

---

# Tenant Guide

## 5 things to check before you sign

---

Docet Legal | [theleasinglawyer.com.au](http://theleasinglawyer.com.au)  
info@docetlegal.com.au | +61 2 7262 6662

*This guide contains general information only. It does not constitute legal advice. Always seek advice specific to your matter before acting.*

### What this guide covers

A commercial lease is one of the largest financial commitments your business will make. The five areas below are where tenants most commonly get caught out — not because the terms were hidden, but because they were not explained. Read each one before you sign anything. Better still, get advice before you sign anything.

#### 1

#### The make-good clause

##### What it says

Make-good clauses typically require you to return the premises to their original condition at the end of the lease. In practice, this can mean removing all fitout — even fitout you spent \$200,000 on — and restoring the premises to bare concrete and plasterboard.

##### What to check

Read the clause carefully. Does it require removal of fitout or just repair of damage? What is the standard — "original condition" or "good repair and condition"? What is the landlord's position on fair wear and tear? Can you negotiate a cash settlement instead of physical works? The time to negotiate make-good is before you sign — not the day before you hand back the keys.

#### **What it can cost**

Make-good disputes are among the most expensive lease disputes. Costs can run from \$20,000 to well over \$200,000 depending on the premises, the fitout and the lease terms. Understanding your obligations before you commit is not optional.

---

## **2**

### **The outgoings liability**

#### **What it says**

Most commercial leases require the tenant to pay outgoings — rates, land tax, insurance, management fees, maintenance costs and more. The amount is not always fixed. In a gross lease you pay a single amount; in a net lease, outgoings are on top of the base rent.

#### **What to check**

Ask for an outgoings estimate before you sign. Compare it to the actual outgoings in the previous year. Check whether land tax is included — land tax is prohibited in retail leases in most states but is frequently included in commercial lease outgoings. Check whether the clause includes a cap or estimate obligation, and what auditing rights you have if you think the figures are wrong.

#### **What to watch for**

Outgoings that increase significantly year on year, management fee percentages that are not capped, and capital expenditure items being passed through as outgoings. These are common and often disputed.

---

## **3**

### **The personal guarantee**

#### **What it says**

If you are signing the lease through a company, the landlord will almost certainly require a personal guarantee from the directors. That means if the company cannot pay, you pay — personally.

#### **What to check**

Read the guarantee carefully. What obligations does it cover — just the rent, or everything including make-good and outgoings? Is it capped? Does it have a sunset clause? What are the triggering events? Can you negotiate a bank guarantee or security deposit instead?

#### **What to negotiate**

Guarantees are negotiable. A cap on the guaranteed amount, a time limit, or a release upon satisfactory performance of the lease for a defined period are all outcomes that have been achieved. The strength of your negotiating position depends on market conditions and the landlord — but you cannot get what you do not ask for.

---

## 4

### The rent review mechanism

#### What it says

Your rent will almost certainly be reviewed during the lease term. The method of review — market, CPI, fixed percentage, or a combination — determines how much your rent can increase and when.

#### What to check

Is there a ratchet clause? A ratchet clause means that even on a market review, your rent can never go below the current rent — even if the market has fallen. Ratchet clauses are prohibited in retail leases in some states (VIC, for example) but are standard in commercial leases. Check the review frequency, the methodology, and whether there is any cap on CPI increases.

#### What to negotiate

A cap on CPI reviews, removal of ratchet clauses, and greater certainty around the market review process are all negotiable. At the very least, understand exactly what you are agreeing to before you commit to a five-year term.

---

## 5

### The option and exit provisions

#### What it says

Your lease may include an option to renew — a right to extend for a further term at a rent to be determined. It will also include provisions about how the lease ends, holdover, and what happens if you want to leave early.

#### What to check

How much notice is required to exercise the option? If you miss the date, the option is usually gone. What are the conditions — can you exercise the option if you are in breach at the date of exercise? What is the rent review mechanism for the option term? On exit, what notice must you give, and what are the consequences of leaving early?

#### What to negotiate

Longer option notice windows, the ability to exercise the option despite minor breaches, a defined process for the rent review on renewal, and an early termination right (demolition clause or break clause) if your circumstances change.

---

**Ready to talk about your lease?**

[info@docetlegal.com.au](mailto:info@docetlegal.com.au) +61 2 7262 6662 [theleasinglawyer.com.au](http://theleasinglawyer.com.au)

---

*This guide is general information only and does not constitute legal advice. Legislation and case law change — always seek current legal advice specific to your matter and jurisdiction before acting or relying on anything in this guide. Docet Legal | [theleasinglawyer.com.au](http://theleasinglawyer.com.au)*