

## Phantom Space: Beware of Over Charging Landlords

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In our many years of experience, we have found that some landlords are over-charging chiropractors for more square footage than the tenant actually has. Do you know if you are paying too much?

This is a common oversight in the commercial leasing field. Chiropractic tenants frequently trust the reported square footage of their leased premises. However, whether this figure was accidentally reported by the landlord or reported by a distant property owner who has never even seen the site, the amount of reported square footage can easily be wrong. The end result is that chiropractic tenants needlessly pay an increased rent, based on their incorrect square footage isn't it better to keep this money in your own pocket than pay it to your landlord?

Recently, a Chief Operating Officer of a large chain store shared that her company had recently moved into a new 4,400 square foot office. She went on to explain how spacious, beautiful and comfortable the office was. We asked her if she had ever verified the square footage and she said no. Why was this necessary? After all, this was the total area stated on her lease agreement. It took several weeks to convince her to measure the space to determine if she was actually getting the 4,400 square feet that the landlord was charging her for.

Finally, she agreed. When we completed measuring the premises, the area was 800 square feet short. In the real estate industry, we refer to this as "phantom space" where the tenant is paying for more space than exists. And, in this case, this tenant was paying more than \$50,000 more (for her entire lease term) than she needed to for space she didn't have. We approached the landlord and successfully corrected the problem - both for the past and the future. The obviously-pleased tenant was reimbursed for her previous overpayments and continued to pay a lower adjusted rate.

Even the smallest amount of phantom space can grow to be quite large as rental rates and Common Area Maintenance (CAM) charges increase over time. As an example, we found that one previous client had a discrepancy of only 27 square feet. While this doesn't sound like much, this specific unit was located in a prime downtown shopping mall with high rent. When this came to our attention, it was seven years into the tenant's lease term and the landlord had collected \$20,000 more than was rightfully due. Again, this came to a satisfactory conclusion with the tenant being reimbursed.

Yet another issue for chiropractic tenants to consider is how phantom space can repeatedly affect them. Understand that every tenant pays two rents - the base rent (which is negotiable) as well as the Common Area Maintenance (CAM) charges. CAM costs cover charges on property upkeep which benefits all tenants (eg: trash removal, property taxes and building maintenance) and are charged proportionately. Therefore, if a tenant occupies 1,800 square feet, then they are responsible for the CAM charges on that area as well. If that tenant has been wrongfully paying for phantom space, they will also wrongfully pay too much for CAM charges.

Such square footage discrepancies are not uncommon for chiropractors leasing retail or office

space. In our experience, many discrepancies are negligent, not necessarily fraudulent. This is a small consolation as the tenant remains overcharged. When the landlord is receiving rent on 107% of a building, it stands to reason that the landlord should have questioned how they could get more than 100% of rent from that building.

If you have been taking the landlord's word for the measurement of your business premises, you may be overpaying substantially on one or more of your locations. You may be presented with a "measurement certification." Don't be fooled. Many of the locations where we have found discrepancies were "verified" as accurate but, in fact, were measured incorrectly. Sometimes, the discrepancies are only 30 to 40 square feet; however, these can also be hundreds of square feet off - especially if the leased space is significant in size.

Phantom space or measurement discrepancies are more likely to occur where the space is irregular in shape, such as if a room is partially round. The lease line can also affect your space. A lease line is the point in the property from which your rentable space is measured. Depending on your type of building, some lease lines may be calculated to various points such as the outside of the interior wall that faces a hallway, to the exterior wall surface, to the midpoints of the demising wall shared by two tenants, or even to the outer edge of an overhang on the building. If the person measuring the premises is unaware of the measurement standard and lease lines, they may make measurement mistakes or over-measure your space, mistaking where the lease line should really be.

If you discover that your area has been mis-measured or miscalculated, you need to take action. Although many landlords may agree to correct an obvious measurement discrepancy for the future, they can be resistant about paying back the chiropractic tenant for past years of rent overcharges. When landlords have space measured, they typically use a surveyor, architect, space planner or professional space-measurement company. A few companies do specialize in space measurement and their number one customer is the commercial landlord. These measurement companies can work for tenants, too, but usually the landlord hires them. The fee for measurement services can range from a few hundred dollars on a simple measurement to more than a thousand dollars for more complicated or larger units.

You may think that when a landlord is shown there is an area discrepancy, they will automatically do the right thing. That's often not the case. A landlord may point to the words in a lease agreement like approximately 2,300 square feet. The intention of the word approximately is to prevent the tenant from voiding the lease contractually because they have more or less area. Many landlords learn their lesson and include language in the formal lease agreement that creates a statute of limitations - so their exposure is only limited to one year back from the date the discrepancy was discovered.

In the event a discrepancy is found mid-term and the landlord is resisting a refund, the chiropractic tenant has a couple of options. Factor the recovery in as part of the lease-renewal negotiation. This only benefits the chiropractic tenant planning to stay in the property with a lease expiring soon. Some landlords are reasonable to deal with while others are not so much. Take legal action or explore arbitration. This can be an expensive path for the chiropractic tenant and, depending on the wording of your lease agreement or the size of the potential recovery, may not necessarily be the best route.

As you can see, phantom space is a simple concept and can be simply avoided. No one can ascertain the exact size of an area by naked eye alone. Nor, should a chiropractic tenant always trust what is stated on their Lease Agreement. Have the measurements checked to make sure that you're not paying for phantom space. Space measurement can provide peace-of-mind and can save

you thousands of dollars. So, isn't this worth looking into?

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