

# Clear commercial language

This is the second installment from last week's column.

**No access period** - this is to cover a situation where the property is totally or partially destroyed or damaged, after a natural disaster such as an earthquake. The Deed of Lease records a period of time after which either party has the right to cancel the lease. The default period is nine months, but that can be amended.

**Outgoings** - expenses payable in addition to the rent (or included, depending on whether it is a gross or net lease). They can include utilities, rates, rubbish collection charges, management expenses and so on. They are to be agreed in the Agreement to Lease.

**Personal guarantee or guarantee** - when the tenant is a company, generally a landlord will



require a personal guarantee from its directors and/or shareholders.

This is a promise by those individuals to comply with the lease and pay the rent if the company fails to do so.

The reason is that the company could be wound up and if it has no assets, then it is difficult for a landlord to obtain payment for outstanding rent or take any action against the company.

Guarantees will also sometimes be required when there are other entities, such as incorporated societies or charitable trusts, as tenants. Some landlords require bank guarantees, where rental incentives are to be paid in advance.

**Premises condition report** - a report attached to the Deed of Lease that records the condition of the premises (including carpets and so on) when the parties entered into the lease.

Often landlords and tenants will do a walk-through of the premises together to undertake it, but sometimes it is undertaken by a professional or third party. Photos can be attached.

**Property Law Act notice** - a notice under the Property Law Act 2007 issued from the landlord to the tenant advising of a breach of

the lease, such as non-payment of rent (and generally advising that they will cancel the lease if those breaches of the lease are not remedied within a certain time).

These notices are required to validly cancel a commercial lease in the event of a breach. They are required to include certain information in a certain format, so landlords should always take legal advice before issuing a notice.

**Rent review dates** - the dates that the rent will be reviewed.

There is a process required to be followed in the Deed of Lease, in which either party gives notice of the new rent and the other party has an opportunity to dispute it.

Rent reviews can be to market rent (that generally involves arbitration or valuers if agreement can't be reached) or to CPI, (based

on a percentage increase based on the Consumer Price Index) or a mixture of market and CPI, depending on what is agreed.

**Renewal dates (rights of renewal)** - agreed dates when the tenant is required to give notice to renew the lease for a further term.

**Sublet** - where a tenant lets part of the property to another tenant. Generally the landlord is required to consent and is entitled to ascertain the suitability of that sub-tenant, as with assignment.

**Term** - the length of time that the lease will run (subject to rights of renewal).

■ Column courtesy of Rainey Collins Lawyers, phone 0800 733 484. If you have a legal inquiry you would like discussed in this column, email [aknowsley@raineycollins.co.nz](mailto:aknowsley@raineycollins.co.nz)