



ISSUES RELATING TO COMMERCIAL LEASING

CANADA - ONTARIO 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.

In Ontario, leases with terms of 50 years or more are subject to payment of land transfer tax. The land transfer tax amounts to approximately 1.5% of the fair market value of the premises to which the lease extends. For properties in the City of Toronto, the City levies an additional land transfer tax of approximately 1.5% of the fair market value (for a total tax of 3%).

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

A lease for a term of 21 years or more (inclusive of options to renew) is considered void if the lease only applies to a portion of the landlord's land parcel (in other words, the lease is void if the landlord owns adjoining lands which are not subject to the lease). However, exceptions to the foregoing include a lease: (i) of part of a building; (ii) of a whole of a lot or block on a plan of subdivision; and (iii) for which consent has been obtained by the local municipal authority.

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?

Termination is a self-help remedy in Ontario. In other words, Court involvement or supervision is not required. 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 re-enter and 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.

Landlords must advise tenants if the premises contain asbestos or asbestos containing materials. Aside from the foregoing, there are no 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.

Under statute, 15 days must elapse before the landlord can terminate a lease for non-payment of rent. However, this period is usually reduced or eliminated altogether in leases. For non-rent defaults, the landlord must first provide the tenant with written notice of the default and a reasonable period within which to cure it. This statutory requirement cannot be altered under contract.

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.

Although there are no formal requirements, the Statute of Frauds requires the lease to be in writing to be enforceable.

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

For properties registered under the Land Titles system (which represents most properties in Ontario), leases for a period not exceeding 3 years do not require registration where the tenant is in actual occupation. For properties registered under the Registry System, the period

is increased to 7 years. Save for the foregoing exception, in the absence of the registration of the lease or a notice thereof, a third party without notice may be entitled to an interest in the property without the property being subject to the lease.

