
277 Te Irirangi Drive (near Cnr Ormiston Road), Botany Junction
PO Box 217 006, Botany Junction, Manukau 2164, New Zealand
Ph: (09) 271 5880 Fax: (09) 271 5876 DX EP 83003, Botany Junction

LEASE OF BUSINESS PREMISES

Why have a lease?

Essentially a lease imposes obligations on the tenant and is primarily for the benefit of the landlord. The main benefits for the tenant are the certainty of the term (otherwise occupancy can be terminated by a months notice) and the certainty of the rent until the next rent review. As well as being a benefit this can also be a problem in that the tenant can be locked into a lease that no longer suits the tenant's requirements and is difficult to dispose of.

Term

The tenant is still liable for the rent for the full term of the lease. Even after selling the business and transferring the lease if the new tenant defaults.

Ratchet Clause

Keeping the rent up on a rent review.

- Full Ratchet

The rent never reduces.

- Soft Ratchet

The rent never goes below the original rent at the beginning of the lease.

- Hidden Ratchet

The rent review is at the option of the landlord (the landlord "may" rather than "shall").

- Tricky Ratchet

Compulsory rent review ("shall") but the new rent starts from the date the landlord initiates the rent review and pursuant to the lease that can be left until just before the next rent review (e.g.2 years).

WARNING:

One or two words and their placement in the rent review clause can make a significant difference. Contact us before you sign anything. Words are our business.

Rent Review Clauses

There are many variations. Some common provisions:

- (a) The new rental as assessed by the landlord is payable unless and until agreement is reached or the rent is settled by arbitration with the under or over adjustments taking place at that time.
- (b) The costs of the rent arbitration (e.g. the arbitrator's fees) are not always shared equally between the tenant and the landlord.
- (c) The valuer for the landlord and the valuer for the tenant meet to try and reach agreement and failing that an umpire (another valuer) decides.

Costs

Most leases provide for the tenant to pay the landlord's solicitors costs of preparing the lease and any future renewal documents or rent review documents.

If you sign an Agreement to Lease that does not specifically provide who pays the lease cost then you have probably agreed to pay the landlord's solicitors costs by virtue of the clause specifying the format of the lease e.g. the lease is to be on the Auckland District Law Society form.

Whether the tenant pays the landlord's solicitors costs of preparing the lease is negotiable. The best result from a tenant's point of view is each party paying their own costs in relation to the Lease, Deeds of Renewal of Lease and Deeds of Rent Reviews.

Another possibility is the tenant paying a fixed sum towards the landlord's solicitors costs on the preparation of the lease. This would still leave future Deeds of Renewal and Rent Reviews for which the tenant would have to pay the landlord's solicitors costs.

Outgoings

Many leases provide for the tenant to pay (or reimburse the landlord) for all the landlord's building outgoings including:

- Rates
- Building insurance premiums
- Body Corporate management fees
- Building managers fees
- Maintenance of grounds and gardens
- Routine maintenance of the building (including painting)

Reinstatement

At the end of the lease the landlord is entitled to require the tenant to reinstate the interior of the building to its original condition at the beginning of the lease. The beginning of the lease could be before the current tenant took over the lease e.g. the current tenant purchased the business including the lease from the former tenant.

Reinstatement can involve considerable expense. In particular if there was no fair wear and tear exception in the lease.

Rights of Renewal

This is a tenant's right to extend the lease for a further term. There is usually a rent review to coincide with the beginning of the renewed term. The tenant needs to give notice to the landlord at least before the end of the current term.

Staying on after the lease expires

If the tenant remains in possession after the expiry of the term without exercising any rights of renewal then the occupancy continues as a monthly tenancy on the same terms as the lease (except the term and rights of renewal).

Agreements to Lease

Even very short forms of Agreement to Lease usually provide for a standard form of lease. Once you have signed the agreement you have agreed to the terms of the lease and can no longer negotiate e.g. as to payment of the landlord's solicitors costs, ratchet clauses, fair wear and tear exceptions to maintenance requirements.

TIP: See us for advice *before* you sign.