



ISSUES RELATING TO COMMERCIAL LEASING

CANADA - ALBERTA Blake, Cassels & Graydon LLP

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1. Describe [National][state][territorial][provincial] or local transfer taxes payable on creation or assignment of a lease.

No transfer taxes are payable on the creation or assignment of a lease, however, registration fees are charged if a lease or notice of a lease is registered at the Land Titles Office.

Leases may be registered at the Land Titles Office, and a certificate of leasehold title may be issued, if the leased premises constitute the entire parcel of land owned by the landlord. In such event, a registration fee of 0.02% is calculated and charged upon 5% of the fair market value of the land (including buildings and any leasehold improvements intended to be made) multiplied by the number of years remaining in the term. The same fee is calculated and charged for the registration of a transfer of the leasehold title.

Nominal registration fees are charged for the registration or transfer of leases which are registered by way of notice (caveat) only.

2. Describe any legal restrictions limiting the maximum term of a lease (including renewals).

If the lease is for an entire parcel of land, there is no restriction on the length of the term provided it is not perpetual (i.e. indefinite). Where the lease is for a portion of a parcel of land, there is no prescribed maximum term but the lease is not registerable if it has the

effecting of subdividing the parcel without approval of the subdivision authority. An example of such a subdivision is where rent for the entire term is paid in advance and/or the landlord's reversionary rights are limited, such that it is the true intention of the parties to effect a sale of the premises rather than a lease.

3. Describe any laws requiring landlords to allow a tenant to renew its lease.

There are no such laws. If the lease does not grant the tenant a right of renewal, the tenant has no legal right to remain in the premises at the expiry or earlier termination of the term.

4. Describe any restrictions on rent that may be charged for to a tenant.

There are no restrictions. Rent is freely negotiable both initially and in respect of renewals.

5. Describe any laws permitting tenants to terminate a lease prior to its stated expiration date.

Under common law, a tenant is permitted to terminate its lease if the landlord has committed a fundamental breach. The threshold for establishing a fundamental breach is very high as the Courts have interpreted fundamental breach to mean a breach which essentially deprives the tenant of the entire benefit of its lease. Aside from the foregoing, the law does not afford a tenant any right to terminate its lease.

6. Describe any laws allowing tenants to assign or sublease without landlord's consent.

In the absence of any restriction contained in the lease, a tenant may assign or sublet without restriction. However, most leases require the landlord's prior written consent to be obtained (and, in most cases, the landlord is required to act reasonably in considering the tenant's request).

Where the lease requires the landlord to act reasonably, a tenant may seek redress from the Courts if the tenant is of the view that the landlord has unreasonably refused to grant consent. If the tenant is successful, the Court has the authority to order the landlord to permit the assignment or sublet, as the case may be.

7. Describe any laws allowing landlord to restrict assignments or subleases by tenants.

It is possible to have an absolute prohibition on assignment or subletting. However, as noted above, most leases oblige the landlord to act reasonably in considering the tenant's request.

8. What is the common form of eviction proceeding? What is the customary length of time for that proceeding?

Court involvement or supervision is not required to effect termination of a lease, however, as the tenant has the right to apply to a court for relief from forfeiture, a court order confirming the termination may be applied for by the landlord. Typically, the landlord provides a notice of default requiring the tenant to remedy a breach within a stipulated cure period (see discussion below on cure periods). Once the cure period has expired, the landlord may terminate the lease.

9. Are there any legal restrictions on pledging a leasehold interest as security for a financing?

No. However, leases typically stipulate that the pledging of a leasehold interest will constitute a default under the lease unless the landlord's prior written consent is obtained. Some leases require landlords to act reasonably in granting their consent, others permit the landlord to arbitrarily withhold consent.

10. Describe any requirements for landlords to hold security deposits in separate accounts and, if such requirements exist, describe if there can be one separate account for all tenant security deposits or whether each security deposit must be held in its own separate security deposit.

There are no legislated restrictions regarding the handling of security deposits.

11. Describe any required statutory or other legal disclosures to be made to all tenants.

There are no such legal disclosure obligations.

12. Describe all taxes on rent or other taxes that landlord are required to collect from tenants.

Landlords are required to collect and remit to the Government of Canada Goods and Services Tax (GST). GST is levied in an amount equal to 5% of the rent payable by the tenant to the landlord. GST applies to all rent payable by the tenant (i.e. both on net rent and any additional rent such as recovery of operating costs and property taxes).

13. Describe any limitations on the ability of landlords to exercise self-help.

A landlord may terminate the lease and retake possession of the leased premises without court order, however, the exercise of a power of distress (seizure of tenant's goods for unpaid rent), if available to the landlord, may only be made by a bailiff or civil enforcement agency appointed pursuant to the Civil Enforcement Act (Alberta).

14. Describe whether remedies such as acceleration of rent must be expressly stated or whether they are implied.

The remedies of termination and distress are implied. However, rent cannot be accelerated unless the lease expressly provides for it. Further, the lease must expressly grant the landlord the right to enter the premises to cure a default on behalf of the tenant.

15. Describe whether there are any expedited remedies for tenant default and, if so, what lease provisions (such as waiver of jury trial, for example) would be required for a landlord to seek expedited remedies.

There are no such expedited remedies available.

16. Describe any formal requirements for the execution of a lease.

There are no formal requirements.

17. Describe whether a memorandum of lease or other document would need to be recorded for the lease to be enforceable against third parties.

Leases for a period not exceeding 3 years do not require registration where the tenant is in actual occupation. For leases exceeding 3 years, the tenant should register the lease or notice of the lease in order to ensure priority of the lease as against third parties with an interest in the property.