

Changes to Standard Lease for Commercial Premises

The Auckland District Law Society lease, which is the standard lease used for the vast majority of commercial properties, has had a large number of changes made to it. Some of these are as a result of the experiences of landlords and tenants after the Christchurch earthquakes.

The main changes include:

- Under the old lease, if a landlord had to upgrade a building because of some government requirement (for example, earthquake strengthening), the landlord was entitled to charge the tenant a percentage of the cost of that work until the next rent review date. This requirement has been deleted from the new form.
- There is now an option on a rent review for either rental increases in line with increases in the Consumer Price Index, or increases to the market rent, or a combination (e.g. yearly CPI increases with less frequent reviews to market).
- The landlord and the tenant now pay their own legal costs for the negotiation and preparation of the lease and of any deed of rent review, deed recording a variation, or a deed of renewal – previously, the tenant paid the landlord’s costs.
- A schedule has been added to allow the landlord’s fixtures and fittings which are in the premises at the commencement date to be listed, so there is no argument at the end of the term as to who owns what.
- A schedule has been added to allow the condition of the premises at the beginning of the lease to be described, so there is no argument at the end of the term as to what the premises were like at the beginning. This is because the tenant is required to keep the interior of the premises in the same condition they were in at the commencement of the lease, fair wear and tear excepted.
- A new clause has been added to say that if there is an emergency, and the tenant is unable to gain access to the premises to carry on business because of public safety issues, or to reduce or prevent any hazard associated with the emergency, then a fair proportion of the rent ceases to be payable until access is available again. If access is still not available after the end of the period which the parties have agreed in the schedule to the lease, either side can cancel the lease.
- The landlord has always had the ability to come onto the premises to carry out inspections and repairs. However, the landlord now has the right to require the tenant to vacate part or all of the premises to allow work to be completed. This will be a major concern to tenants, because this would be a major disruption to the tenant’s business. The landlord is supposed to act in good faith, and have regard to the nature, extent and urgency the works when exercising this right, but a tenant should carefully consider whether this clause should be deleted or modified.

This information is designed as a general guide and should not replace specific legal advice on a particular issue

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