



'Nice' landlord doesn't supplant need for tenant representation

By **JASON HUGHES**

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There's a rule of thumb in advertising that suggests a commercial or advertisement needs to be heard or seen several times before it makes the desired impression. People don't respond to messages, important or otherwise, at first blush. It takes multiple impressions to move someone through the continuum of awareness, understanding and, ultimately, acceptance.

That observation certainly holds true in commercial real estate, in particular when it comes to tenants heeding advice about dealing with landlords. I've used this column more than once over the past 18 months to caution tenants about trying to represent themselves, so to speak, when dealing with office leases. Apparently, my admonitions are no more powerful than advertisements when it comes to the need to repeat them multiple times.

The continuing stream of cases in which tenants have fallen prey to "nice" landlords prompts me to once again implement the multiple impressions theory of message acceptance.

The typical story goes like this: A tenant is getting ready to renew his or her lease. Time is of the essence; the tenant doesn't have all that much time to devote to renewing the lease, much less the initial time needed to search out a broker to represent him. Besides, the tenant has had a fairly good relationship with the landlord; he or she seems "really nice." So, why the need to muddle things up by bringing in somebody from the "outside?" Good grief, a tenant-leasing representative may ask all sorts of questions that might embarrass the landlord and interfere with the "good karma" between the landlord and tenant.

Truth is, landlords are not in the good karma business. They are in business to extract the most rent out of their tenants while incurring the least amount of expense in doing so, considering tenant improvements, free rent, decent parking allocations, etc. They "make nice" only when it suits them. They can be nice and even charitable in their personal lives with their spouses, children and other loved ones. Tenants are not among these, however. The landlord's business is grinding deals to their terms. Nothing more, nothing less.

Books upon books can be written about the so-called "deals" tenants thought they were getting when negotiating directly with an owner. Let's see; a couple of horror stories come to mind. There's one case in which the landlord slipped in - no doubt over a cocktail or two -- language that allowed for the tenant's space to be re-measured. Guess what? The space "grew" by 10 percent, thereby kicking in an additional 10 percent increase to the already increased overall rent.

Then, there was the time the landlord adjusted the rent for the new leasehold - but didn't change the operating expense provision, thereby costing the hapless tenant an extra 20 cents per square foot per month - over and above the spike in the rental rate. Oops!

Some tenants actually have told me they heeded my advice about avoiding negotiating with their landlord by dealing with the landlord's property manager. Let me state the obvious: Other than what their respective ZIP codes might be, there's little or no difference between a landlord or his or her property manager. In both instances, the tenant is up against a party whose singular goal is to get as much for as little effort as possible.

In fact, the lease agreement many landlords use when dealing directly with tenants is one from the American Industrial Real Estate Association (AIR). This crafty document says in part: "In representing both lessor (landlord) and lessee (tenant), the agent (landlord's property manager or leasing agent) may not, without the express permission of the respective Party (landlord) disclose to the other Party (tenant) that the lessor (landlord) will accept rent in an amount less than that indicated in the listing..."

You think there's a lot of bargaining room there?

I continue to hear the excuse from tenants that they want to save money by not using a broker to represent them, thinking the lack of another commission will accrue to their benefit. What they don't realize in most cases is that the commission the landlord pays is basically the same, whether there are one or two brokers involved in the transaction. What it does mean is that the landlord broker's commission would increase significantly if he or she didn't have to split it with a tenant's representative. Could it be possible the landlord's broker might pour on the charm a little more in order to persuade a tenant not to "bother" hiring his own broker?

Real estate transactions are fraught with disclaimers and disclosures about all sorts of issues that impact real estate values. Yet, there's no requirement, legal or otherwise, that compels a landlord's broker to disclose the financial gains that he would reap if there is no tenant representative involved.

If that's an example of "making nice,"

I'll pass, thank you.

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