of time. We suspect the courts will face more of these types of cases given the accommodations made during the pandemic.

In Hatchet Firm, P.C. v. Atlanta Life Fin. Grp., Inc., 2021 WL 774596 (Ga. Ct. App. March 1, 2021), the sub-tenant made partial or no rent payments for 16 months until the sub-landlord finally objected to not being paid the full amount of rent each month. The sub-landlord sued and sought summary judgment since it was undisputed the sub-tenant failed to pay what was owed under the lease. Although the trial court granted the sub-landlord summary judgment, the appellate court reversed. “By repeatedly accepting payment (or nonpayment) in deviation from the terms stipulated in the sublease, a factual dispute arose as to whether a quasi-new agreement was created.” A jury must now decide whether the sub-tenant owes nothing, an amount less than what is required under the lease, or what is actually owed under the lease. The lease’s non-waiver clause did not provide the landlord help: “[T]he existence of an anti-waiver provision in the sublease does not preclude waiver, as acceptance of irregular payments raises a jury question as to whether the anti-waiver provision in the sublease was waived.”

Landlords need to remain vigilant by (1) rejecting less than full payment, (2) informing the tenant that by accepting less than full payment, landlord does not waive the full amount that is owed under the lease and demand strict performance with lease, or (3) amending the lease to address a (temporary or permanent) rent reduction.

For more information or guidance regarding lease disputes, contact Miller & Martin attorney [Michael Kohler](#) or a member of our [Litigation](#) or [Real Estate](#) teams.