

Ending a lease early

In the event a tenant or lessor is considering ending a commercial or retail shop lease before the agreed date, it is important to understand the options and the potential consequences.

Provisions of the lease

Leases usually contain rights for tenants or lessors to end a lease before the end of the term in certain circumstances, including (but not limited to):

- if one party defaults,
- unforeseen and unavoidable catastrophes (force majeure),
- demolition or renovations.

Even if you have the right to end a lease early, specific processes provided for in your lease will need to be followed and there may be implications, for example, providing a notice period, or payment of compensation.

If you believe you have the right to end your lease early under the provisions of your lease, and wish to exercise this right, consult with your legal adviser to ensure that you are exercising your right in accordance with the contract and you are aware of any implications or consequences of exercising that right.

Periodic tenancies

A periodic tenancy rolls on, usually on either a weekly, monthly or yearly basis with no end date. The lease may be periodic from the start, or a fixed lease may end but the parties agree to continue the tenancy on a periodic (month to month) basis.

Under a periodic tenancy, either party can terminate the lease (without reason) by giving at least 1 whole period of notice. For example,

if the period of the tenancy runs from the first day of the month to the last day of the month, either party could give the other a notice to terminate before the first day of the month which would take effect at the end of the following month.

Ending for other reasons

If a tenant breaks the lease by ending it early outside of the provisions of the lease (i.e., walks away), this is a breach of the lease and will have legal ramifications.

This can occur following a dispute or ongoing issues between the lessor and tenant.

The QSBC has published number of fact sheets which are aimed to assist parties to navigate issues and avenues for support to avoid issues escalating, including:

- [Locked out of premises](#)
- [Breach notices](#)
- [Repairs and maintenance](#)
- [Make good](#)
- [Payment issues](#)
- [Not paying rent](#)

A QSBC mediator can mediate a dispute up to \$750,000 in value. QCAT considers disputes related to retail shop leases **if the dispute is not resolved after mediation at QSBC.**

Courts consider disputes between a tenant and lessor for non-retail shop leases.

Tips to resolve issues

- Gather information for weighing up the options, e.g., calculate the likely costs, and factor in make good and lessor legal costs (if applicable)
- Seek legal advice from a lawyer experienced in commercial tenancy law
- Negotiate with the other party when seeking to alter the lease agreement
- Prepare a proposal with specific details or provide notice as required in the lease if seeking consent to assign or sublet
- Ask the other party for a date you might expect a response or a decision
- Respond promptly and politely (you are seeking to alter a binding agreement)

Consider Alternatives

Alternative options to consider include:

- Negotiating a mutual surrender
- Relocating within the building
- Negotiating rent relief or deferring rent
- Selling the business
- Subleasing or a lease assignment
- Voluntary administration or personal insolvency

Top tips

- Leases are legally binding and ending the agreement early likely comes with significant costs.
- If you must end a lease early, negotiating a surrender of lease may save everyone time and money.

Understand your Lease

Parties have likely agreed (within a legally binding contract) to a set amount of time for the lease (the lease term). Review the lease agreement to get a clear understanding of any:

- avenues for amending or ending the lease term early and the costs involved
- preconditions that need to be met to terminate, relocate, assign or sublet (e.g., make good or lessor consent)
- notice requirements to activate such clauses or arrangements

Consider engaging a professional lease negotiator or solicitor experienced in negotiating the early ending of a lease.

Implications

If a tenant ends the lease early outside of the provisions of the lease, the tenant may be liable for damages incurred by the lessor as a result of the breach. Typically, tenants are obliged to pay any costs incurred by the lessor associated with the tenant ending the lease early. These costs may be significant and could extend to any damages sustained by the lessor including (but not limited to):

- loss of rental income
- loss of opportunity costs (for example the new tenant's rental is less than rental under the original broken lease)
- the costs of removing the fit out and making good the premises.

The [commercial lease bond](#) fact sheet has further information regarding the implications on any guarantees.

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.