

Introduction

A Lease Agreement (the "Lease") sets out the rules to govern the relationship between the Landlord and the Tenant. It is a legal contract, as well as an immensely practical document full of crucial business details and deep legal implications. As a landlord, it is important to have a Lease that includes essential clauses that protect your rights and interests.

Failure to include these clauses may result in loss of income, liability for damages or lengthy and costly legal disputes in Court. This legal alert highlights some of the essential clauses of a lease protecting the landlord and provides a rationale for each clause.

Essential Clauses of a Lease Agreement

i. Permitted User Clause

A permitted user clause is an important provision in leases that specify the type of business activity or use that is allowed on the leased premises. This clause restricts the tenant from using the property for purposes that are not permitted in the lease. The rationale for the inclusion of the permitted user clause is;

- a. **Zoning and planning regulations:** Commercial properties are usually zoned for specific uses, e.g., retail, office, industrial, etc. The clause ensures that the tenant's use of the property complies with zoning and planning regulations, thus helping to avoid potential legal issues with local authorities.
- b. **Protection of the Landlord's Investment:** the permitted user clause ensures that the tenant's use of the property does not damage the property or depreciate its value.
- c. **Compliance with insurance requirements:** a landlord's insurance policy may have restrictions on the type of business activity or use allowed on the property. The clause ensures that the tenant's use complies with the insurance requirements.
- d. **Compliance with Lender requirements:** a landlord may have obtained a loan with the rented premises as security. The lender may have requirements regarding the type of business activity of use allowed on the property. The clause ensures that the tenant's use of the property complies with the lender's requirements.

In summary, the clause is necessary to protect the landlord's investment, comply with planning regulations, insurance and lender requirements and avoid potential legal issues.

ii. Security Deposit Clause

The Security Deposit Clause acts as a form of insurance for the Landlord, protecting them from losses in case the tenant fails to fulfill their obligations. The security deposit clause must specify that the deposit shall not be used as rent for the months leading up to the lapse of term of lease. This clause must also specify how the deposit will be utilized before refunding after the lapse of lease.

The clause must specify the order of utilization of deposit as follows;

- a. To settle all outstanding bills with respect to water, electricity, telephone, insurance, etc.;
- b. Compensation for third- party damage to property for which the tenant is liable;
- c. To conduct repairs and maintenance of the rented premises;
- d. To settle all penalties and/or interests accrued from outstanding rent and service charge bills;
- e. To settle the outstanding service charge bills; and finally
- f. To offset any outstanding rent charges.

It is only once all the above deductions are made by the landlord that the tenant is entitled to a refund of the security deposit. By providing this exhaustive description in the security deposit clause, the Landlord is protected from any financial loss.

iii. Dispute Resolution Clause

A dispute resolution clause outlines the process to be followed in the event of a disagreement between the landlord and tenant. The clause provides alternative ways of resolving disputes aside from resorting to court processes, often characterized by exorbitant costs and prolonged timelines. By offering avenues for dispute resolution, e.g., negotiation, mediation or arbitration, the clause fosters the preservation of the landlord- tenant relationship by departing from the confrontational nature of litigation.

The underlying rationale for the dispute resolution clause is to provide lucidity and predictability. By articulating a well- defined process, it obviates confusion and misunderstandings that may arise during court process.

iv. Notice Clause

A proper notice clause is essential for protecting the landlord's rights. The provision should clearly specify the requisite procedures and protocols for delivering notices. The law requires the landlord to adhere to specific notice requirements before making any amendments to the terms of the lease.

It is imperative that this clause be included in the lease which recognizes notice by newspaper. This enables the landlord to serve statutory notices in a national newspaper without first obtaining leave of court. Such inclusion will save time and litigation costs that may otherwise be incurred if the landlord were to obtain permission from the court before service.

v. Severability Clause

The severability clause establishes that in the event a court invalidates a provision within the lease, the remaining terms of the lease remain enforceable. This provision ensures that the lease remains valid, notwithstanding any unenforceable provision. The landlord retains the benefit of the lease despite any attempt by the tenant to terminate the lease due to the invalidation of a single clause by a court. The severability clause permits cancellation of only unenforceable provisions while preserving the effectiveness of other enforceable clauses in the lease.

iii. Termination and Right of Re-Entry Clause

The Landlord and Tenant (Shops, Hotels & Catering Establishments) Act introduces the concept of a controlled tenant. A controlled tenancy is one that restrict the landlord's ability to increase rent or terminate the lease without prior clearance from the Business Premises Rent Tribunal. To avoid this, the Lease ought to satisfy the following requirements;

- a. The term of lease must be more than 5 years;
- b. The lease must not have a termination clause allowing the Tenant to terminate the lease before lapse of 5 years;

Commercial Leases typically do not have termination clauses. However, the re- entry clause allows the Landlord to terminate the lease by re- entering the rented premises before lapse of term in the following circumstances;

- a. Non- payment of rent and other rent service even after receiving demand;
- b. Non- performance or breach by the tenant of any covenants to the Lease;
- c. Liquidation, placement under receivership or administration or voluntary arrangements with creditors of the tenant.

Conclusion

It is important to note that these clauses are not exhaustive and may vary depending on the specific circumstances of each Lease. Our legal team is well-equipped to provide personalized professional advice and assistance in drafting, reviewing and registering Lease Agreements that secures your rights and interests as a Landlord.

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