

Annual rent increases and market reviews

Generally commercial leases will include both an annual rent increase and a market rent review.

Increase vs Review

Annual Rent Increase (increase):

- Sets out how rent changes will be calculated during the lease term.
- Generally increases annually - although not always.

Some of the most common types of rent increases are:

- fixed percentage,
- consumer price index (CPI),
- fixed amount (less common).

These methods lead to few disagreements, likely because the method is rigid, well defined, and open to little interpretation.

Market Rent Review (review):

- A means of 'resetting' the rent to the current market.
- Generally occurs at specific times during the lease: i.e. when exercising an option or at specific times during long leases.
- Determines market rent by comparison with similar properties in the area.
- Could involve costs such as independent valuations or other research.
- It is possible for market rents to fluctuate, largely due to the supply and demand conditions at the time.

Reviews are based on research, perspective, and/or professional opinion, which may make them more open to disagreements.

Subject to the terms of the lease, in the first instance, the landlord and tenant will usually try to agree on the appropriate market rent.

The lease may set out a dispute resolution process if market rent can't be agreed.

Top tips

- Negotiating can save everyone time and money
- Research the current market and [negotiating business premises leases](#)
- [Apply to QCAT](#) to appoint a specialist retail valuer

Important facts

The *Retail Shop Leases Act 1994 (Qld)* (the RSL Act) does not set a maximum limit on how much the rent can be increased; however, a lease may contain clauses that limit the amount by which the rent may be increased.

Clauses considered to be either of the below are prohibited by the RSL Act:

- ratchet rent reviews (preventing rent being decreased or limiting the extent of any rental decrease) and
- dual method rent reviews (choosing between two or more review methods)

Rent changes at the end of a commercial lease

When a lease is about to end and there are no options to renew:

- The landlord may offer a completely new lease to the tenant but is not obligated.
- Any new lease offered may have different terms (e.g. higher rent or security deposit).
- Since there is no lease in place at that point, this is a commercial negotiation.
- Mediation is usually not available through the QSBC to settle the rent in a new lease.

Rent changes applied late

If a commercial lease increase or review is not applied on time, the tenant is still likely liable to pay any amount determined by the increase or review. The oversight or forgetfulness of the landlord or agent does not typically release the tenant from the obligation to pay an increase in rent retrospectively.

Reviews for retail leases

The RSL Act includes specific requirements for conducting rent reviews in a retail shop lease.

The landlord and tenant will usually try to agree on the appropriate market rent. Where parties can agree, this agreed rent is the market rent payable until the end of the applicable term.

According to the RSL Act, if the landlord and tenant cannot agree on the market rent within one month after the review date specified in the lease, a specialist retail valuer must determine the rent. If there is a disagreement on the appointment of a valuer, an [application can be made to QCAT](#) (Queensland Civil and Administrative Tribunal), and they will appoint a specialist retail valuer.

- Specialist retail valuers assess rent based on the guidelines provided in the lease and submissions from both parties.
- The cost of the valuer's fee is split equally between the landlord and tenant.

If the lease is not subject to the retail shop leases act in Queensland, the lease may set out a dispute resolution process if market rent can't be agreed.

Resolving disputes

The landlord is usually not obligated to re-negotiate the rent reviews or increases under an existing lease. Negotiation may or may not make commercial sense for both parties.

- Seek legal advice from a lawyer experienced in commercial property law.
- Establish whether you are negotiating a new lease or in dispute over an increase or review.
- Assess whether the requests and actions are consistent with the lease.
- Be clear, polite, and specific in your communication to increase the likelihood of a positive response.

If the tenant and landlord are unable to resolve the dispute, they may be able to [apply for mediation](#) through the Queensland Small Business Commissioner (QSBC). QCAT considers disputes between a tenant and landlord related to retail shop leases **if the dispute is not resolved after mediation**.

It is **not** recommended to withhold payment of rent during disputes as this may put you in breach of the lease. You should seek legal advice before withholding rent.

Consider engaging professional lease negotiators or legal professionals experienced in commercial leases to help negotiate and resolve disputes.

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.