

## CANTERBURY EARTHQUAKE

### LANDLORD AND TENANT SERIES: RENT ABATEMENT ISSUES

This brief guide considers rental obligations and rent abatement issues when a tenanted property has been partially damaged or destroyed.

When a tenanted property has suffered partial destruction or damage, until repairs or reinstatement have been completed, a fair proportion of the rent and outgoings should abate or cease to be payable. This is set out in the standard form Auckland District Law Society Deed of Lease and the Property Law Act 2007.

The key question is, what proportion of rent and outgoings is a fair proportion to abate?

The onus will be on the tenant of a partially destroyed property to show what they consider to be a fair amount. This will be a question of fact in each case. What is clear is that a tenant should not simply stop paying rent or withhold rent without explanation. A tenant should also not unilaterally decide what proportion of rent it considers should cease to be payable.

A sensible approach by a tenant would be to notify its landlord of the partial destruction of the property and the extent to which this affects its operations. The tenant would be wise to obtain a valuation from a registered valuer assessing the reduction in rental. Once a tenant has obtained that assessment the report could be provided to the landlord to support what fair proportion of rental the tenant believes should be abated.

In assessing what a fair proportion would be, a valuer would consider not only the area of the property which has been damaged, and the degree to which it has been damaged, but also the significance of the affected area to the tenant's business. For example, damage to a customer area of a retail tenanted property may have considerably more impact on the tenant than damage to the same sized area from a staff or storage area of the same property. This may then justify a higher proportion of the rent being abated.

Communication and cooperation between a landlord and tenant are key to working through what, if any, rent abatement is available. Hopefully landlords and tenants and their respective valuers can agree on a rental abatement, but if not, both parties have a right under the ADLS lease to go to arbitration.

Finally, there are also many instances of a tenant being unable to gain access to undamaged properties because the tenant's premises are located within an area cordoned off due to damage to a

neighbouring property. In this situation, the ADLS lease provisions on rent abatement will not be relevant as the tenant's inability to access the property is not an issue between the tenant and its landlord. A landlord's obligations obviously extend only to its actual property so that impact on a tenant - because of neighbouring circumstances - is not a lease concern (unless the neighbouring property is owned by the same landlord when a tenant's right to quiet enjoyment of the premises may, depending on the facts of the situation, provide the tenant with further rights against its landlord). In this case a tenant will need to rely on any insurance they may have for interruption to their business.

If you would like to discuss this further please contact;



**Richard Lang, Partner**

Tel: +64 3 379 2430

Mobile: +64 21 226 3041

[r.lang@DuncanCotterill.com](mailto:r.lang@DuncanCotterill.com)

This fact sheet provides general information and is not intended to be comprehensive or a substitute for legal advice. Legal advice should be sought before applying it to particular circumstances. Whilst care has been taken in the preparation of this fact sheet, no liability is accepted for any errors. © Duncan Cotterill Lawyers 2010