

# LANDLORD LEASING TERMS CHEAT SHEET

When leasing your property, it is crucial to understand key terms. This factsheet highlights essential points such as quiet enjoyment clauses, make good obligations, guarantees and security options. These guidelines help protect your interests and ensure a smooth leasing process.

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## MAKE GOOD OBLIGATIONS AND CLAUSES



A make good clause requires the tenant to restore the interior to the condition specified in the lease at the end of the term. The condition should be clearly defined in the lease agreement.

In most leases, make good means 'base standards' or a 'bare shell', and involves removing the fit-out in preparation for the next tenant. (Note: The tenant is not responsible for fair wear and tear arising from reasonable use.) Discuss the make good requirements with the tenant before the lease ends, as the existing fit-out may suit the next tenant. Payment for any fitout remaining can be negotiated.

Unless stated otherwise, the tenant must comply with the make good clause. This is the case even if you contributed to the fit-out as an incentive. We recommend attaching a premises condition report to the lease to confirm the agreed condition before the fit-out begins.

## QUIET ENJOYMENT CLAUSE



A landlord cannot interfere with the tenant's use and enjoyment of the premises, for instance, by:

- erecting scaffolding that disrupts customer access to the tenant's shop;
- failing to repair a leaking roof; or
- starting construction work near the tenant's shop.

If you breach your tenant's right to quiet enjoyment, the tenant may take action against you for any losses incurred to their business. Landlords should notify tenants in writing about any planned renovations before they sign the lease. You must also inform tenants of any works that could interfere with their use. This includes renovations to a shopping centre or building work near the tenant's premises.

## PERSONAL GUARANTEES



It is common practice for landlords to require directors of a tenant company to provide a personal guarantee when signing a new lease. This is especially the case if a new entity is running the business.

A personal guarantee means the director is personally responsible for the lease if the tenant company struggles to meet its obligations.

If a tenant is reluctant to provide a personal guarantee, alternative options like a bank guarantee or rental bond can be explored. However, you should require a personal guarantee where possible. This will provide additional security if the tenant's company fails to meet their lease obligations.

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## BANK GUARANTEES AND RENTAL BONDS



Under the Law Association precedent, landlords can choose a bank guarantee as security to protect their interests. This could cover situations where a tenant leaves early or damages the premises. Your lease terms should document this option.

Some New Zealand banks may take time to provide a bank guarantee, so consider this when setting lease timeframes.

Another security option is a rental bond, in which several months' rent plus outgoings are held in an account with you or your solicitor. This option is often more flexible than a bank guarantee. Your tenants may request that the funds be held in an interest-bearing account, with the interest following the rental bond.

## ASSIGNING THE LEASE



A lease assignment occurs when a current tenant transfers the lease to a new tenant. This often happens during a business sale or when a tenant needs a larger premises. In a business sale, the Agreement for Sale and Purchase is usually conditional on the landlord consenting to the lease assignment.

The landlord must generally consent if the new tenant is respectable, responsible, and financially capable of meeting the lease commitments. You can only refuse in limited circumstances. This includes when there are concerns over the new tenant's business experience or financial capability. When a lease is assigned, the new tenant typically accepts the terms as they are currently drafted.

Give the prospective tenant guidelines for the information they must provide. For example:

- business references relevant to the industry related to the use of the premises;
- tax returns or bank statements; and
- trading references from suppliers.

## LEASE OFFER CHECKLIST



Before offering a tenant a lease agreement, ensure you have:

- ☐ Included formulas for calculating outgoings and rent increases.
- ☐ Recorded any terms or variations that differ from the standard lease position.
- ☐ Considered if an incentive or rent-free period is appropriate.
- ☐ Documented any intended renovations to the premises clearly, specifying the work that has been consented to.
- ☐ Provided the tenant with your insurance policy requirements and bank guarantee details.
- ☐ Clearly set the commercial terms in either a term sheet or an Agreement to Lease to minimise the negotiation process.

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