

NJ Ruling Sheds Light On When 'Stub Rent' Must Be Paid

By **Daniel Reynolds, Luke Barefoot and David Schwartz** (January 21, 2026)

A Nov. 3 decision in *In re: New Rite Aid LLC* in the U.S. Bankruptcy Court for the District of New Jersey affirms, at least in the Third Circuit, that landlords may seek to have so-called stub rent treated as an administrative expense under Section 503(b)(1) of the Bankruptcy Code.

As a result, stub rent need not be paid immediately; debtor-tenants may wait until the time of plan consummation to pay. Although consistent with prior Third Circuit precedent on the treatment of stub rent, it is one of the first written decisions to directly address the issue of exactly when stub rent must be paid.

Given that timing of payments by a debtor — and, conversely, receipt of payment by the landlord — can be critical, this decision is more important than it may first appear.

The decision highlights critical considerations that debtors should bear in mind if they have significant leases that they may reject, and could affect debtors' considerations of when and where to file for bankruptcy.

Particularly as certain industries — notably, artificial intelligence companies with data center leases, as well as more traditional retail businesses with large retail footprints — have begun to lease significant amounts of real property as a strategy for growth and balance sheet management, these considerations will become important in times of future distress.

Background

"Stub rent" refers to the amount due to a landlord for the period of occupancy between a debtor's bankruptcy petition date and the first post-petition rent payment. This arises when a debtor files for bankruptcy in the middle of a rent period and continues occupying the leased premises after filing for bankruptcy, without having paid rent for that period yet.

For example, if a debtor files for bankruptcy on Jan. 15 and the next rent payment is due Feb. 1, the stub rent period would run from that date through the end of the applicable lease period on Jan. 31.

Sections 365 and 503 of the Bankruptcy Code govern the treatment of stub rent. Section 365(d)(3) requires a debtor or trustee to "timely perform all the obligations of the debtor ... arising from and after" the petition date "under any unexpired lease of nonresidential property, until such lease is assumed or rejected."

Section 503(b)(1) allows administrative expense claims for "actual, necessary costs and expenses of preserving the estate."



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Courts are split on how to treat stub rent obligations, depending on how they view when the obligation to pay rent "arises" and, as a consequence, when such rent must be paid.

Billing-Date Approach

Courts in the Third, Sixth, Seventh and Eighth Circuits look to the lease and hold that rent arises on the day that rent is due, i.e., the "billing-date approach", including e.g., the U.S. Court of Appeals for the Third Circuit's 2001 decision in *In re: Montgomery Ward Holding Corp.*; the U.S. Court of Appeals for the Sixth Circuit's 2000 decision in *In re: Koenig Sporting Goods Inc.*; the U.S. Court of Appeals for the Seventh Circuit's 2003 decision in *Ha-Lo Industries v. Centerpoint Properties Trust*; and the U.S. Court of Appeals for the Eighth Circuit's 2009 decision in *Burival v. Creditor Committee, aka In re: Burival*.

Under the billing-date approach, a debtor who filed on Jan. 15 with a lease that provided for rent payment on the first of the month would not be obligated to pay for the stub rent period within the 60-day period under Section 365(d)(3).

Instead, landlords are entitled to have their stub rent claim for the remainder of the month treated as an administrative expense claim under Section 503(b)(1).

Proration Approach

While not uniformly adopted, courts in the Second,^[1] Fourth and Ninth Circuits have held that rent accrues each day the tenant occupies the leased premises, i.e. the "proration approach," including, e.g., the U.S. Bankruptcy Court for the Southern District of New York's 2004 decision in *In re: Ames Dept. Stores Inc.*; the U.S. Bankruptcy Court for the Eastern District of Virginia's 2009 decision in *In re: Circuit City Stores Inc.*; and the U.S. Bankruptcy Court for the Central District of California's 2012 decision in *In re: Leather Factory Inc.*

As such, under Section 365(d)(3), in these circuits, a debtor who filed on Jan. 15 would be required to make a timely payment for the stub rent period of Jan. 15 through Jan. 31.

This difference in treatment implicates when payment of rent is due and the burden to assert or rebut — and ultimately collect — stub rent. Generally under Section 365(d)(3), rent must be paid within 60 days after the petition date, and landlords are not required to show any benefit conferred to a debtor to be entitled to payment.

While courts have discretion to extend the payment window, if a debtor fails to make payments within the prescribed window, they may be subject to late fees or charges for any untimely rent payments., per the U.S. Bankruptcy Court for the District of Delaware's 2007 decision in *In re: Pac-West Telecomm Inc.*

In contrast, Section 503(b)(1)(A) requires showing that the "debtor's occupancy of the leased premises ... confer an actual and necessary benefit to the debtor in the operation of its business" to qualify as an administrative claim, per the Third Circuit's 2010 decision in *In re: Goody's*.

If stub rent is deemed an administrative expense under Section 503(b)(1), a debtor need not pay it until plan consummation.

Thus, Section 503(b)(1) shifts the burden to landlords to demonstrate they are entitled to administrative expense treatment for their claims and allows debtors to hold onto cash for a longer period of time as they are not obligated to pay within 60 days.

Moreover, this approach substantively increases the credit risk landlords undertake: If a debtor's case becomes administratively insolvent or converts to Chapter 7, landlords may take a substantial haircut on stub rent claims.

The Recent New Rite Aid Decision

In its recent decision in *In re: New Rite Aid*, the U.S. Bankruptcy Court for the District of New Jersey weighed in on when stub rent must be paid. The court affirmed that Section 503(b)(1) remains an option that landlords can rely on to have stub rent deemed an administrative expense.

