



Commercial Lease
Specialists

Lease Insights – March 2021

Selling a commercial property and walking away

Part 1

In order to adequately cover this important topic, we will present it in two parts, one week apart.

Here is the first part.

One of the most common misconceptions of commercial property landlords and their agents is that once settlement has taken place and the sale of a commercial property is complete, the old owner can walk away without any continuing liability. Well, that is not the case if they granted the tenant a Lease that is still current.

Here's why.

A Lease creates two types of rights. Firstly, what we can call 'Property Rights' which move with the land ownership. In other words, the new owner automatically steps into the shoes of the Lessor once they are registered as the owner on the title to the property.

The second type of rights are 'Contractual Rights'. These don't move with the title to the land and continue for as long as the Lease is in place.

In effect when you and the tenant signed the Lease you created a binding contract for the entire term of the Lease and even though you may have sold the property, you are still liable under the terms of that contract.

One of basic terms of all leases is that the landlord gives the tenant 'Quiet Possession' which means that they can use the property without interruption.

But what if the new owner decides to throw the tenant out? Which he can do – after all he did not sign a contract (Lease) with the tenant. In that case the tenant is likely to sue **you**, even though you no long own the property.

So, what can you do as a landlord contemplating selling a commercial property that has a Lease in place to ensure that you are in the clear after settlement?

Well, you will just have to wait for Part 2 for the answer.

Regards

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