

# LEASING

LEASING premises is often the biggest decision a small business has to make. Getting your lease right will help save you from later regrets. Following on from our autumn issue, this article concludes the list of issues to think about when leasing premises.

**Maintenance:** Require the landlord to maintain the building in good repair.

**Guarantees:** If your business is a company, the landlord is likely to require your personal guarantee to pay the rent. If the landlord has struggled to rent the premises, you might be able to negotiate a limit on your risk to a maximum dollar amount or a maximum time.

**Signs:** Your lease should give you plenty of scope for putting up signs. You want to be as visible as possible. Get an undertaking to prevent other tenants putting up signs which might obscure yours.

**Capitalising chattels:** You could finance your set-up costs by getting the landlord to pay. The landlord would recover the cost in increased rent.

**Burglary:** Look around the premises and see where burglars could get in. You might want burglar alarms and a monitoring system as part of your package. Could a new, low building be attached to the one you are renting, making for easy access by burglars?

**Appliances and climate control:** Test everything to make sure it works, particularly air conditioning. Give them a good test over several hours. Check for health and safety risks.

**Competing tenants:** If you are a retailer, you might want an exclusive tenancy to prevent a competitor opening in the same building.

**Default interest rate:** If you can't pay the rent, you'll make the situation worse if you have agreed to a high default interest rate. Negotiate this downwards, just in case.

**Demolition clause:** Sometimes landlords want the right to demolish and rebuild their premises when it suits them. They insert a "demolition clause". You could refuse the clause or require compensation. It is usually very expensive to move.

**Elevators:** If you are considering renting in a multi-storey building, check how long it takes to get from the ground floor to your office and vice versa, particularly at rush times.

**GST:** Does the rent include GST? Get a tax invoice. IRD requires everyone claiming GST to have a tax invoice to support the claim. One invoice can cover the whole lease period.

**Nuisance:** Look out for nuisances including noise, blocked access due to delivery trucks and bad odours within the vicinity.



**Partial or total destruction of building:** Avoid any obligation for rent of premises you could not use if the building is partly or fully destroyed. Should you insure for that likelihood?

**Partitions, carpets:** Internal fitments might not belong to the landlord. Do you have to buy these in addition to paying your rent?

**Suitability:** "No warranty or representation expressed or implied has been or is made by the landlord that the premises are now suitable or will remain suitable for adequate use by the tenant or that any use of the premises by the tenant will comply with the bylaws or ordinances or other requirements of any authority having jurisdiction." Is it safe to leave a clause such as this in your lease?

**The Building Act 1991:** Some leases make the tenant responsible for the costs of compliance with the Building Act. Is this acceptable to you?

**Costs of preparing the lease document:** Leases are often drawn up by the landlord's solicitors and the tenant pays. Could you ask for this cost to be shared?

**Lawyer:** Get your lawyer's advice before signing.