

REAL ESTATE



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Q | My commercial tenant has breached its lease, but is still sending rental payments. Should I accept these payments?

A | Accepting rental payments after a lease default is risky, and may lead to a waiver of the landlord's right to terminate the lease. The terms of a landlord's lease may protect against such a waiver, especially if the lease's "non-waiver" provisions confirm that the landlord retains the right of lease forfeiture even after the acceptance of rent. If rent (or partial rent) is accepted after a payment default, it should be applied to the older amounts due, with a confirmation that recent defaults are not waived.

In any event, if a landlord has started an unlawful detainer lawsuit to terminate a commercial lease, it should work with its attorney to balance the benefits of accepting payment with the potential risks that the landlord may waive its legal rights.