

**MODEL LEASE
CLAUSE**

Require Tenants to Comply with Your Warranties When Exercising Self-Help Rights

When you can't avoid granting a tenant self-help rights, be sure to impose limitations on how the tenant exercises those rights. One danger to guard against is the risk that tenants will carry out self-help repairs, maintenance, replacements, and other work in a way that violates the terms and conditions of the warranties provided by the third-party contractors you rely on in performing or supporting those operations.

Here's a Model Lease Clause recommended by a New York City commercial leasing attorney that you can adapt, with the help of your own lawyer, to achieve this objective.

Caveat: The Model Lease Clause refers to not only repairs and maintenance but also "replacement" work. Of course, there's a big difference between repairing/maintaining a roof, parking lot, etc., and replacing it. So, if, like many landlords, you don't allow tenants to carry out self-help replacement work, delete the references to "replacement" in the clause.

TENANT SELF-HELP RIGHTS & LANDLORD WARRANTIES

- a. Request for Warranty Information:** In the event that Tenant elects to exercise its self-help remedies under Section __ of this Lease, Tenant shall include in its written notice of election to exercise self-help remedies to Landlord a request for all pertinent information regarding any warranties that may be in effect that are pertinent to the particular repairs, maintenance, replacements, or other self-help actions to be undertaken. Landlord shall provide Tenant such warranty information within *[insert number, e.g., five (5)]* business days of receiving a request therefor.
- b. Duty to Comply with Warranties:** Once supplied with such pertinent warranty information, Tenant shall observe and abide by all of the terms and conditions of said warranties.
- c. Consequences of Breach or Nonobservance of Warranties:** In the event that Tenant
 - (1) Does not request pertinent warranty information prior to resorting to self-help remedies;
 - (2) Breaches any term or condition of said warranties; or
 - (3) Does not fully observe all of the terms and conditions of said warranties;then Tenant shall be liable to Landlord for any and all claims, actions, damages, and expenses incurred in connection with such failure to request warranty information, warranty breach, or warranty nonobservance.
- d. Failure to Furnish Warranty Information:** Notwithstanding the terms of Paragraph c hereof, if Landlord does not furnish the warranty information within the *[insert number, e.g., five (5)]*-business day period specified by Paragraph a hereof, then Tenant shall not be held accountable for the breach or nonobservance of the terms or provisions thereof, provided that all such repairs, maintenance, replacements, or other self-help actions undertaken are performed in accordance with the terms of this Lease.