

LEASE RIGHTS POST 4 SEPTEMBER

The earthquake of 4 September 2010 and its subsequent aftershocks have created a number of issues where Landlords and Tenants will need to work together to find sensible practical solutions to in order to move forward with their contractual relationship.

For most, this is uncharted territory and as a result a number of questions have arisen out of the damage that has been caused in Canterbury. It is not possible to give definitive answers to these questions as it will depend upon the specific wording of the Lease agreements relating to that property but in reference to the standard ADLS Lease provisions it is possible to give a general indication.

The following are our comments to some frequently asked questions:

1. **Our building has been yellow stickered (restricted access until further notice). Are we obliged to pay rental?**

If the building has been damaged but not to such an extent as to render it untenable, then yes, but possibly at a reduced rate (in some circumstances) if part of your premises are unable to be occupied for normal use.

2. **What is the definition of “untenable”?**

Unfortunately this is not defined in the Lease and there is little case law that covers the type of damage that has occurred. To be untenable it appears as if the damage needs to substantially interfere with the right to use and enjoy the premises. Temporary closure for structural analysis will not necessarily render the building untenable.

3. **Our building is fine but closed because the neighbouring property is about to fall down. Do I have to pay rental?**

Generally yes. However it will depend on the time that you are excluded from your premises. Other remedies may be available to you than those contained within the Lease but specific legal advice will need to be taken on these.

4. **Our building has been destroyed. What happens to the Lease?**

If the building is untenable, the Lease terminates immediately and your obligation to continue paying rent ceases from the date it was damaged.

5. **The Landlord is going to rebuild. Are they obliged to offer us first right to Lease the new building?**

No. Fresh negotiations for a new Lease will need to be entered into.

6. **Our premises had wonderful kauri wood panelling throughout which has been damaged beyond repair. Is the Landlord obliged to replace the wood panelling like for like?**

No. The Landlord may use such materials or form of construction as the Landlord thinks fit so long as it is reasonably adequate for the Tenant's occupation and use.

7. **The Landlord says that he hasn't got enough money from his insurance to pay for the repair to the premises. What happens now?**

The Lease terminates. If the Landlord was carrying insufficient insurance from that required in the Lease, then the Tenant may have recourse against the Landlord.

8. **I pay the insurance premiums on the building, who gets the pay out?**

The Landlord (or more likely their bank). The payment of the premium by the Tenant is normally cost of occupation on top of your rental.

9. **Our building has to be demolished. Our Landlord has offered us space in one of their other buildings but the rent is higher and it is smaller. Are the same terms carried over?**

No. You will need to enter into new negotiations for a replacement Lease.

10. **The Landlord says that the premises have to be pulled down for safety reasons. I think they are making it up. How do I find out?**

Unless the building is required to be demolished immediately for public safety reasons, the building owner will be required to obtain a permit from the Council in the usual way or permission under the emergency legislation. Contact the Council to find out whether such consent or permission has been granted.

11. **Does a verbal agreement to renew a Lease term constitute a contract? Both parties verbally agreed, but the Landlord has changed its mind after the earthquake.**

Being a relationship regarding land, enforceable agreements need to be in writing. However in some circumstances for example, if you have continued to occupy the premises after the initial term expired, the Lease provides for renewal periods, the Landlord has accepted rental after expiry date of the initial term, and you have acted in a way consistent with the renewal of the term, it is possible that if the Landlord tried to deny that a renewal has occurred, a Tenant may get the Courts to prevent the Landlord from terminating the Lease.

These are but a few of the questions that have arisen. All turn upon their own facts and therefore our answers are intended to provide general information only and not legal advice and therefore should not be relied upon as such. Specialist legal advice should be sought before any action is taken in respect of circumstances you find yourself in. Please feel free to call us:

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