



Commercial Landlord Could Not Evict Tenant for Repeatedly Paying Rent Late

A Superior Court judge recently rejected a commercial landlord's effort to evict a restaurant tenant for late rental payments. In *Varano v. PDJM Land Trust, LLC*, Nicola Varano ("Varano"), who owns and operates a restaurant in the North End called Nico Ristorante, brought a declaratory judgment action seeking to invalidate his landlord's attempt to evict him. The landlord, PDJM Land Trust, LLC ("PDJM"), based its eviction efforts on the fact that Varano repeatedly paid the rent late.

After conducting a bench trial, the court held that PDJM could not evict Varano based on the late rent payments. The court first acknowledged that the failure to pay rent on time (in this case, by the first of the month) constituted a breach of the lease. The court concluded, however, that such breaches of the lease were neither material nor sufficiently significant to warrant enforcement of the lease's default clause.

The court explained that PDJM had not been deprived of an essential and inducing feature of the lease in any meaningful sense because "the essential and inducing feature of the parties' contract was for this landlord to receive agreed-upon rents, not for the landlord to receive such rents by a particular date." The evidence showed that PDJM always received the rent it was entitled to, and the lateness was typically modest (only a few days to a few weeks). PDJM was at no time impaired in its ability to meet its own obligations or conduct its financial affairs as a result of these delays in payment. The court explained that the only loss suffered by PDJM due to the late payments was the time-value of money, but the lease's provision for late charges addressed that concern.

The court also explained that Varano would suffer a severe forfeiture if his tenancy were summarily terminated, noting that he had expended half a million dollars in premises improvements and had spent years developing good will at the North End location. The court stated that an abrupt eviction might put Varano's restaurant out of business and "[a] commercial death penalty, for crimes as inconsequential as Nico's, is a result that equity simply will not countenance."

This case serves as an important reminder to landlords that not every breach of a commercial lease, even where repeated in nature, will give rise to a right to evict the tenant.

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