

Types of Securities in Tenancy Contracts

Many of us sign tenancy contracts for apartments or places of business (store, office, building, lot), either as landlords or as tenants.

As the landlord, we want to make sure that rent payments will be made. We want to make sure the tenant will pay all applicable taxes due for the leasehold, and we want to make sure the tenant will evacuate the leasehold at the end of the tenancy period.

There are several commonly used means to achieve the goal of guaranteeing the tenant's duties. Each has its own upsides and downsides.

Oftentimes, being familiar with the different securities prior to executing the contract can guarantee your rights throughout the contractual relations, either as the landlord of the apartment or place of business or as the tenant, and this can prevent anguish and financial losses.

1. Security Check

Security checks are very frequently used - not just in tenancy transactions but in many other transactions. Many are not aware that, for all intents and purposes, the security check is a personal check and the words "for security only" does not grant it any special status; on the contrary, it may (in certain cases) help the check drawer (the person who signed and gave the check) prove its claims that realizing the security check was inappropriate.

The security check is a note, subject to the Bills and Notes Act. As such, it benefits the drawee (the party who received the check), among other things, since the other party (who gave the check) has to prove it does not owe the check amount and that the terms for realizing the check were not fulfilled.

One of its advantages is that one can submit the check directly to the Execution Bureau and commence proceedings against a debtor who violated the tenancy.

On the downside, the debtor can submit an objection on the note's execution to the Execution Bureau, and if the objection as aforementioned is submitted

on time, the case is transferred to the Courts, and the litigation may last a long time. In such an event, prolonged litigation takes the edge off the security check.

However, this also can be addressed. In certain cases, one can ask to foreclose on properties held by the debtor (who gave the check) prior to delivering the warning, an act which puts the debtor at a disadvantage as its bank account, for example, is foreclosed even before the legal proceeding start.

2. Third Party Guarantee

In many tenancy contracts, a guarantor signs at the bottom of the contract and thereby guarantees the tenant's liabilities. Please note that according to the Guarantee Act, one cannot take action against the guarantor until such time an action has been taken against the primary debtor (the tenant). However, this can be resolved by having the guarantor sign a clause, stating that he waives this right. On the other hand, as guarantors, we want to avoid signing this clause, and in any event, we want to demand to receive notice of breach of contract by the tenant, so that we can be aware of the risks we are facing.

3. Bank Guarantee

The bank guarantee reigns supreme over all other securities. Landlords can realize autonomous bank guarantees by appealing to the bank, regardless of the tenant's wishes or objections.

In other words, upon breach of agreement, the landlord in the apartment or place of business does not have to contact the tenant; rather he can contact the bank, and receive the guaranteed amount directly from the bank.

The letter of guarantee has to be phrased very carefully.

The downside is that very few tenants are willing to issue bank guarantees.

4. Promissory Note

A promissory note is a legal instrument that can be used at the Execution Bureau in order to collect a debt without having to go through the courts. The promissory note is similar to the security check. It can be submitted to the Execution Bureau directly, and normally, the burden of proof is on the tenant in breach of contract, who must prove that he met his duties. It is advised to

consult with a lawyer on the best ways to collect the note amount, and if you're on the other side - on the best ways to defend yourself against the note.

This article is a mere summary, it does not cover all scenarios and all rulings, and it is not a substitute for individual counseling by a proficient and knowledgeable Attorney.