

Make good

A 'make good' clause in a commercial lease refers to the obligation imposed on the tenant, as to the condition the property is to be returned to the lessor at the end of the lease.

General obligations

For a commercial lease three years or less (short lease) the tenant must repair damage caused by them or a person on the property with their permission (s 106 of the *Property Law Act 1974* (the PLA)).

- This requirement under the PLA overrides any term written in the short lease.

For a commercial lease, of any length, under section 105 of the PLA the tenant must hand the premises back to the lessor at the end of the lease in:

- "Good and tenantable repair, having regard to their condition at the commencement of the lease, damage from fire, flood, lightning, storm and tempest, and reasonable wear and tear excepted".

However, the PLA allows the lessor and tenant to agree the premises can be handed back in a different condition. These are generally referred to as the make good conditions in the lease.

Redecoration vs make good

While make good and redecoration clauses are separate, they are often confused.

- Redecoration clauses require tenants to perform maintenance or upgrade works at specified intervals during the lease term to maintain the property's appearance.
- A redecoration clause might specify repainting walls or replacing carpets throughout the term of the lease.

Two Perspectives

Balancing tenant and lessor interests at the end of a lease can be complex. While tenants value their investments in premises upgrades and see the removal of additions like fit outs as counterproductive, lessors seek neutral spaces to appeal to future tenants, and write this into the lease agreement.

Negotiation becomes a key tool in finding a solution that works for both tenants and lessors.

Common make good terms

The specific make good requirements will vary depending on the lease agreement, but commonly include one or more of the following:

- Repairing any damage caused during the occupancy.
- Removing all tenant installed fixtures, partitions, joinery, installations, flooring, and ceiling finishes.
- Restoring the premises to an open floor plan (including removing walls).
- Returning the base building services such as air conditioning, fire, and hydraulic systems to their original state.
- Leaving the area clean and tidy.

Some leases may require nothing more than a clean premises, whereas others may require things like repainting or removing a fit-out.

Options to make good

Tenants may have options outlined in the lease to meet make good obligations, including:

- **Physically making good:** Tenants carry out or manage the necessary works (often required to be carried out by a professional or to a professional standard).
- **Cash settlement:** Tenants negotiate a cash settlement with the lessor in lieu of physically making good.

Not completing the make good obligations on time may result in additional rent or penalties.

Disputes over make good

Disputes frequently arise regarding the make good obligations due to various reasons:

- Limited or no evidence of the condition of a premises at the beginning of the lease.
- Vague or ambiguous make good clauses.
- Disagreement over the quality of the 'make good'.
- Removal of something of value that was added by the other party.

Almost always, the return of the tenant's security deposit is affected by the dispute.

Top tips

- Prepare a condition report now, even if there isn't one already.
- Negotiate issues early to ensure timely release of the security deposit.
- Stay on top of general wear and tear.

The original condition

If there is little or no evidence of the condition of a premises at the beginning of the lease, consider what evidence you can present to a tribunal or court that the premises has or hasn't been returned to that condition. Mediating a solution can save time and money if there is little or no evidence. During mediation:

- Parties are guided through a process of discussion and negotiation.
- No-one hands down a decision (there is no 'judge') - you have control over what you agree to.

Resolving disputes

If you find yourself in dispute over make good obligations, consider the following steps:

- Seek legal advice from a lawyer experienced in property and tenancy law.
- Talk to the other party to clarify what they want done to make good the premises.
- Assess whether the requests and actions are consistent with the lease.
- Assess the cost and viability of pursuing legal proceedings to decide the dispute.
- Make an [application for mediation](#) with the QSBC.

A QSBC mediator can mediate a make good dispute up to \$750,000 in value.

QCAT considers disputes between a tenant and lessor related to retail shop leases **if the dispute is not resolved after mediation.**

More information

Contact the QSBC by submitting an [online enquiry](#) or calling 1300 312 344.

This information provides general guidance only. It does not constitute legal advice. We recommend you seek Independent legal advice which considers your individual circumstances and applicable laws.