

Information About Leasing

Commercial leases are loosely regulated. The rights and obligations of the landlord and tenant are mainly a matter of contract between the parties. What is agreed to in the lease is key. Contacting a lawyer at an early stage is important.

As a commercial lease is a matter of agreement, each lease is somewhat unique and every landlord will have its own form of lease. Nevertheless, there are "standard" components found in almost all forms of lease. These including provisions relating to:

* The premises and term of the lease: these provisions describe the space being rented and the time for which the tenant will rent it

* The tenants monetary obligations under the lease: Commercial leases break down into two general categories with respect to the tenant's monetary obligations: gross leases and net (or "net net") leases.

The "gross" lease is the more simple but less common form, where the tenant pays only one gross amount to the landlord per month at a set rate, which may scale upwards in successive years. Under a gross lease the landlord assumes the risk of rising operating costs - if these are more significant than predicted, the landlord's profit margin suffers.

Most landlord's prefer the guaranteed profit of a "net" lease. Under a net lease, the tenant pays net or basic rent, which is net profit to the landlord, and "additional" rent, which is essentially the tenant's share of all other costs associated with the premises (for example: property taxes, utilities, and the tenant's proportionate share of the landlord's costs of operating the building and common areas)

* The tenant's physical obligations under the lease: The tenant's physical obligations usually relate to the intended use of the premises, maintenance and repairs within the premises, and alternations to the premises.

Tenants are usually required to maintain and repair any systems and equipment found within the premises itself, the landlord takes responsibility for maintaining and repairing the common areas and the structural elements of the building. In a net lease, the costs of doing so will be charged back to the tenants through their respective shares of operating costs.

Any alterations made by or specifically for the tenant are usually tightly controlled by the landlord, who wants to ensure that no permanent building-wide problems will arise as a result. At law, the general rule is that anything affixed to the building in a permanent or semi-permanent manner becomes part of the building as a "fixture" and ownership passes to the owner of the building.

* Insurance: these provisions relate to the requirements of the tenant's insurance policy relating to the space, and in some cases, the requirements of the landlord's insurance policy relating to the building generally

* Lease assignment and subletting rights: these provisions describe restrictions regarding the transfer of the rental space to other parties

* Registration, subordination and non-disturbance rights: these sections describe the rights of the tenant as against the landlord's creditors and or future purchasers of the landlord's building

* Default: these provisions set out in detail the landlord's remedies in the event of tenant default under the lease

* Special rights: these are the specific terms agreed to by the tenant and landlord regarding future rights such as renewal, expansion, or termination, and regarding the work and inducements the landlord agrees to provide to the tenant as an incentive to enter into the lease

Process

Often the leasing process is done in two stages - first an "offer to lease" is signed containing all of the essential business terms of the agreement, and later a full lease is signed in the landlord's form. The offer is usually the best chance for each side to negotiate its business points, conditions and "deal breakers". Once the offer is signed and all conditions have been satisfied, the lease is then drafted containing the modifications required by the offer.

Negotiating Power

In Canada landlords wield most of the negotiating power in commercial leasing, unless the tenant is taking a large amount of space or is a potential anchor in a retail setting. As a result, most forms of offer and forms of lease will inherently favour the landlord. However, generally landlords are also prepared to be fair in negotiating most points, provided they are points of significant importance to the tenant. The tenant must therefore plan ahead and be clear on its critical business points. Provided a tenant knows its needs, it will be in a better position to focus the negotiations on its important issues.