

# Can I put my rent into escrow until landlord completes work?

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Dear Ask the Attorney:

For the past three months, my landlord has promised to complete some work on my storefront per our lease agreement. However, I can never get a hold of him or get a date in which the work will be done. Can I hold my commercial retail store's monthly rent in escrow until my landlord completes work that is required by the lease?

JB

***Our guest blogger today is Jason R. Rittie, Esq. Jason is a Partner with Einhorn, Barbarito, Frost & Botwinick, PC and the Chair of the firm's Real Estate practice, overseeing such matters as acquisitions, leasing and sale of commercial and residential properties and the representation of borrowers, private lenders and banks in commercial and residential finance and mortgage transactions. Mr. Rittie is also involved in land use and zoning matters and real estate related litigation.***

Dear JB:

You first need to be certain that the lease agreement requires the landlord to perform the work, and at the landlord's cost. The landlord's lack of response or avoidance may be the result of the lease agreement being unclear or ambiguous as to the party responsible for performing and paying for the work. You may want to have your attorney review the terms of the lease agreement before evaluating your remedies for landlord's breach of the lease agreement. Your specific facts and circumstances, including the nature of the work to be performed by landlord under your question, are critical to your decision of how best to proceed.

Generally, in New Jersey, a lease, whether it be for a residence or for commercial purposes, is a set of mutually dependant covenants (or promises to one another); i.e. the tenant's covenant to pay rent is dependant (among other things) on the landlord's covenant permitting the tenant the quiet enjoyment of the leased premises. In addition, a landlord and commercial tenant may agree that the tenant's obligation to pay rent is conditioned upon the landlord performing certain repairs or work.

Assuming the obligation to perform the work is clearly set forth in the written lease agreement as being landlord's obligation, you must give the landlord timely and adequate written notice of the work to be performed, and afford the landlord a reasonable opportunity to complete the work. You may also want to put the landlord on notice that, if the work is not completed, you will reduce the rent until the work is completed. Alternatively, if, after serving the written notice on landlord to perform its obligations under the lease agreement, landlord fails to perform the work, you could make the repairs or perform the work and then deduct the costs from future rents. Furthermore, depending on the nature of the repairs or work to be performed, you may have other available remedies, such as vacating the premises, or seeking a court order to compel the landlord to make repairs and perform the work, or a court order, should the work never be performed, seeking to permanently reduce the rent to the fair rental value of the leased premises in their "as is" condition.

Finally, you (or your attorney) should carefully review the written lease agreement. Most leases have provisions for providing written notice to the other party, and you must be cognizant to follow the lease agreement's notice requirements. A failure to adhere to the notice requirements in the lease may further delay the landlord's performance of the work, or alter your available remedies.

*"Ask the Attorney" is a blog in which answers to your legal questions submitted to [asktheattorney@einhornlawyers.com](mailto:asktheattorney@einhornlawyers.com) may be answer. The answer to the questions are for informational purposes only and are not to be construed as legal advice or the creation of an attorney-client relationship. The facts of each case are different and you should therefore seek competent legal representation.*