

Leasing Health Checks



How important is your business location?

The location of your business premises is often of critical importance and value. It provides storage space for stock, the physical connection to employees and supply chains, and is the location your customers visit. The mix of tenants surrounding a retail business and the volume of pedestrian traffic can also impact your customer numbers and profitability. If your lease is for a retail space which is part of a larger development (such as a shopping centre or an arcade) you may wish to consider negotiating with your landlord criteria for the type of tenants who can occupy the surrounding shops and marketing for the location as a whole. This can be helpful in both drawing the right kind of foot traffic to your door and in ensuring you do not find yourself situated next to a tenant whose use of their premises interferes with yours.



Are you entitled to Covid-19 rent relief?

You may have been entitled to a reduction of a 'fair proportion' of rent if the impact of Covid-19 resulted in you being unable to access or conduct business from your premises (depending on the impact you experienced and the terms of your lease). You could consider obtaining legal advice on the terms of your lease regarding rent abatements to see what entitlements you could or should have received. Going forward, consider formalising the abatement arrangements with your landlords to help prevent future disputes (these can be stressful and time consuming!). Also, obtaining confirmation from your landlord on abatement arrangements helps when creating business contingency and resilience plans. You may also want to consider obtaining accounting and tax advice regarding the implications of these arrangements, to ensure the cost to your business is recorded correctly.



When and how does your rent increase over the lease term?

Rent review clauses are set intervals at which rent can be altered (usually increased) and are an essential consideration when negotiating the terms of your leasing arrangements. The parameters of your rent reviews should be carefully examined. Rent review provisions can ensure the price of rent changes in parallel with market rates or in proportion to inflation rates. Rent review provisions can also fix rent increases regardless of market trends. In such cases, consider whether there is a risk you could be paying above market rates during the term of your lease. Ideally, a balance should be struck between market and/or fixed rent reviews and how often the reviews take place. It is often beneficial to create the ability for your rent to be corrected to market rates at regular intervals.



What are your renewal rights and notice periods?

Keeping track of key lease dates is essential. For example, most commercial leases require at least three calendar months notice of your intention to exercise a right of renewal. Given that NZ lease documents are typically unregistered, instances of tenants missing time-critical lease reviews or renewals are commonplace (and can be expensive), particularly when managing multiple premises concurrently. Leasing management software can assist with both the storage of original and digital lease-related documents to avoid the loss of key documents and data, and can provide your professional advisors with instant access to trigger dates and key terms to help you stay on top of your leasing portfolio.



How expensive are the remediation and reinstatement conditions in your lease?

Leases typically contain specific repair, maintenance and reinstatement covenants relating to the condition of the premises, including the obligation for the tenant to remediate damage. There may be reinstatement conditions where the premises have been altered by the tenant, which require the premises to be reinstated to its condition at a specific point in time (i.e., before the alterations). It is important to be aware of any remediation and reinstatement conditions in your lease, as these can be a growing contingent liability as alterations are made or damage occurs. This can mount up and get expensive. Keep in mind that recording the condition of the premises at the commencement of the lease gives you a good reference point and helps alleviate disputes at the end of lease. Again, you may want to consider obtaining accounting and tax advice regarding remediation and reinstatement conditions, to ensure the costs to your business are recorded correctly.



Have you given a personal guarantee?

Landlord's commonly request a personal guarantee to guarantee performance of all the tenant's obligations under the lease, including timely payment of rent. A personal guarantee is a continuing obligation. You may be required to cover unexpected costs such as unpaid rent and operating expenses, remediation and reinstatement costs, legal fees and other penalties if you have provided a personal guarantee under a lease and it is subsequently enforced. Keep in mind too that unless you negotiate otherwise, personal guarantees may remain in place following an assignment of the lease.



Tenants have a right to quiet enjoyment

Tenants have a right to 'quiet enjoyment' of their leased premises which entitles the tenant to enjoy the leased premises for all usual and lawful purposes without substantial interference from the landlord or its agents. The courts in NZ have accepted that 'substantial interference' may take many forms, such as non-exclusive occupation, noise, and dust. The right to quiet enjoyment is an important and enforceable right and legal advice should be sought if you think that your landlord is breaching your right to quiet enjoyment.

If you need any help with your leasing, please don't hesitate to contact:



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