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RETAIL LEASE

Landlord Information Pack

*A lease is an important and complicated legal document. It creates a binding and enforceable legal relationship between a landlord and a tenant that takes effect for the duration of the lease. This legal relationship creates rights, responsibilities and obligations for both a landlord and a tenant. The following information is designed to provide a summary of the **key rights, responsibilities and obligations** of a landlord of a retail premises under the various standard forms of lease. This information is not a substitute for reading the lease and is intended only to provide an overview.*

All references in this information pack to “you” are to be interpreted as a reference to “the landlord”.

Application of the Retail Leases Act 2003

The Act applies, with some limited exceptions, to the premises used for the supply of goods or services to the public. This includes shops in shopping centres, but also includes stand alone premises to which the general public has access. It also includes premises that the tenant makes available for use by other businesses, such as convention centres and storage facilities.

INTRODUCTION

As the landlord of a retail premises the *Retail Leases Act ('the Act')* imposes numerous obligations on you in relation to your tenant and your property.

This Information Pack is designed to give you an overview of your obligations under the lease and the Act and provide an outline of the information that will be contained in the lease and Disclosure Statement.

DISCLOSURE STATEMENT

You are obliged to give a Disclosure Statement to a prospective tenant at least seven days prior to the tenant signing the lease. This Statement provides the tenant with extensive details in relation to the physical characteristics of the premises and needs to be completed by you with care and attention. A defective Disclosure Statement may entitle the tenant to terminate the lease and seek a refund of amounts paid pursuant to the lease.

LEGAL COSTS

The Act prohibits you from recovering your legal costs for preparation of the lease and Disclosure Statement from the tenant. You should negotiate the rent on the basis that your legal costs will be payable by you from the rent. We can give you an accurate estimate of our costs for preparing the lease and Disclosure Statement when we know the basic terms of the lease.

MINIMUM TERM

A retail tenant is entitled to a minimum term of 5 years. This can be by way of a term for 5

years or a term and options that total 5 years. The tenant can seek consent from the Small Business Commissioner to enter into a lease of less than 5 years.

A lease for less than 12 months is **not** a retail lease, however where a tenant initially enters into a lease for less than 12 months then over holds beyond the 12 month threshold, the lease becomes a retail lease.

BUILDING OUTGOINGS

Building outgoing include any of the following expenses incurred in respect of the land, building or premises. Any or all of these outgoing may be applicable to your lease and payable by you or by the tenant depending on the agreement reached:

- rates and levies imposed by relevant authorities (for example, local council rates);
- the costs of maintaining and repairing the building and your installations;
- premiums and charges for insurance policies (for example, building insurance); and
- Owners Corporation fees.

These are the most common outgoing, however there may be additional outgoing depending on the property.

TENANT'S PAYMENT, USE AND INSURANCE OBLIGATIONS

The tenant must:

- pay the rent required under the lease when it is due without any deductions to you in accordance with the terms of the lease;

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- pay all charges for the provision of services to the premises, such as water, electricity, and telephone;
 - remove from the premises all rubbish and waste generated by the tenant's operations;
 - conduct its business operations in an efficient, safe and lawful manner and comply with the requirements of all relevant authorities; and
 - take out and keep current an insurance cover in the tenant's name for public liability.

The tenant must **not**:

- use the premises except for the permitted use as defined in the lease;
- use the premises for any illegal purpose;
- carry on any harmful activity on the premises;
- carry on any activity that might cause nuisance, damage or disturbance to anyone on a neighbouring property;
- do anything which might adversely affect any insurance policy relating to the premises;
- place a sign on the outside of the premises without your written consent; or
- make any alteration or addition to the premises without your written consent.

REPAIRS, MAINTENANCE, FIRE PREVENTION AND REQUIREMENTS OF AUTHORITIES

The lease provides that the tenant must:

- keep the premises in the same condition as it was in at the **start** of the lease,

except for fair wear and tear. However Section 52 of the Act imposes a statutory obligation on you to maintain the premises in the same condition as they were at the start of the lease. There is an obvious tension between these two obligations and each case generally falls to be resolved by negotiation. The *Building Act* also makes you responsible for maintenance of essential services, such as safety and air conditioning, and you can not pass those costs on to the tenant (you should consider obtaining a Condition Report at the start of the lease).