The question in *Rite Aid*, however, was at what point in time is the debtor required to make payment of any stub rent claim allowed under Section 503(b)(1).

In *Rite Aid*, a landlord filed three separate motions seeking to compel payment of rent owed to it, including stub rent (for May) and two months of rent due after the debtors filed for bankruptcy (June and August, which were not yet due at the time of the filings).

The landlord also sought, *inter alia*, late fees for the months of June and August. After filing for bankruptcy, the debtors rejected the lease at issue on July 31, 2025. Before rejecting the lease, the debtors made timely rent payments for June and July.

The court held that stub rent "amounts to an administrative expense under [Section] 503(b)(1)(A)," and "must be addressed prior to plan confirmation" rather than paid "by a date certain" under the Bankruptcy Code.

As a result, the court stated that the landlord had not shown that it was entitled to any late fees for the May stub rent since the May stub rent was not due until plan confirmation, which had not yet occurred.

Further, since the debtors timely paid June and July rent, no late fees were due related to those months' rent.

Rite Aid serves as an affirmation of the avenues available to landlords in the Third Circuit, while providing additional guidance on the issue of when stub rent under the billing-date approach is due.

As made clear in *Rite Aid*, while Section 503(b)(1) remains available to landlords, there are trade-offs to that treatment, notably forfeiting any claims to late fees, as that rent will not have come due yet, in addition to the delayed timing of payment.

Considerations for Debtors and Landlords

As noted above, *Rite Aid* addresses the issue of when stub rent payments must be paid — an important consideration for debtors with significant leased property, such as data centers, when deciding when to file.

With the increasing demand for data center capacity outstripping the rate at which these resource-intensive properties can be built, data center leasing continues to grow exponentially quarter-over-quarter and year-over-year.[2]

At an industry level, debtors that enter into significant leases for data centers should be aware of the obligation to pay stub rent and the split in authority on when that rent may be due.

Given the number of companies that lease data centers, the decision of when and where to file based on a debtor's lease terms can have significant future cash flow implications for the company and credit risk implications for landlords.

For debtors, the Rite Aid court's decision highlights the importance of carefully considering when and where to file for bankruptcy as the treatment of leases varies by district.

Jurisdictions that follow the billing-date approach, such as the Third Circuit, may be more attractive for debtors with financially significant leases and little cash on hand. In the jurisdictions that follow this approach, courts are likely to require the next month's rent after the petition date to be timely paid under Section 365.

But, for any stub rent outstanding, even if a court were to treat that claim as an administrative expense under Section 503(b)(1), the debtor-tenant would still be able to defer the time of payment until as late as plan confirmation. This delayed obligation to pay stub rent also means that landlords may get paid little or nothing if the debtor-tenant becomes administratively insolvent or converts to a liquidation under Chapter 7.

For landlords, asserting a right to payment under Section 365 in jurisdictions that generally follow the proration approach (e.g., the Second Circuit) will afford the most timely payment obligation for stub rent and include a larger portion of rent. As a practical matter, this treatment ensures landlords receive rent payments as soon as practicable.

Additionally, landlords should carefully consider the payment terms of rent obligations and consider providing that rent accrues on a daily basis in the terms of a lease, i.e., formalize the proration approach in the lease documents.

Including such language in leases can be landlord-favorable in jurisdictions that follow the billing date approach and neutral in other jurisdictions, and landlords should consider including these terms for high-credit-risk tenants.

Ultimately, the structuring of the lease terms in this way may not ultimately succeed given the current state of the case law, but, as Rite Aid confirms, landlords may still assert claims for payment of stub rent as an administrative expense.

Regardless of the payment terms, when assessing the credit risk of distressed tenants, landlords should consider where a tenant may file for bankruptcy, keeping in mind the ease with which a debtor-tenant may create venue in bankruptcy by, for example, the incorporating a new Delaware subsidiary and thereby securing more tenant-friendly treatment of any stub rent.

Conclusion

The varied treatment of stub rent presents a challenge for landlords and tenants.

Landlords should be attuned to the methodology that courts apply when calculating rent owed under Section 365(d)(3) as well as the availability of Section 503(b)(1) as an alternative method to collect stub rent based on their jurisdiction.

Tenants facing bankruptcy should likewise carefully consider the magnitude of potential rent payments and the timing of filing for bankruptcy, both of which may have significant impacts on cash flows.

While these considerations should be on the radar of all companies with leased real property, companies that are heavily reliant on leased space, such as AI companies with significant data center leases, should keep these issues front of mind if faced with financial pressures and considering filing for bankruptcy.

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[1] But see *In re Avianca Holdings S.A.*, 127 F.4th 414, 424 (2d Cir. 2025) (holding that "the billing date approach is the approach most consistent with the text of Section 365(d)(5), the Bankruptcy Code as a whole, and sound bankruptcy policy").

[2] See, e.g., Barney Dixon, "US Data Center Capacity Leasing in Q3 Exceeds Entirety of 2024," Data Center Dynamics, (Oct. 21, 2025), <https://www.datacenterdynamics.com/en/news/us-data-center-capacity-leasing-in-q3-exceeds-entirety-of-2024/>; "North America Data Center Trends H1 2025: Data Center Demand Continues to Outstrip New Supply," CBRE (Sept. 8, 2025), <https://www.cbre.com/insights/reports/north-america-data-center-trends-h1-2025>.