

# Rent Review

## Your Rights and Obligations under the ADLS Lease

### Relevance

- The Auckland District Law Society (Fifth Edition 2008) (**ADLS**) lease is the standard form of lease used for commercial properties.
- Most of you, as business owners, lease your business premises or are employees who work for a business which leases a building premises from where the business is operated.
- Leases are formalised by the landlord and tenant entering into a deed of lease. We would recommend entering into a lease as this makes the terms and conditions very clear for all the parties involved.
- It is essential that you know what the rent review clauses in your lease mean. In today's market when businesses are struggling, it is not uncommon to see that tenants and landlords disagreeing as to what the current market rent should be.
- Rent review dates are provided for in the First Schedule of the ADLS lease. Typically, rent reviews are undertaken every two to three years.

### Rent

- Clause 1 of the ADLS lease provides that rent is payable monthly in advance on the rent payment dates set out in the lease and the rent is to be paid by the tenant without any deduction or set-off.

### Rent Review

- Clause 2.1 of the ADLS lease provides that the annual rent paid by the tenant from the rent review date is determined as follows:
  - (a) either the landlord or the tenant gives written notice no earlier than three months prior to the rent review date and no later than the next rent review date specifying the annual rent proposed as the current market rent as at the rent review date;
  - (b) the recipient of the notice (**Recipient**) can within 20 working days give notice to the initiator of the notice (**Initiator**) disputing the annual rent proposed and specify the annual rent proposed by the Recipient as the current market rent;

- (c) if the Recipient does not give written notice within 20 working days from the date of service of the notice (time being of the essence) the Recipient is deemed to have accepted the new annual rent specified by the Initiator's notice;
- (d) the rent is not to be less than the rent payable at the commencement date of the then current term of the lease;
- (e) the new annual rent is payable from the rent review date or the date of the Initiator's notice if the notice has been given three months after the rent review date (subject to clauses 2.3 and 2.4 of the ADLS lease);
- (f) the parties may wish to record the rent review in a deed.

## Rent Determinations

- Clause 2.2 of the ADLS lease provides that if the parties cannot agree on the current market rent within 10 working days following the service of the Recipient's notice on the Initiator then the new rent may be determined in the following manner:
  - (a) by one party giving notice to the other party requiring the new rent to be determined by arbitration; or
  - (b) if the parties so agree by registered valuers acting as experts and not arbitrators as follows:
    - (i) each party can appoint a valuer and give notice of the appointment to the other party within 10 working days of the parties agreeing to determine a new rent;
    - (ii) if the party receiving a notice fails to appoint a valuer within the 10 working day period then the valuer appointed by the other party shall determine the new rent and such determination shall be binding on both parties;
    - (iii) the valuers appointed before commencing their determination should appoint a third expert who need not be a registered valuer;
    - (iv) the valuers appointed by the parties shall determine the current market rent of the premises but if they fail to agree then the rent is determined by the third expert;
    - (v) each party shall be given the opportunity to make written or oral representations subject to such reasonable time and other limits as the valuers or the third parties may prescribe and they shall have regard to any such representations but not be bound by such representations.
- Notice of the new rent is to be given to both the parties.

- The notice also provides for how the costs of the determination is to be borne and such provision is binding on the parties.

## Interim Rent

- Clause 2.3 provides that until the new rent is determined the tenant can pay an interim rent as follows:
  - (a) if both parties supply a registered valuer's certificate substantiating the new rents proposed, the interim rent payable shall be half way between new rents proposed by the parties; or
  - (b) if one party supplies a registered valuer's certificate, the interim rent is to be the rent substantiated by the certificate; or
  - (c) if no registered valuer's certificates are supplied, the interim rent is to be payable immediately prior to the relevant rent review date.
- The interim rent cannot be less than the rent payable as at the commencement date of the then lease of the then current term.
- The interim rent payable is to be determined as at the relevant rent review date, or the date of the Initiator's notice if such notice is later than three months after the rent review date.
- Upon determination of the new rent, any overpayment is applied in payment of the next month's rent and any amount then remaining is refunded to the tenant. Any short fall in payment is payable by the tenant.

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