



RETAIL SHOP LEASES ACT AMENDMENTS:

REMINDER FOR LANDLORDS

The Retail Shop Leases Act was amended in 2006.

A reminder to landlords that the major implications of the amendments for them are:

Options to renew leases

When a lease provides for an option to extend or renew the lease, the onus for notification moves from the tenant to the landlord. Landlords are now required to give written notice of the option date to the tenant at least two months but not more than six months before the option date. If a landlord fails to do so, there is a monetary penalty.

Where a lease does not provide for an option to extend or renew the lease, the landlord must give written notice to the tenant advising whether it is offering a renewal or extension of the lease, or otherwise notifying the tenant that it does not intend to offer a renewal or extension of the lease. The term of the lease determines how much notice the landlord must give to the tenant of its intentions:

- if the term of the lease is less than one year, the landlord must give notice to the tenant at least three months but not more than six months before the expiry date of the lease;
- if the term of the lease is more than one year, the landlord must give notice to the tenant at least six months but not more than 1 year before the expiry date of the lease.

If the landlord does offer the tenant a renewal or extension of the lease, the offer must remain open for acceptance by the tenant for one month – the offer cannot be revoked until after one month has passed or if the tenant has already accepted the offer.

If the landlord does not comply with its obligations to give the tenant notice of its intentions regarding renewal, the term of the lease is extended until 6 months after the landlord does give the notice (but the tenant must ask for the extension by written notice to the landlord before the lease would otherwise expire).

Therefore it is essential that landlords have a

system in place for recording and highlighting these critical dates.

Early determination of current market rent

If the lease contains an option of renewal with a market review in the first year of the option, the tenant may give notice to the landlord that it requires the current market rent to be determined in the **early determination** phase which depends on the term of the lease:

- if the term of the lease is less than one year, the early determination period is between 3 months and 1 month before the option expiry day (the last day under the lease on which the option must be exercised);
- if the term of the lease is greater than one year, the early determination period is between 6 months and 3 months before the option expiry day. Note that the current market rent is to be determined at the date the request is made.

Ordinarily, leases nominate a date by which the tenant must exercise its option. Landlords should note that if the rent review process is delayed, the tenant has until the expiry date of the lease to exercise the option. The last day the option can be exercised by the tenant is 21 days after the tenant receives written notice of the current market rent or the day the lease ends (whichever is earlier).

These amendments may make landlords less inclined to have a market review of the rent on the exercise of the option. Landlords may consider whether to instead have market reviews of the rent in the second year of the option period. Landlords need to ensure the market review process occurs expeditiously to achieve certainty regarding the tenant's intention to exercise the option.

New disclosure statement

There is a new 'Lessor Disclosure Statement' which requires more detail (eg anchor tenant details and pedestrian traffic figures) from landlords. This must be given to the tenant at least seven days before the lessee enters into the lease. The tenant has a right of termination for a failure to give a disclosure statement or the giving of a defective statement for up to six months after the tenant

enters into the lease. Landlords may also have to pay compensation if the tenant has suffered loss because of non-compliance or provision of a defective statement.

Demolishing building

If the landlord intends to demolish the building in which a retail shop is located, the landlord must give written notice to the tenant advising the details of the proposed demolition at least six months before the landlord intends the lease to terminate. Landlords must take care in drafting the notice to ensure all details required by the Act are included in the notice.

The tenant may then terminate the lease at an earlier date by giving at least seven days notice.

The tenant will be entitled to compensation and the Act sets out the procedure for deciding the amount of compensation.

Relocation

If the landlord intends to relocate the tenant's business, the landlord must give written notice to the tenant advising details of the proposed relocation at least three months before the proposed relocation. The lessee is entitled to its reasonable costs of the relocation. The Act sets out a dispute resolution process if the parties cannot agree on the compensation.

Landlords must take care in drafting the notice to ensure all details required by the Act are included in the notice

The tenant has an option to terminate the lease within one month of receiving the relocation notice.

CONTACT US

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