



ISSUES RELATING TO COMMERCIAL LEASING

CANADA - QUEBEC 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 Quebec, leases with terms of 40 years (including renewals) or more are subject to payment of transfer duties upon registration of the lease at the Quebec Land Registry. The graduated land transfer tax amounts to approximately 1.5% of the fair market value of the premises to which the lease extends.

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

In Quebec, the term of a lease may not exceed 100 years; if it exceeds 100 years, it is reduced to that term. (article 1880 of the *Civil Code of Quebec*).

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

A lease is renewed tacitly where the tenant continues to occupy the premises for more than 10 days after the expiry of the lease without opposition from the landlord. In that case, the lease is renewed for 1 year or for the term of the initial lease, if that was less than 1 year, on the same conditions. The renewed lease is also subject to renewal. (article 1879 of the *Civil Code of Quebec*) However, this rule is not of public order and as such most leases usually provide that there is no tacit renewal.

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.

In Quebec, the non-performance of an obligation by either the tenant or the landlord entitles the other party to apply for the resiliation (i.e. termination) of the lease where the non-performance causes serious injury to said party or to the other occupants of the building. The non-performance by the landlord of its obligations also entitles the tenant to apply for a reduction of rent. (article 1863 of the Civil Code of Quebec)

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

A tenant may sublease all or part of the leased property or assign his lease. In either case, the tenant must give notice of its intention and the name and address of the intended sublessee or assignee to the landlord and obtain landlord's consent. (article 1870 of the Civil Code of Quebec)

Notwithstanding the foregoing, the landlord may not refuse to consent to the sublease or the assignment without a serious reason. If the landlord refuses, the landlord is bound to inform the tenant of the landlord's reasons for refusing within 15 days after receiving the notice; otherwise, the landlord is deemed to have consented to the sublease or assignment. (article 1871 of the Civil Code of Quebec).

However, these rules are not of public order and as such the landlord can request that the lease stipulates that its consent, acting reasonably, is required and/or can list circumstances/events pursuant to which landlord can refuse to grant its consent. Most commercial leases contain clauses to this effect.

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 for assignment or subletting. However, as noted above, most commercial leases oblige the landlord to act reasonably in considering tenant's request.

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

Unless there is a clear clause in the lease to the effect that the lease can be terminated by the landlord without any judicial proceedings (usually upon the occurrence and continuance of an event of default

and subject to a reasonable cure period, as agreed between the parties), the landlord must petition the Court to obtain the termination of the lease.

When the lease contains a clear clause, the Quebec Courts have held that the landlord is entitled to terminate the lease without any judicial proceeding. There is still, however, uncertainty under Quebec law as to whether the landlord can, upon unilaterally terminating the lease, re-enter the premises without judicial proceeding, even with a clear clause in the lease to that effect.

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

No. However, in Quebec the tenant does not have a real right in the lease but only a personal right to occupy the premises. There is no concept of leasehold interest per se.

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 the Goods and Services Tax (GST). GST is levied in an amount equal to 5% of the rent payable by the tenant to the landlord. Landlords are also required to collect and remit to the Government of Quebec the Quebec Sales Tax (QST). QST is levied in an amount equal to 7.5% of the rent payable by the tenant to the landlord (including the GST).

QST and 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.

The landlord may not unilaterally terminate the lease if (i) there is no clear clause to that effect in the lease, (ii) the landlord has already commenced judicial proceedings or (iii) the landlord has not provided reasonable time for the tenant to remedy its default (i.e. the landlord has abused its rights).

Also, see above “What is the common form of eviction proceeding? What is the customary length of time for that proceeding?”

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

In Quebec, rent cannot be accelerated unless the lease expressly provides for it. There is no equivalent to the right of distress in Québec.

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.

In Quebec, any lease may be registered at the Land Registry by either (i) publishing the lease at length, (ii) by way of summary (in which case the actual lease still needs to be attached for consultation purposes), or (iii) by way of a notice.

The effect of registration is that an acquirer or the person who benefits from the extinction of title may not resiliate (i.e. terminate) the lease if the lease was registered at the Land Registry before the deed of alienation or the act by which the title is extinguished (i.e. deed of sale or foreclosure). (second paragraph of article 1887 of the Civil Code of Quebec)