

DETERMINING THE (UTILITY) LINES OF RESPONSIBILITY



BY TERESA BITLER

Utilities are usually straightforward—the lease should stipulate whether the tenant or the landlord is responsible to pay electricity, water, sewer, gas, heat or any other necessary services. That party would put the service in its name and pay for its use each billing cycle.

But, sometimes, the lines blur. Is the utility-paying landlord responsible for the tenant's unreasonable electric bill? Or, the tenant responsible for the water wasted when a pipe bursts?

BEFORE YOU SIGN THE LEASE

You can decrease the chances of utilities becoming an issue by taking a few precautions upfront. First, unless you own a multi-unit property that doesn't have separate utility meters for each unit, make each tenant responsible for utilities. Don't offer to pay the utilities for them.

"Putting utilities in the name of the tenant is even more important now in drought areas where special fines may be imposed for excess water usage," says Stacy

Brown, franchise support manager with Real Property Management. "If the owner pays utilities, the owner is responsible."

Once you've determined whether you are going to assume responsibility for utilities or require your tenant to do so, have an attorney review your lease for ways to make it stronger and clearer, recommends attorney Robert R. Pellegrini Jr. If you will be paying utilities, inquire about whether you can set limits in the lease.

"Most landlords assume that the lease they pulled off the Internet or have been using for 12 or 13 years is OK, but it's a good idea to sit down with an attorney who has experience with what's going on out there," he says.

WHEN THE LANDLORD PAYS UTILITIES

Let's say your tenant cranks the air conditioner down to 68 degrees in the summer and constantly runs the washing machine and dishwasher during peak hours, leaving you with an electric bill that is substantially higher than previous tenants' bills. Do you have any recourse? Can

you refuse to pay or ask him or her to kick in some money?

The short answer is no, according to both Brown and Pellegrini. If the lease states that utilities are included in the rent, you can't dictate how much a tenant can use. Pellegrini adds that you might be able to argue that, by the excessive use of a utility, the tenant is causing damage to the property and get an eviction, but that would be a stretch. You are likely stuck with the tenant and his or her excessive ways.

WHEN THE TENANT PAYS UTILITIES

On the other hand, assume that something for which you are responsible (the water pipe leading to the house) breaks, dumping thousands of gallons of water before it's discovered. Can the tenant come to you asking for reimbursement?

"If there is an issue outside the tenant's control like a bad pipe or electrical issue, or say there is a leak or water damage not caused by the tenant, then the owner would be liable for excessive utilities," Brown says.

The tenant would have the burden of proof, but it should be fairly easy to prove based on past utility usage at the property and neighbors' consumption during the same period. ■

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