



Your Contractor Messed Up. Can You Fire Them?

By: Mordy Mednick | January 2023

Suppose you own a commercial building and intend to lease it to various tenants. But before you do, you need to make a number of improvements, so you hire a contractor.

The contract between you and the contractor is expected to last approximately one year. However, about seven months into the contract, you notice multiple issues with the contractor's work:

- Numerous water leaks;
- The exterior painting is sloppy, incomplete, and incorrectly applied; and,
- There are multiple cracks in the flooring.

These errors – known as *deficiencies* in the construction industry – can range between severe (leaks in a roof) and less severe (the painting is incorrect). Many times, an owner in this situation will become extremely frustrated with the contractor and consider terminating the contract. The question is – is this legally permissible?

RIGHT-TO-REPAIR

Generally, a contractor will always have the right-to-repair a deficiency. In other words, an owner cannot terminate a contract without giving the contractor a reasonable opportunity to correct the deficiency. Suppose the owner terminates the contract without doing so. In that case, if the owner hires another contractor to repair the original contractor's work, that owner cannot seek costs from the original contractor for the costs it incurred to make the repairs.

AN EXCEPTION TO THE RULE

There is one major exception to this rule: if a deficiency is so serious that it prevents an owner from substantially receiving the whole benefit of the contract, known in the legal industry as a '*fundamental breach*,' then an owner is (1) entitled to terminate the contract without allowing the contractor to repair the deficiency, and; (2) can sue that contractor for all of the costs it incurred to correct the deficiency.

IN CONCLUSION

Whether something is considered a fundamental breach is a judgment call based on the facts of the particular case. For example, although painting the exterior of a commercial building may not be essential to the construction of the building as a whole, the opposite may be true if an owner hired the painter directly, and it was the painter's only job to paint the exterior wall. Therefore, before terminating a contract because of a deficiency, always consider whether the deficiency is so fundamental that it entitles you to terminate the contract without giving the contractor a reasonable opportunity to repair.

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