

## Locked out of premises

If a tenant has breached the terms of their lease agreement and has not rectified the breach in accordance with a correctly served Notice to Remedy Breach, the lessor may lock them out.

### Important facts

- In certain circumstances lessors may lawfully lock out tenants from commercial and retail premises.
- Courts have jurisdiction to decide the validity of notices and whether a lock out was lawful.
- QCAT can make an interim/injunction order under the *Retail Shop Leases Act 1994* if a situation emerges that requires urgent action.
- QCAT does not have jurisdiction to hear matters involving a commercial (non-retail shop) lease.
- Lockout of the premises may also be due to the lease having been terminated.

### Prior notice

Generally, lessors cannot take possession and re-enter (lock out) a tenant of the premises without providing notice.

- Specific conditions outlined in the lease agreement typically grant the right of re-entry to the lessor.
- The *Property Law Act 1974* sets out the procedures for a lessor to provide notice to the tenant to exercise their right of re-entry or forfeiture of a lease.
- If an invalid notice was relied upon by the lessor for a 'lock out', a tenant may have a right to compensation.

### # Impact of lock out

**The financial and legal implications of being locked out can be serious and significant** not just for you but also any guarantor under the lease. Impacts may include costs for damages, termination of the lease, any possessions inside seized or sold, costs to 'make good' the premises, forfeiture of any bond or bank guarantee, and reputational damage with staff and customers.

### Lock out response

If you find yourself locked out, consider the following steps:

- Seek legal advice immediately.
- Assess whether the lessor's actions are consistent with the lease.
- Assess the viability of pursuing legal proceedings for relief or compensation.
- Apply to QCAT or a court for urgent relief or to QSBC for a mediation to negotiate an end to disputes.
- Communicate politely and assertively.
- Communicate with staff and customers.
- Keep detailed records.

The conditions granting the lessor the right of re-entry can vary considerably from lease to lease.

## Belongings

Both the tenant and the lessor have obligations outlined in the lease agreement that they must adhere to. When a commercial or retail tenant has been locked out, the terms of the lease may stipulate:

- Any items left in the premises become the property of the lessor.
- Access must be granted for removal or disposal of perishable items.
- A timeframe to remove assets and equipment from the premises.
- Tenants to remove fixtures, fittings and furnishings after the lease has ended.

Negotiating the return of personal items can be very important. Lessors (if asked) may allow removal of:

- Customer property,
- Staff property or tools,
- Personal belongings,
- Tools that might allow you to keep earning an income,
- Goods held on consignment,
- Equipment provided under contract (e.g. supplier fridges) or leased equipment.

If the tenant has given a personal guarantee for the lease (and potentially also given a personal guarantee for the stock, plant, and equipment still in the premises), there may also be a risk to the tenant's personal assets.

## Locked out without notice

If you find yourself locked out without the proper notice, consider the following steps:

- Seek legal advice immediately.

- Assess the viability of pursuing legal proceedings for relief or compensation.
- Assess whether the lessor's actions are consistent with the lease.
- Talk to the lessor about how you can work together to find a resolution.
- Keep detailed records in case legal action becomes necessary.

### # Top tips

- Tenants should seek urgent legal advice from a qualified attorney experienced in property and tenancy law.
- The QSBC may be able to offer mediation; however, it may not be suitable, or required, in urgent situations.
- The QCAT website explains the process for [making an application for interim/injunction orders](#).

## Items in the PPSR

If lessors and tenants have personal property security interests [registered on the Personal Property Securities Register](#) (the PPSR) they may be subject to different obligations in relation to that/those security interests.

## 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.*