

# Hurricane Irene Damage To Business? Both The Tenant And Landlord Should Look To The Lease

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September 23, 2011 | by Jason Rittie

In the wake of Hurricane Irene, many business owners that rent commercial or retail space are looking for answers concerning flood damage clean up and reimbursement of costs. Similarly, landlords have questions concerning their responsibilities and obligations to tenants. Both [tenants and landlords](#) should be looking to the lease for some direction and answers.

Most, if not all, leases have a casualty provision that sets forth each parties' respective rights, duties and responsibilities. If there is no lease, or the lease does not contain a casualty provision, New Jersey laws provide remedies and direct the landlord to repair the damage. In the meantime, rent could be abated, or partially abated, for the unusable space. Generally, lease casualty provisions also provide that a tenant can terminate the lease if the damage cannot be repaired within a specified period of time, or the premises are totally destroyed.

Interestingly, there is also a New Jersey statute that requires every landlord to notify each of his or her tenants upon the event that the rental property has been determined to be located in a flood zone or area. In fact, each new tenant must also be notified by the landlord that the property is in a flood zone or area prior to the time that occupancy of the rental unit is assumed. I have not found any cases which this statute has been used by a tenant as a basis for seeking to terminate a lease, notwithstanding the express terms of the lease. However, and in the aftermath of Hurricane Irene, I suspect some savvy tenants may claim that they would have never rented the property if they had been notified by their landlord that it lay in a flood zone or area. These tenants may further allege that the landlord is liable for all flood damage, or termination of the lease. Only time will tell.

As for landlords, they should be keenly aware of this statute and fulfill their notification responsibilities. This may require a landlord to perform some investigation of whether their property is situated in a flood zone or area, and then provide proper notification to each current and every future tenant.

If you are either a tenant or landlord and would like to further discuss your lease or the statutes mentioned above, contact [Jason Rittie, Esq.](#) and the attorneys of [Einhorn, Barbarito, Frost & Botwinick, PC.](#)