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Inside the Brokerage Biz



Natalie Keyssar for The Wall Street Journal

\$5M vs \$370,000

Landlord and tenant's rival estimate of what rent should be in 2018

■ **Address:** 160 E. 38th St.

■ **Tenant:** El Rio Grande restaurant

■ **Landlord:** Murray Hill Mews Owners Corp.

Calculating Rent Escalation

As tenants are growing restless and struggling with the economic downturn, many business owners are reading the fine print of their leases to see if they're overpaying for everything from window cleaning to electricity.

Rent escalation clauses, which provide for increases in rent each year to help account for inflation, have proven a particularly contentious subject.

Take a recent dispute between the El Rio Grande restaurant and its landlord, Murray Hill Mews Owners Corp., over the rent for the retail space at the base of a large apartment tower at 160 E. 38th St. The discrepancy centers essentially on how the rent escalation is calculated.

The method used would make a big difference in rent especially in the later years of the lease. Based on the landlord's preferred formula, the annual rent would be about \$5 million by 2018, according to court papers filed by El Rio Grande.

Under the formula that the restaurant is advocating, the rent that year would be about \$370,000, the court papers state.

The landlord recently won a

summary judgment in an appellate court, but the tenant's attorney, Richard Leland, of Fried, Frank, Harris, Shriver & Jacobson LLP, says the restaurant will seek to appeal.

Disputes of this kind—albeit usually involving much smaller discrepancies—are springing up frequently. It's even helped lead to an industry of accountants and attorneys who specialize in combing leases for points of dispute, usually on a contingency basis. "There has developed a cottage industry of lease auditors," says Gary Rosenberg, a real-estate attorney. "Fifteen years ago there was maybe one guy who did it and now you get letters from big firms saying, 'Now you should have your lease audited.'"

While that might make some landlords nervous, for business owners pinched by tough times, it's become increasingly popular. "When the market was tough and everybody was looking for every nickel they could find, the tenants were a little bit more focused on that," says Seth Molod, a partner at Berdon LLP, an accounting firm.

—Laura Kusisto