

# No duty to mitigate damages for residential landlords in NYC

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There is seemingly much confusion about whether, under New York law, a residential landlord has a duty to mitigate its damages resulting from a tenant's breach of the lease.

In other words, does a residential landlord have an obligation to try to relet space after a tenant abandons a lease in order to minimize

its damages of lost rent? The answer currently in New York is no.

For a period prior to 1995, the general consensus

among the courts was that, although commercial landlords were under no such duty, resi-

dential landlords had a duty to mitigate their damages.

In 1995, however, the Court of Appeals issued a decision in *Holy Properties Ltd., L.P. v. Kenneth Cole Productions, Inc.* holding generally that landlords do not have to mitigate their damages.

While the *Holy Properties* case involved a dispute concerning a commercial lease, the Court of Appeals did not make any distinction between

commercial and residential leases in its decision and did not carve out any exception for residential leases.

Thus, some courts interpreted the holding in *Holy Properties* as applying to all leases, including residential leases. Other courts, however, maintained that New York law still imposed a duty to mitigate on residential landlords and that the *Holy Properties* case only applied to commercial leases.

That is, until the Second Department Appellate Division finally settled this issue in 2008 when it held that

“well-settled law [in New York] imposes no duty on a residential landlord to mitigate damages.”

Residential landlords certainly stand to benefit from this no-duty-to-mitigate rule.

If a tenant defaults, landlords can pursue nonpayment of rent actions without having to contend with the issue of whether they mitigated their damages.

Advocates of imposing this duty on residential landlords argue that without such a duty, landlords can hold tenants hostage to their leases and are incentivized to do nothing

upon a breach since they can recover all damages from the defaulting tenant.

While it is true that a landlord could choose to do nothing, this may not be all that likely in practice, as collecting rent from a new tenant is far more attractive than pursuing a defaulting tenant whose default might very well have been because he or she could no longer afford to pay rent.

Nevertheless, a majority of states impose a duty to mitigate on residential landlords, but for now, New York has not joined that majority.

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