

There are slight differences in the operation of retail leases in Victoria, when compared to New South Wales.

This article will outline retail leases in Victoria and the mechanisms available if a tenancy dispute was to arise.



ENTERING INTO A VICTORIAN COMMERCIAL LEASE

In a retail lease, upon entering into negotiations with a prospective tenant, a landlord must provide a written copy of the proposed lease and a copy of the Victorian Small Business Commission Information Brochure, which can be found on the Victorian Small Business Commission website.¹ Failure to do this can result in fines of over \$8,000.00.²

When the lease is finalised, it must be in writing and signed by all parties. At least seven days prior to entering into the lease, the landlord must give the tenant a disclosure statement.³ The information within this statement must not be misleading or materially incomplete.

ESSENTIAL PROVISIONS

A retail premises lease must be for a minimum of five years; however, a tenant may apply to the Victorian Small Business Commission for a shorter lease, and after the lease is signed, the landlord must notify the Small Business Commissioner in writing.

If a lease contains an option for the tenant to renew for a further term, it must state:

- The date until which they can exercise the option;
- How the option must be exercised
- The terms and conditions that apply to exercising the option; and
- How to determine the amount of rent payable during the renewed period.

Where a lease gives a tenant the option to renew for a further term, a tenant must be allowed to do so unless:

- The landlord informed them in writing that there is a default under the lease and the tenant has not yet remedied it; or
- The tenant has repeatedly defaulted under the lease throughout its term, with the landlord providing written notices of the defaults.⁴

A landlord must notify the tenant of the date which the option expires at least six months prior to that date. If they fail to do so, the option is taken to expire six months after the notification to the tenant, regardless if the lease ends prior to this.⁵

¹ *Retail Leases Act 2003 (Vic)* s 15.

³ *Retail Leases Act 2003 (VIC)* s17(1).

⁶ *Ibid* s 54.

² Victorian Small Business Commission, *VSBC Information Brochure—Important Facts for Tenants*

⁴ *Ibid* s 27.

⁷ *Ibid* s 60.

⁵ *Ibid* s 28.

⁸ *Ibid* s 88.



INTERFERENCE WITH TENANCY

Once a tenant begins to use the premises, the law generally allows tenants to conduct their business freely with minimal interference from the landlord. If a landlord inhibits a tenant's access to the property, or unreasonably causes significant disruption to the tenant's trading, they may be required to pay compensation to the tenant, as they have interfered with a tenancy. This is not applicable if the interference was a result of an emergency, or by acting according to other requirements of law, e.g. if there had been a fire in the building and it had not yet been deemed safe.⁶

Tenants are able to assign their lease to a new party, which transfers their rights and obligations under the lease agreement to the new party. The landlord may withhold consent to the tenant assigning the lease where:

- The party to whom the tenant wishes to assign the lease wants to use the premises in a way that is prohibited under the original lease;
- The landlord believes the new party lacks the financial resources to meet their obligations under the lease; or
- The current tenant has failed to comply with certain provisions within the lease.⁷

DISPUTE RESOLUTION

Both landlords and tenants can refer a dispute to the Small Business Commission for mediation. Legal representation can be sought by both parties; however, a mediator may request to speak to a party without their legal representative present. The mediator determines the cost of the mediation, with parties choosing whether to divide the cost proportionally or equally.

The dispute cannot progress to a Tribunal until the Small Business Commission certifies that the

mediation has failed or is unlikely to succeed. Any statement or admission made in the course of the mediation are not admissible in Tribunal proceedings, to ensure the parties can negotiate honestly and openly in the hopes of preventing the matter from escalating to a more costly proceeding.⁸

While mediation allows parties to tailor an agreement to their individual needs, a Tribunal is limited in the remedies it can prescribe. A tribunal can make orders to the following effect:

- Requiring a party to provide specific services or facilities;
- Returning specific fixtures to another party;
- Requiring a party to pay restitution or compensation;
- Rectifying the lease or another document; or
- Allowing the landlord to recover possession of the premises.

Generally, each party to a Tribunal proceeding bears its own costs. However, a tribunal may order one party to pay the other's costs if they determine that:

- The party acted vexatiously, unnecessarily disadvantaging the other party; or
- The party refused to take part in or withdrew from mediation.

In all proceedings, the parties are expected to participate in good-faith.

Comasters Law Firm can advise and assist clients with issues relating to their retail leases and commercial leases or assist them with preparing for dispute resolution.

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