



ISSUES RELATING TO COMMERCIAL LEASING

NEW ZEALAND Simpson Grierson

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

There are none as New Zealand does not levy stamp duties on leases (or any other instruments).

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

A lease must be of an entire certificate of title (called a unique identifier) or if it is over a part title then it must either be:

- (a) for less than 35 years (in total); or
- (b) authorized pursuant to a resource consent (subdivision consent) granted by a territorial authority.

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

If a lease grants a tenant a right of renewal then a tenant can seek a Court to force the landlord to accept that renewal. This applies even where the tenant is in breach or has not met agreed pre-conditions however it is a situation where the Court has a wide discretion as to the orders it will make which will likely be fact specific (Property Law Act 2007, sections 261-264).

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

There are no such restrictions.

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

There are no such laws.

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

Where a tenant assigns without consent (where consent is required) that action does create a valid assignment but that is subject to the landlord's rights to terminate the lease for breach – the effect being that unless and until the landlord exercises that right the assignee in occupation is the tenant and must abide by the terms of the lease.

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 if there is a right to assign or sublet (with landlord consent) then that consent must not be unreasonably withheld or delayed (and reasons why the landlord rejected the request must be given in writing if requested). Landlords are liable for damages if they unreasonably reject such a request.

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

First a notice in a prescribed form (requiring the tenant to remedy a breach within a prescribed notice period) must be given. Once that notice has expired unsatisfied then the landlord may peacefully re-enter and cancel the lease. Additionally, in the case of a residential tenancy, the landlord must first gain the consent of the Residential Tenancies Tribunal prior to re-entry.

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

No. However most leases would provide for that to be a contractual breach (or at the least require prior consent from the landlord).

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 legislated minimum disclosure requirements.

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

The only tax that landlords are required to collect is Goods and Services Tax (GST) which is levied on all goods and services sold or provided in New Zealand (other than financial products) at the rate of 12.5%.

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

Landlord's are not allowed to take tenant's goods (distrain has been made illegal since 1 January 2008).

There are statutory notice periods that must be complied with before landlords can re-enter and cancel a lease.

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

Acceleration of rent is not common in New Zealand. If it is to be used then it would be necessary to expressly provide for it.

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 in New Zealand.

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

All leases for a term of 12 months or more (including rights of renewal) must be executed as deeds. This requires individual's signatures to be witnessed and for corporations usually 2 directors must sign. There are other means of compliance depending on the constitution of the corporation.

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

Most commercial leases are not registered in New Zealand. That means that an innocent third party without notice **may** be entitled (in certain limited circumstances) to an interest in land without that land being subject to that lease. If a memorandum of lease is entered into and registered against the title to the land then that prevails over all other unregistered interests.

18. Describe any restrictions on the transfer of ownership of real properties subject to a lease. Does such a transfer affect the tenant's rights or obligations?

There are no such restrictions. A transfer is subject to the terms of any lease (and the failure to disclose the existence of an unregistered lease to a bona fide purchaser for value would be an actionable fraud).