

SCOTT SILVER, a real estate attorney for landlords and tenants, as well as a landlord himself, has some good advice for renters. Right now, he's working to keep business owners open for business and paying rent so their landlords can pay their mortgages!

YOUR BUSINESS: TOO MUCH RENT? BE THE FIRST "SQUEAKY WHEEL"!

From a tenant perspective, if you own a business and are paying more to your landlord in rent than you're taking home, you're probably paying too much rent. If you're a small restaurant or retail store owner, and your rent is more than 10% of your gross sales, then you, too, are probably paying too much rent.

In 2008, 150,000 retail stores closed their doors nationwide. More and more closures are expected to continue at that level or greater this year. While those numbers include the "big box" chains you read about in the Wall Street Journal, there are a whole lot of "mom and pop" businesses in those numbers, representing far too many dashed dreams and hopes. A great many of them have already closed or are closing now because they're paying too much rent. They decided that breaking their lease was the "economically efficient" best course of action. In other words, these folks decided it was preferable to get sued, then try to settle with the landlord or risk a judgment and the low likelihood of collection, rather than continue to pump dollars into a business that was losing money from ever-decreasing sales. But how many businesses could have stayed open longer and been able to ride out this economic nightmare if they were assisted by substantially reduced rent?

Out of fear, shame or ignorance, many tenants never even ask their landlords for a rent reduction! Landlord clients of mine have had tenants literally close their businesses and clear out in the middle of the night. But many of these landlords would have preferred to give substantial temporary rent relief to their tenants to prevent another "dark" store in their shopping centers.

For many tenants, no amount of rent relief would have allowed them to survive; but for some it could have helped keep them open long enough to sell (or even give away) their businesses to new tenants. That would have lessened the landlord's damages.

In the real estate boom of 2001 – 2007, landlords sought to get even more money by charging the maximum rent that the market would bear. But "enlightened" landlords realize that excessive rent charges will help put a tenant out of business, and vacant spaces are extremely costly to a landlord in many ways. There are the tangible losses: lost rent, legal fees to sue the tenant with only a chance of recovery, and construction costs of deconstructing the space so it can be shown to prospective tenants. Sometimes, the space can actually be re-let (there are very few tenants out there looking for space now), so the landlord has to pay brokers leasing commissions (5% of the rent for the entire term is typical) and provide the new tenant with a "tenant improvement allowance" (typically \$20 - \$60 per sq. ft.). And this is all before the poor landlord even sees one dollar of rent again!

Then there are the intangible losses: leasing spaces in a center with other vacancies becomes exponentially harder, selling or refinancing becomes extremely difficult, and a stigma often attaches to spaces or even a whole center that have had a string of failures. As if all that weren't bad enough, other tenants, particularly large national chains, often have so called "co-tenancy provisions" in their leases. These allow them to pay reduced rent and eventually terminate their leases if overall vacancy dips to a certain level or certain tenants are lost.

I'm not advising that every tenant seek a rent reduction or telling you that every landlord should or will grant one. Landlords should only give relief in situations where they are convinced that the tenant is acting in good faith and for good reason, and has some likelihood of survival beyond the relief period without further assistance. Landlords will often want reduced rent repaid sometime in the future as "deferred rent" (so the tenant is really just getting an "interest free loan"). Or they might ask for an increase in the term of the lease, increased security of some form, increased personal liability and other lease modifications in exchange for rent relief.

All landlords share one common concern - they have a finite number of rent dollars they can afford before "the pain" becomes too great for them to pay their mortgage. Accordingly, if you are a tenant, you don't want to be one of the last of many to ask - and be turned down. Instead, you want to be the first squeaky wheel!