

A Reprint from *Tierra Grande*, the Real Estate Center Journal

# Duty to Mitigate Rent Payments

For both residential and commercial leases entered on or after September 1, 1997, landlords have a duty to mitigate damages if a tenant abandons the premises before the lease term ends. Any lease provisions that attempt to waive or exempt the landlord from this duty are void (Texas Property Code Section 91.006). This means the landlord must make a reasonable effort to relet the property for the balance of the lease term. Any rent received by reletting reduces the tenant's liability to the landlord.

The statute fails to detail exactly how the landlord fulfills this duty. The case of *Cash America International, Inc. v. Hampton Place, Inc.*, 955 S.W.2d 459 (Ft. Worth, 1997) reported in Vol. 12,

No. 2 of *Letter of the Law* offers some insight. The tenant abandoned the lease soon after its inception over building specifications. The landlord sued for future lost rent over the remainder of the lease period. The trial court reduced the damages to the present discounted value of the income stream. The tenant appealed, contending the award should have been reduced by the amount of rent the landlord could have collected using reasonable care to relet the premises.

The appellate court agreed with the tenant, citing Section 91.006. The landlord must make a reasonable effort to relet. But what if the landlord attempts to relet at a higher rate of rent for a longer lease

term? Would this satisfy the duty to mitigate?

The unpublished case of *Dallas Berkshire Partners, Ltd. v. James French Photography, Inc.*, No. 05-98-01352-CV (Dallas, 3/1/2001) answers the question. The trial court and the appellate court agreed that without further proof, the mere fact the landlord attempted to raise the rent for a long lease term does not establish a failure to mitigate. The tenant must prove the effort unreasonable under the circumstances. ♦

*Fambrough is a member of the State Bar of Texas and an attorney with the Real Estate Center at Texas A&M University. His e-mail address is judon@recenter.tamu.edu.*



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Texas A&M University  
2115 TAMU  
College Station, TX 77843-2115

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