

STEEL

You have Questions
We have Answers

RETAIL LEASES

What are “Retail Premises”?

In general terms the premises is deemed to be a retail premises (and therefore governed by the *Retail Leases Act 2003*) if under the terms of the Lease the premises is used or is to be used, wholly or predominately for the sale or hire of goods by retail, or the retail provision of services. However exceptions do apply.

What are NOT “Retail Premises”?

Generally a premises with occupancy costs of \$1,000,000.00 or more per annum, premises where the conduct of wholesale sales take place, premises that are predominately used for carrying on a business by the Tenant on behalf of the Landlord as the Landlord's employee or agent, premises where the Tenant is, or is a subsidiary of, a listed corporation and premises where the whole term of the Lease including options is less than 1 year, are not considered to be a retail premises.

What information needs to be disclosed by the Landlord before the Lease is entered into?

A Landlord is required to provide the Tenant with a Disclosure Statement within the time frames stipulated by the *Retail Leases Act 2003*.

The Statement needs to include information about the Lease such as:-

- The occupancy costs under the lease (including rent and any outgoings)
- The term of the lease and whether there are any options for further terms
- Landlord/tenant's installations
- Any representations the Landlord has made to the tenant
- The manner and frequency of rent reviews
- Specific details of the premises to be leased

If any information provided in the disclosure statement is false, misleading or materially incomplete, the Tenant has remedies including termination of the Lease under the Act.

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If there is an option to renew the lease, what notices are required of the landlord?

If the Lease contains an option exercisable by the Tenant to renew the Lease for a further term, the Landlord must notify the Tenant in writing, at least 6 months prior and no more than 12 months prior, of the date after which the option is no longer exercisable. The Landlord is not required to notify the Tenant if the Tenant exercises the option before being notified of the date.

Who is responsible for payments of outgoings such as council rates, water rates, electricity, insurance etc?

In most cases the Tenant is responsible for its own usage charges, such as telephone, electricity, gas and water. The Landlord has the right to charge the tenant for most outgoings including

- Council and water rates and service fees
- Administration, Management and Audit Fees
- insurance including building, plate glass and public liability
- Security
- Cleaning
- Repairs
- Waste Management

This is not an exhaustive list. The Disclosure Statement will list the annual charges for all outgoings that the Landlord intends to pass onto on the Tenant.

Who is responsible for Repairs and Maintenance of the Premises?

Responsibility for maintaining the premises will generally be set out in the Lease. It is usually the tenant's responsibility for keeping the premises clean and in good repair over the term of the Lease subject to "fair wear and tear". The Landlord is usually responsible for maintaining (to the same condition as when the Lease was entered into) the structure of the premises as well as the Landlord's fixtures, Plant and Equipment and Appliances, fixtures and fittings relating to services to the property such as gas, electricity, water and drainage. The Landlord is generally not required to maintain these items if the necessity for repair is due to the Tenant's misuse of that item, or if under the Lease the Tenant is required or entitled to remove the item at the end of the Lease.

How much security deposit needs to be paid and who is entitled to hold it?

A security deposit is usually sought by the Landlord as some form of protection against a tenant's non-performance under the Lease. A Landlord does not have to ask for a security deposit although it is common for Landlords to require the payment of a security deposit before the Tenant is given access to the premises.

The amount of the security deposit is not regulated and is generally negotiated by the Landlord and Tenant. It is generally the amount equivalent to one or two months' rental.

The Landlord must hold the security deposit in an interest bearing account on behalf of the Tenant. The Landlord must account to the Tenant for interest earned on the deposit, but the Landlord is entitled to keep the interest and deal with it as money paid by the Tenant to the Landlord to form part of the Security deposit.

Is the Tenant able to Assign the Lease?

Generally yes. However the Landlord's consent to the assignment must firstly be obtained. The procedure to obtaining the Landlord's consent will be set out in the Lease. The Landlord is only entitled to withhold consent to the assignment under certain circumstances which will also be set out in the Lease.

Is there a minimum term that the Landlord needs to offer?

The Landlord is required to offer a first time Tenant a rental term of no less than 5 years including any further term/s provided for by way of option for the Tenant to renew the Lease. However, if both the Landlord and the Tenant agree to a shorter term, a request can be made of the Small Business Commissioner for a shorter term to be granted.

We can Help!

Whether you are a Landlord or a Tenant, please contact one of the friendly Chinka (HEP) Steel Team members in order to discuss your individual Lease requirements.