Subject to Section 52, the lease requires the tenant to:

- comply with all notices and orders affecting the premises which are issued during the term of the lease (for example, notices from the council);
- repaint all painted surfaces (and refinish all finished surfaces) in a workmanlike manner at least once every 5 years during the lease;
- replace broken glass and repair defective windows, doors and locks etc;
- give notice to you of any damage or defects to the premises; and
- keep all doors and windows locked when the premises are not in use.

The tenant is **not** obliged to:

- repair damage to the premises which you must insure against; or
- carry out structural or capital repairs to the premises unless such actions are necessary as a result of the tenant's conduct.

LEASE TRANSFERS AND SUBLETTING

The tenant must **not transfer** the lease or **sublet the premises** without your written consent. You may only withhold your consent in accordance with the Act. The tenant must pay your reasonable expenses incurred in connection with an application for your consent (such as your legal costs).

GENERAL AGREEMENTS BETWEEN LANDLORD AND TENANT

By entering into a lease, you and the tenant agree to a number of general conditions from the outset of the lease.

The tenant agrees that it uses and occupies the premises at its own risk and indemnifies you against all claims resulting from accidents occurring on the premises.

When the lease term ends, the tenant must return the premises to you in a clean condition (subject to fair wear and tear) and must remove all of its installations and other property on the premises.

If the tenant leaves any of its installations or other property on the premises after the lease ends, then that property may be considered to be abandoned by the tenant and will become your property. If you choose to remove the tenant's property, you may then seek to recover the costs of removal from the tenant. You will however have obligations to store the tenant's property.

LANDLORD'S OBLIGATIONS

You must give the tenant quiet possession of the premises without any interruption by you as long as the tenant fulfills its obligations under the lease.

Also, you must keep the structure (including the external walls and roof) of the building and your installations in a condition consistent with their condition at the start of the lease.

EVENTS OF DEFAULT AND LANDLORD'S RIGHTS

You may terminate the lease if:

1. the rent is unpaid for 14 days after it is due;
2. the tenant does not meet its other obligations under the lease;
3. the tenant or a guarantor becomes bankrupt; or
4. the tenant discontinues its business on the premises or leaves the premises unoccupied for 14 days, without your consent.

If you terminate the lease, you may still sue the tenant for unpaid rent or for damages for breaches of the tenant's other obligations under the lease. Before terminating the lease, you must give the tenant a notice under the *Property Law Act*. We can prepare this notice on your behalf.

DESTRUCTION OR DAMAGE

If the premises is damaged so that it cannot be used or accessed for the permitted use, a fair proportion of the rent and outgoings is to be suspended until the premises is again wholly fit for the permitted use.

If the premises is partly destroyed, but not substantially destroyed, you must reinstate the premises as soon as reasonably practicable. If the premises is wholly or substantially destroyed then you are not obliged to reinstate the premises and you and the tenant may end the lease.

However, if the tenant is responsible for the destruction of the premises then it does not have the right to suspend payment of the rent or to terminate the lease.

CONSENTS AND WARRANTIES BY LANDLORD AND TENANT

You must not unreasonably withhold your consent or approval to any act by the tenant which needs consent, unless the lease otherwise provides. However, you may impose reasonable conditions on any consent or approval and the tenant must reimburse your reasonable expenses resulting from an application for your consent or approval, such as your legal costs.

The lease and the Disclosure Statement contain the whole agreement of the parties, and neither party is entitled to rely on any written or oral statement which is not contained in the lease or Disclosure Statement.

OVERHOLDING AND ABANDONMENT OF THE PREMISES

If the tenant remains in possession of the premises without objection by you after the end of the term of the lease, then the tenant, without any need for written notice of any kind, is a monthly tenant on the conditions of the lease.

Either party may end the tenancy by giving one month's written notice to the other, and you may increase the monthly rent by giving the tenant one month's written notice.

RENT REVIEWS TO MARKET

If a market rent review is applicable to the lease, then you may initiate a market rent review by giving the tenant a written notice stating the current market rent which you propose as the rent for the renewal period. The tenant may do likewise to you.

