

## COMMERCIAL LEASES

Our general comments below are based on the standard wording of the latest editions of the Auckland District Law Society Deed of Lease (ADLS Lease) and Property Council Retail Lease (Retail Lease). You should always refer to the specific wording of your lease to determine your actual rights and obligations.

### Lease Termination

The ADLS lease and the Retail Lease are the most common forms of lease used for commercial leases. Both of those forms make provision for the termination of leases in the event of damage or destruction where the premises are rendered untenable (in the case of the ADLS lease) or unfit for use (in the case of the Retail Lease). The termination is automatic under the ADLS lease and is at the Landlord's option under the Retail Lease.

Whether or not premises have been rendered untenable will be a question of fact in each instance, but as a general guide the premises must be substantially unfit for use by the tenant and this status must have a degree of permanence.

Under the ADLS lease the landlord may also terminate the lease upon giving notice where the premises, or a building of which the premises forms a part, requires demolition or reconstruction in the landlord's reasonable opinion.

### Abatement of Rent

Where the premises are tenable, notwithstanding any damage suffered, both lease forms provide that the landlord shall with all reasonable speed, once relevant consents have been obtained, expend the insurance money received towards repairing or reinstating the premises. However, if relevant consents cannot be obtained, or insurance payment is inadequate to cover the cost of repair or reinstatement, the lease shall terminate.

Under the ADLS lease rent and outgoings shall cease to be payable by a fair proportion having regard to the extent of the damage until repair or reinstatement is completed. No rent reduction is available to the tenant under the Retail Lease unless the landlord re-enters possession of the premises to effect repairs.

In the absence of a lease between landlord and tenant (or where the lease is silent) the Property Law Act (Act) governs the relationship. The Act provides that if the premises are destroyed or damaged by an earthquake to the extent that they become unfit for occupation by the tenant, the rent or any outgoings will abate, in fair and just proportion to the destruction or damage. Abatement will continue until the premises have been repaired and reinstated and are again fit for occupation by the tenant.

Where the premises are not damaged but the tenant cannot access the premises due to either a cordon or damaged adjacent premises, no abatement of rent will be available under either the ADLS lease or the Retail Lease. The tenant will need to rely on business interruption insurance if that is held.

Landlords can seek to recover loss of rental and outgoings from their insurer if their insurance policy covers this. Such insurance is commonplace and premiums are generally included as an outgoing payable by the tenant during the lease term. Such insurance should cover the period that payments by the tenant were suspended or reduced as a result of the earthquake.

### Contact Details

**Jonathan Gillard**

/

**Jeff Kenny**

Partner

Partner

Mobile: 021 226 6100

Mobile: 027 448 8696

jonathan.gillard@wynnwilliams.co.nz

jeff.kenny@wynnwilliams.co.nz

**Disclaimer:** The information in this newsletter is general information only, is provided free of charge and does not constitute legal or other professional advice. We try to keep the information up to date. However, to the fullest extent permitted by law, we disclaim all warranties, express or implied, in relation to this newsletter – including (without limitation) warranties as to accuracy, completeness and fitness for any particular purpose. Please seek independent advice before acting on any information in this newsletter.