

Commercial Tenant Resource Guides

No. 2: Commercial Lease Negotiation

- Overview of Commercial Leases
- Common Clauses and Terms Explained

2022

2. Commercial Lease Negotiation: Tips and best practices

What is a Commercial Lease?

A commercial lease is a (rental) contract between you and the landlord that guides the interactions and obligations between you and your landlord. It defines the terms and conditions of your tenancy. Most tenant protections are written into clauses in the lease agreement.

When renewing a lease or starting a new lease, it is very important to understand what is in the lease and how to carefully negotiate the best terms for yourself.

Almost everything in that contract can be negotiated but this depends on many variables such as type of business, financial covenant, experience of the operator, market conditions and the vision of what the landlord is trying to achieve with their building.

Most landlords use their own standard form of lease, which they present to the tenant for signature. Often, landlords are hesitant to modify their standard form of lease. There is no binding standard form or legal provincial requirement for commercial leases, so your lease may substantially differ from other leases. We highly recommend that you get professional help to negotiate the best possible lease for you.

Resource Guides Overview

- Guide 1 Commercial Tenancy Basics
- Guide 2 Commercial Lease Negotiation**
- Guide 3 Relocation and Finding a Space
- Guide 4 Redevelopment Timeline and Process
- Guide 5 Navigating City Permit and Licence Processes
- Guide 6 Support, Resources and Glossary

Cover image: [Joe Mabel, creative commons](#)

A commercial lease lays out the terms of the agreement, such as:

- the start and end date of the lease
- the payment and termination details
- other conditions for using the space, and
- the mutual obligations of the landlord and tenant.

What is an Offer to Lease?

- Before signing a lease, it is general practice to use an Offer to Lease as the starting point for negotiation and documenting the agreement between the landlord and the tenant. Before committing to a lease, the Offer to Lease usually has subject conditions which provide the tenant with an opportunity to do their due diligence and negotiate the substantive business terms and conditions of the lease.
- It is a document that includes the substantive business terms between the landlord and the tenant such as commencement date, base rent, additional rent, options to renew, parking, and tenant improvements.
- Examples of tenant due diligence include: confirming that the tenant will receive City of Vancouver approval to occupy the premises; review and approval of landlord's lease, reviewing and approving the design, cost and timing of leasehold improvements, inspecting the property, and arranging financing.
- Once the Offer to Lease is executed by both parties, it is replaced by the lease.



We highly recommend that you seek professional advice for anything concerning your tenancy and relocation. For more information on how to get support, please see [Guide 6: Support, Resources and Glossary](#).

Please note: *This guide is intended to be a helpful service for business operators. It is not to be relied on for legal or other professional advice.*

City staff recommend that you seek appropriate advice as the need arises.

Negotiating your Commercial Lease: Renewal, Termination and Notification Period

You can negotiate your commercial lease with your landlord. Do not assume your landlord's form of lease cannot be changed by negotiation. However, it is highly recommended you seek professional advice to do so.

For example, the lease presented by the landlord may or may not include:

- Options for renewal of the lease after the term ends
- A minimum notice period for termination



1. Renewal: If you have an existing lease, do not assume your lease will automatically renew – we recommend regular check-ins with your landlord throughout your tenancy, especially if your current lease has no provision for renewal or notice of termination. If you do have a renewal clause in your existing lease, ensure that if you intend to renew, you do so prior to the date for providing notice within the renewal clause of the lease. Failure to do so can render a renewal term invalid.



2. Termination of Lease/ Notice Period: A lease can usually be terminated before the end of the term under the conditions stated in the lease. To avoid a surprise termination, we generally recommend that you seek to ensure there is a termination notice-period stated in the lease. A termination notice can refer to the whole contract, and/or can set different notice requirements for different events (see also below). For example, many leases have 'demolition clauses' that allow the landlord to evict the tenant for redevelopment. If there is no wording requiring a minimum notice period, the landlord could effectively give you immediate notice to vacate the property.



3. Notice period: provides a minimum period of time the landlord must notify you before they terminate the lease for reasons stated in the lease (e.g. redevelopment). The purpose of a minimum notice period is to give you enough time to relocate. All notice periods should be written in the contract and are negotiable. City research into industry best practices revealed that usually three to four months are considered a standard time period for wrapping up operations and finding a new location. For some operations like restaurants, more time may be required to install equipment such as kitchens.

One of the best ways to provide certainty and protection from short-notice lease termination is to try to negotiate longer notice periods in your lease.



We highly recommend that you seek professional advice for anything concerning your tenancy and relocation. For more information on how to get support, please see [Guide 6: Support, Resources and Glossary](#).

Please note: This guide is intended to be a helpful service for business operators. It is not to be relied on for legal or other professional advice.

City staff recommend that you seek appropriate advice as the need arises.

Some Common Reasons for Early Termination include:



- **Redevelopment / Demolition / Sale:** allows the landlord to end your lease if they decide to develop, demolish, renovate or sell the building where you are located. Such a provision may be non-negotiable, especially if the landlord is already contemplating future redevelopment. Try to ensure you agree to a notice period provision if this clause is included. Be aware of your landlord's plans for the building. While a demolition clause may allow for more affordable rent, it may also result in a shorter lease or no options for renewal. If the building is demolished and redeveloped, you will have to relocate. Even if you plan to relocate in the new building, you will still need to find a temporary space until the new building is ready for occupancy.



