

Your Lease Your Business (Landlords and Tenants) Your Future

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Don Gilbert is a specialist retail valuer and arbitrator. He provides independent impartial advice to landlords, prospective investors and tenants. Don is not an advocate for landlord or tenant interests. Don is interested in fair legislation and outcomes for the benefit of the whole industry. See www.aaapc.net.au **australian assets & property consultants**

When one writes industry articles, as I have done since 1993/94, feedback is always useful.

“I love reading your articles, always make me laugh. We have decided to quit....retail just isn't fun anymore and our landlord is being a typical landlord, demanding full refits jacking up rents, constantly criticizing, etc, etc. and I'm over it. Time to take a break. Keep up the good work my man. I have learnt something from these people though, I am a landlord now and I take bloody good care of my tenant.” - note. Unlike most retail business owners, this client is able to walk away from the business. They have other forms of income and he has invested in his intellectual property and is a qualified engineer

Background

Over the last 15 years I have written hundreds of articles about leases, leasing, rental and tenancy disputes.

In this article, “Your lease, Your business (landlords and tenants), Your future, ” I thought it would be useful to revisit the very basics. What is a lease? Where are your leases? What are your rights? What are the essential terms of your leases?

What is a lease?

In the simplest of terms, a lease agreement is a *“Contract granting use or occupation of property for specified period in exchange for rent.”*

A lease agreement (or license to occupy) is a contract between a tenant and landlord. It covers the terms and obligations of the parties under the contract. That is the simple part; the detail and consequences are far more challenging!

In the event that there is legislation (written law, i.e. a Retail Shop Leases Act), the written law takes precedent over conflicting term in a lease. This point alone can add significant “value” to a lease or a bundle of leases.

Where is your lease? What are your rights?

From my experience, landlords generally treat their leases with respect. They know where they are, what is in them and what their rights are.

In contrast, over the years I have had calls from tenants who do not know where their lease is, what is in their lease or what their rights are under a lease.

This is understandable in some ways because leases are the “core” business of being a landlord, not of tenants.

Legislators and regulators (Lease Registries) are starting to recognise that the lease to a business owner, franchisee, etc, per se is miniscule relative to what is involved in: negotiating, arranging finance, starting up, fitting out, building up custom, marketing and promoting, hiring staff, training staff, building a brand image, adjusting stock and product ranges, etc, then making improvements, often the landlord's capital items, i.e. flush ceilings, shop fronts, returning air conditioning and lighting to grid (which cannot be removed), removing flooring, wall fixtures and fittings and vacating after a typical 5-year lease. On top of all this, one must generate a return on one's capital.

Some of the written law is recognising that business owners jump many, many hurdles with just

five years' tenure (and no certainty of renewal at market rent) with regard to a lease offered in a major regional centre, where the family capital is "married" to the shopping centre: customary practice in the community.

Consequently, since the 3rd of April 2006, a landlord in Queensland must now notify a tenant if the tenant has an option and wants to exercise it. The legislation has some way to go for equity and fairness in retail leasing in Australia.

What is in your lease?

Just as legislators and advisors (lawyers, barristers, accountants, valuers) grapple with leases, business owners need to know: what the essential terms are in their lease and, more importantly, the commercial consequences of the agreement they have signed or will sign. Failure to know or understand these things can have serious consequences, including business failure.

This is an extremely specialized area and there are very few qualified and experienced consultants who work with, know and understand these areas well.

I suggest to every business owner: find their lease and disclosure documents (request a copy), take 15 minutes to familiarise oneself with the essential terms of the lease, eg. commencement date, termination date, the rent, payment of outgoings, how the rent is reviewed, what options there are, who gives who notice, make-good requirements, etc.

Conclusion

I wrote in a previous article, *"the industry, legislators and regulators continue to "gamble" with leases, the intangible asset value of tenant's businesses and the landlord's bundle of leases"*

This is extremely destructive to both landlord and tenant capital and the intangible asset value to the "businesses" of both.

Balanced leases, fair rent, opportunity to review market rent, reasonable security of tenure, access to vacant possession by landlords for refurbishment/renovation/redevelopment works every 12 to 16 years will add significant "value" to individual leases and a "bundle" of leases.

A lease can be more valuable than all the physical assets the business owns. I suggest that one should have a high regard for leases and know what is in them.

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