

The New Auckland District Law Society (ADLS) Lease – What it means to you

While many types of leases cross our desks, the most commonly used are those produced by the Auckland District Law Society (ADLS). The Society's last lease document was the Fifth Edition 2008. This edition has now been superseded by the Sixth Edition 2012.

This latest edition was prompted by a need to reflect changing lease practises and to address some of the problems that arose out of the Christchurch earthquake. Becoming familiar with this document is worthwhile because this document could be the one you choose to use as a basis for leasing a property for the foreseeable future, either as a tenant or a landlord. The main changes to the lease follow:

CPI Rent Reviews

The first change is in the First Schedule. Under Rent Review Dates there is an additional option to allow Consumer Price Index (CPI) rent review dates as well as Market rent review dates. Whereas the old lease allowed for only Market rent reviews, the new lease allows for either CPI-adjusted rent reviews or a combination of both.

As with the old lease, the new lease has ratchet clauses that prevent both a CPI-adjusted rent review and a Market rent review from falling below the commercial rent levels.

The CPI adjusted rent review relies on indexing the rent based on the difference in quarterly Consumer Price Index figures between reviews. The indices are published by the Department of Statistics. The method is relatively inexpensive to operate and is unlikely to result in disputes as the figures are a given and the maths is relatively straight forward. Which rent review method will be best for you and your specific lease will be the big question. In recent times with little real rent increases, using CPI would have given rent growth. In pre-Global



Financial Crisis times, though, CPI growth lagged well behind market rental increases, and the Market rent reviews would have been better for the landlord.

Outgoings

The next change in the new ADLS lease occurs under "Outgoings". The "Outgoings" lists costs that the landlord may charge the tenant for in addition to the rent.

The list hasn't changed much but has been varied:

- Insurance - tenants are now liable for insurance excess up to \$2000. Previously this excess was \$500.
- Building Maintenance – repair costs due to defects in design or construction, inherent defects in the building and renewal or replacement of building services are now specifically excluded.

- Yard and Car Parking Maintenance – costs for repaving or resealing are now specifically excluded.
- Building Act – apart from costs to supply a Building Warrant of Fitness and obtaining reports under section 108 and 110 of the Building Act 2004, costs for upgrading or other work to make a building comply are now specifically excluded.

These changes appear to be driven by the Christchurch earthquake experience and protect the tenant from a landlord who may be tempted to unfairly pass on capital costs. Additionally, the landlord must vary the proportion of outgoing payable to ensure the tenant pays a fair proportion of the outgoing. Previously, this change was optional.

Insurance

The wording of this section of

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the lease has largely been left as it was, but reorganised within the lease for clarity. Landlords must still insure their building for damage and destruction from fire, flood, explosion, lightning, storm, earthquake and volcanic activity. The tenant is still responsible for insurance premium costs and related valuation fees unless otherwise varied.

What the new ADLS lease does, however, is move some of the optional additional risks from the main text into the First Schedule where it can be plainly identified. The additional risks include:

- 12-month indemnity in respect of consequential loss of rent and outgoing
- Loss, damage or destruction of any of the landlord's fixtures and fittings
- Public liability

Insurance is a tricky area in any lease, and this is one area in which the existing lease may need to be tailored to meet specific circumstances – it will need modification, for example, if earthquake cover is not available.

No access period

Included in the First Schedule is a new item – a “No Access Period” with a default of nine months or the option of entering your own timeframe. In the main lease a new section has been added under “Damage and Destruction of Premises” called “No Access in Emergency”. This section addresses the post-Christchurch earthquake experience where leased premises were undamaged but couldn't be accessed because of a cordon, for example. Under this scenario the new lease affords the tenant a fair proportion of rent and outgoings reduction commencing on the date when access was stopped through to when access resumes again.

In the case where access continues to be impossible for an extended period of time, the new lease allows either party to terminate the contract after a specified time – the “No Access Period”. The default in the First Schedule is set at nine months, but the landlord has the option of entering their own timeframe.

Maintenance and a Premises Condition Report

Changes have been made to both the landlord's and tenant's maintenance requirements under the new lease. Wording has been introduced specifically requiring landlords to keep and maintain buildings so they are waterproof. Additionally, the landlord's responsibility has been extended. Where building services cannot be maintained in good order and repair, the landlord shall replace them with similar type and quality.

The biggest change to the tenant's obligations is around a Premises Condition Report that forms the Fifth Schedule of the new lease. Tenants are required to maintain the premises in the same clean order, repair and condition as at the commencement of the lease. The Premises Condition Report provides the evidence of what the condition was, so there is less room for potential dispute. Note, though, that the tenant shall not be liable for fair wear and tear arising from reasonable use.

The Premises Condition Report is also useful at the termination of the lease where tenants may be required by the landlord to reinstate the premises. The report provides evidence of what level of reinstatement is required.

Landlord's Access for Inspections/Work

The landlord is still entitled at all reasonable times to enter the premises to view their condition or undertake repair, but the new lease specifies access may occur only after

written notice has been given, except in the case of emergencies.

Additionally, where the old lease was silent, the new lease allows the landlord the ability to give the tenant notice to vacate the whole or part of the premises to enable work to be undertaken; for example, building strengthening or post-earthquake repair. Naturally, the tenant gets a fair proportion of rent and outgoings reduction.

Legal Costs

Under the old ADLS lease the tenant paid for the landlord's solicitors reasonable costs of preparing the lease and for any variation or renewal. The new lease is more equitable requiring each party to pay their own share.

No Improvements Rent

A tenant is no longer liable for an “Improvements Rent”. Under the previous lease, a landlord could charge for work required by legislation and could pass some of that cost on at a fixed percentage until the next rent review. Some landlords used this provision to pass on costs for earthquake strengthening.

In conclusion the new lease contains many important changes, better reflecting the current leasing environment. It is important, whether you are a landlord or a tenant, to become familiar with this document. It may be the document used for your next lease or may contain some good ideas that could be incorporated into your next tailor-made lease. As with any legal document, proper advice should always be sought on the implications of the lease to your own circumstances and how it may be best modified to better match your specific requirements.

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