If the parties cannot agree on what the rent is to be for the renewal period, the parties must appoint a valuer to determine the current market rent. The valuer must make a decision on the rent and that decision is binding on both parties. The fees of the valuer are paid equally by the parties.

FURTHER TERMS

The tenant has an option to renew the lease for the further terms stated in the lease and you must renew the lease for each further term if the tenant is not in breach of the lease.

You must notify the tenant of the last day by which the option is to be exercised at least six, but no more than twelve, months prior to the last day for exercise of the option.

The renewed lease starts on the date after the previous lease term ends.

SECURITY DEPOSIT

The tenant must pay the security deposit to you as set out in the lease.

If the security deposit is invested in an interest bearing account then all interest is treated as a supplementary payment of security deposit. You must use the security deposit to make good the cost of remedying breaches of the tenant's obligations under the lease.

After the lease has ended and the tenant has vacated the premises and performed all of its obligations under the lease, you must refund the unused part of the security deposit to the tenant.

OBLIGATIONS OF GUARANTORS UNDER GUARANTEE AND INDEMNITY

The guarantor guarantees that the tenant will perform all of its obligations under the lease for the term and any renewed terms.

The guarantor must pay any amount which you are entitled to recover from the tenant under the lease and indemnifies you against all loss resulting from your having entered into the lease.

If there is more than one guarantor then the guarantee binds them separately, together and in combination.

GST

All money which is payable under the lease is GST **exclusive**, unless otherwise stated.

IF THE PREMISES IS ONLY PART OF THE LETTABLE AREA OF THE BUILDING

This section is only relevant if the leased premises constitute only a part of the lettable area of the building, such as a shop in a shopping centre.

In this case, you reserve the use of all external surfaces of the building, such as walls, and areas outside the building.

The building, common areas and your installations remain under your absolute control. Some of your main rights include:

- to close off the common areas and your

installations as often as you consider appropriate;

- to exclude people whose presence you consider undesirable;
- to grant easements over any parts of the land which do not adversely affect the tenant's use of the premises; and
- to repair or renovate the building but, in doing so, you must not cause unreasonable inconvenience to the tenant.

Further, the tenant must not obstruct the common areas and it must also comply with the building rules.

ADDITIONAL PROVISIONS

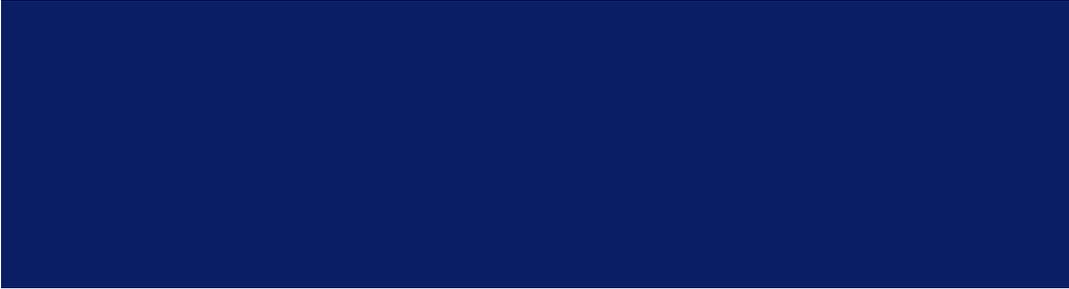
You and the tenant may agree to additional provisions that do not form part of the standard lease. For example, a rent free period, or a requirement that the tenant undertakes certain works at the premises. Any such additional provisions bind both you and the tenant and if they are inconsistent with any other provisions of the lease, then the additional provisions override them.

LEGAL COSTS – STANDARD TRANSACTION

Our Professional Fees (current 1 April 2017)

Annual Rent	Legal Costs
Less than \$25,000	\$770 (inc. GST) plus disbursements
\$25,000 to \$50,000	\$880 (inc. GST) plus disbursements
\$50,000 to \$100,000	\$990 (inc. GST) plus disbursements
Over \$100,000	\$1100 (inc. GST) plus disbursements

Legal costs may increase if the file involves substantial negotiation in relation to the terms of the lease or other complicating factors.



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