- **Non-payment of rent:** If you fail to pay rent, your landlord may be entitled to “re-enter” the premises, which usually includes changing the locks and preventing you from using the premises any longer. The specific language to guide this action will be written into the lease. However, once a landlord takes this action, the lease has ended and the tenant is locked out. In some cases, a landlord may also be able to re-enter the premises, without notice, to seize and sell your property for unpaid rent.



- **“Material breach” of lease:** A commercial lease will contain obligations for which you are responsible. If you do not perform such obligations, or conversely, do something that is strictly prohibited in the lease, your landlord may be able to terminate the tenancy and take over the premises. However, in order to do so, your landlord must be in compliance with the law, such as the Commercial Tenancy Act. Since it is not always clear whether a lease has been breached, in some cases the landlord may apply to a court of law to have a judge decide if you breached the lease, and if so, to have the lease terminated. If a landlord applies to court, you have the right to defend the lawsuit. You may wish to seek legal assistance to present your case. Common examples of material breach of lease include non-payment of rent, subletting without landlord approval, change of use without landlord approval, and tenant improvements (renovations) without landlord approval.

Other Common Clauses and Considerations in Commercial Leases

You can negotiate your commercial lease with your landlord. Do not assume the landlord's form of lease cannot be changed by negotiation. Here are some common clauses:



- **Description of the Premises:** an accurate description of the premises should be included in the lease, and referenced as a site plan in a schedule attached to the lease. The measurements used to define “Rentable Area” referenced in the lease will probably determine the square footage of the leased premises as well as determine the tenant's pro rata share of additional rent paid. It is important that it is accurate to avoid any future disputes. This can sometimes be difficult to confirm if the premises are under construction or renovation. It is important to understand that the methodology used to measure retail space, office space and industrial space is different and the tenant should seek professional advice. BOMA maintains [a suite of floor measurement standards](#) for a variety of property types.



- **Assignment and Subletting:** ensures that the tenant has the right to sell or assign the lease of their business to another party or sublet all or a portion of the premises. Some landlords may seek the right to cancel the lease when the tenant requests consent for an assignment or sublease, or there may be other conditions which are not in the tenant's favour.



- **Use Clause:** to ensure the lease it is not overly restrictive for the tenant's business operation. It should also facilitate future assignment or subletting. Ideally, this clause should be phrased so as to not be overly restrictive and allow the tenant to cover and adapt to future changes in their business.



- **First right of refusal:** provides an option to return to your old address in case your building is redeveloped. This means you will have the first chance at pre-leasing in the future new building. You can decide whether to exercise the option later.



- **Duration of lease:** longer multi-year leases provide more certainty than shorter month-to-month leases. However, the rates may be higher for a longer-term lease and may be adjusted upward throughout the term.



- **Options to renew:** Terms for renewal at the end of the lease. Attention should be given to renewal notice, automatic renewal and rate increases.

Please note that while a new building is constructed you will need to find a temporary space or identify some other temporary solution - make sure your business plan accounts for that.



- **Favorable termination provisions:** For provisions that allow the landlord to terminate the lease, consider including tenant incentives such as rent forgiveness, free rent, or cash. You could also consider incentives for mutually agreed early termination.



- **Situations beyond your control:** includes provisions for rent forgiveness during events out of your control such as restrictive health orders (e.g. during a pandemic) or natural disasters (such as earthquake).

To see what a lease can look like and what is typically included, you can view the BC Law Society's [practice check-list for drafting commercial leases](#).

The checklist is intended for lawyers and does not replace the need for professional assistance.



Rent payable by the tenant as set out within a typical lease is broken down into the following categories:

Base Rent (or minimum rent): fixed basic annual rent payable by the tenant.

Additional Rent: All costs and expenses the tenant has to pay in addition to base rent except for GST. Additional rent includes operating costs such as utilities, insurance, and maintenance and repair costs (sometimes referred to as Common Area Maintenance charges) as well as property taxes. Additional rent costs change over the duration of the lease, unlike the base rent.

Triple-net leases: Tenants pay the fixed base rent plus a proportion of additional rent based on the rented square footage. This type of lease is the industry standard because it shifts the risk of increased costs to the tenant. In other words, while the standard lease rate (base rent) stays the same during the term of the lease, the charge for other costs may increase over time. You should carefully review the lease agreement to see what costs are included in the additional rent. Some lease agreements make the tenant responsible for capital costs such as roof replacement, structural repairs or mechanical replacements such as heating and air conditioning equipment; this “fully net” lease is more common when leasing industrial space.

Gross Rent (not commonly used): By contrast, a ‘gross’ lease does not vary over the term of the lease because all anticipated costs are built into the total rent payment. A gross lease protects the tenant from unexpected cost increases, such as property taxes. Because a gross lease involves more risk for the landlord (if costs increase faster than anticipated) the asking rate may be higher than for a triple-net lease. Rates for both gross leases and triple-net leases are generally renegotiated at the time of renewal.

Percentage Rent (sometimes used in shopping centre leases): Used for shopping centres and provides that the tenant may be charged on a percentage of sales basis in addition to a fixed minimum rent, with the lease sometimes stipulating that the tenant will pay the greater of minimum rent or percentage rent. This percentage will vary by business category and becomes payable when the tenant’s gross revenue exceeds a pre-agreed amount during each rental year.



Please note: *The above list is not comprehensive and there might be other important considerations for your particular type of business or operation. It is highly recommended to get professional advice and/or legal counsel on your individual situation!*