

Maintenance, repair or replacement? Who should fix my air conditioner?

COMMERCIAL REAL ESTATE

We unofficially have found ourselves in summer. The 100-degree days will grace us soon. One of our clients fired up the A/C today — only to discover the air was tepid at best. So what's up? Let me qualify this. Our client leases the building and finds himself with a couple of years until renewal. His tenancy began in 2015 — before lease rates lost their sanity, but I digress. When we originated his deal, the owner was insistent upon a triple net lease — NNN. To review, an NNN lease outlines the base rent and places payment of the extras — insurance, property taxes and maintenance — on the tenant. These are paid separately from the base rent, so the base rent is “net” of these expenses. Some owners collect an estimate of these expenses monthly and others let the occupant pay as the charges are due. In our client's case, the owner bills for a monthly estimate and reconciles any over or under charges next year.

We whipped out a copy of his lease. (Actually, we searched DropBox and accessed a digital version.) We believed we had his answer but wanted to reacquaint ourselves with any edits that preceded his signature.

We discovered no edits. So here's the long answer: It depends.

Maintenance

Responsibility for changing the air filters, cleaning the coil and flushing the system is a part of a quarterly maintenance program. Contained in the lease was clear evidence our client is responsible for routine maintenance. His landlord owns thousands of square feet of industrial buildings, so he benefits from bulk-pricing such services. To ensure the maintenance is properly performed, he does the work and bills our client.

Repairs

Generally, a major reason the cooling doesn't cool is the condenser. This can be a costly repair. Typically, this repair is paid for by the occupant — on a by-occurrence basis. The exception is when the cost to repair the unit exceeds half the cost to replace. Then the owner writes a check for a new air conditioner — with a twist. More below ...

Replacement

At some point, an air conditioner eclipses its useful life and must be replaced. Once the repairs cost more than half the expense of new, it makes little sense to repair it. So now that expense shifts to the owner — sort of. Yes, the new air conditioner arrives, is installed and proceeds to please your employees with its cooling efficiency. However, the landlord can charge you for the expenditure

over the remaining term of your lease — in our case, two years.

Not quite fair, you say? You're correct. With only two years of term remaining, it would be quite onerous. This mechanism is employed: The cost plus a fair interest is spread over 12 years. Great! Our client gets the aforementioned cooling and only pays for two-twelfths — unless, of course, they renew.

That discussion we'll save for another day. *Allen C. Buchanan is a principal and shareholder with Lee & Associates Commercial Real Estate Services. Reach him at 714-564-7104 or abuchanan@lee-associates.com.*



The HVAC system at the warehouse you lease is no longer blowing cold air. Who's responsible for the maintenance on the cooling system? That depends, writes columnist Allen Buchanan.

COURTESY OF THE PUBLIC DOMAIN



Allen C.

Buchanan

Contributing Columnist

