

FREQUENTLY ASKED QUESTIONS FOR TENANTS REQUIRING A NEW LEASE



COMMON LEASING ENQUIRIES

What is the process if I found the right premises?

1. Contact Nichols Crowder at either Moorabbin on 9559 3888, Carrum Downs on 9775 1535, or Morningson on 5925 6005.
2. Confirm the address of the premises, your interest and request a Heads of Agreement (HOA).
3. Provide your contact details (name, company name, phone number and email).
4. An HOA form will be provided for you to complete (tenant's details) and check all other information.
5. Upon return to us, the form will be reviewed and provided to the Landlord for consideration. Once an agreement is made, the form will be completed and provided back to you for signing.
6. To proceed we will require:
 - ▼ Signed HOA returned to our office
 - ▼ Rental references provided as per HOA
7. If this HOA is accepted by the owner and signed, we will then request first month's rent and bond be paid. We then arrange for the Lease (and Disclosure Statement) to be prepared.
8. Once the Lease is prepared you are asked to review, sign and return all copies to our office as soon as possible.
9. The owner then signs the documents.
10. Access to the premises will only occur if:
 - ▼ Lease documentation is signed by both parties
 - ▼ First months' rent (+GST) is paid
 - ▼ Security deposit/bond is paid

When do I collect the key?

You will receive your set of keys and/or swipe cards on the lease commencement date that is stated in the Lease so long as all documentation is signed by both the owner and tenant, and all monies are paid in full (including security deposit).

When can I move in to the premises?

You can move into the premises on the Lease Commencement date stated in the fully executed lease documentation.

Who do I ring when there is a repair required?

You can ring our property management department or your property manager to discuss the issue and they will be able to assist you with the correct procedure.

When do I pay my rent?

The rent is normally due to be paid on the first day of each month, however your Lease will state the stipulated date. The first month's rent is paid in advance to Nichols Crowder at the time of signing the Heads of Agreement (HOA).

You will receive a tax invoice from Nichols Crowder which will state the amount payable, the due date and the period for which the charge relates.

How is the rent determined?

The rent is based on the comparable rents of other properties within the area that are of a similar size and structure. The rent is ultimately set by the owner on the basis of these facts and on the advice of the agent.

How do rent reviews work?

Normally there is a fixed, CPI annual increase or market review at the end of the term. However upon lease renewal (if any) the rent is determined at market levels.

What is the minimum lease term allowed?

This will be determined by the owner, however under the Retail Leases Act, the minimum lease term allowed is five years. This can come in the form of a 2 x 2 x 1 year lease, or a 3 x 2 year lease as examples. Short term leases (e.g. 12 month lease) are acceptable but a waiver needs to be obtained by the tenant and accepted by the Small Business Commissioner. For further information visit www.vsbcc.vic.gov.au.

Essential safety measures & fire safety

Under the Building Regulations 2006, landlords are required to provide a premises that complies with the Essential Safety Measures Legislation. Premises are required to be inspected annually (some bi-annually) to ensure the premises remains compliant.

Should the premises be found to be non-compliant then significant fines may be imposed. We ask for your co-operation with any access, as is required by the lease. In line with the provisions of the Retail Leases Act amendments October 2020, costs associated with ESM are charged to the tenant as an outgoing.

Do I need a solicitor?

As a tenant, you legally do not need a solicitor to lease a property. However for the purposes of understanding the legal terms contained within the lease, we recommend you do have a solicitor review the documentation involved.

What is the retail leases act?

The Retail Leases Act was put into legislation in 2003, it is designed to enhance:

- a) The certainty and fairness of retail leasing arrangements between landlords and tenants; and
- b) The mechanisms available to resolve disputes concerning leases of retail premises.

In the Act, retail premises means premises, not including any area intended for use as a residence, that under the terms of the lease relating to the premises are used, or are to be used, wholly or predominantly for:

- ▼ The sale or hire of goods by retail or the retail provision of services.

Retail leases legislation applies to a retail premises lease used for the sale or hire of goods by retail or the retail provision of services and where the occupancy cost is less than \$1 million per year.

Once I have moved in who do I contact if I need to talk to someone?

Your property manager (the name and details will be provided) is always available to assist.

If your query relates to any common property matters then it is best to contact the owners corporation (the company name and details will be provided) directly.

When do I pay my first rent payment if I have paid my initial deposit?

The first tax invoice will be sent midway through the first month of the tenancy. Rent is payable in advance (not arrears). Late fees may apply so setting up a direct deposit system is advisable.

When do I get a tax invoice and what does it look like?

You receive a tax invoice for your rent, outgoings and the GST monthly in advance of the due date.

What is a disclosure statement?

The Disclosure Statement forms part of the lease and is a statement that is required to be completed by the landlord under the Retail Leases Act 2003. The Disclosure Statement outlines aspects such as:

- ▼ The landlord(s) details
- ▼ The tenant(s) details
- ▼ The details of the premises
- ▼ The retail shopping centre (if applicable)
- ▼ The terms of the lease
- ▼ The permitted use of the premises
- ▼ The occupancy costs
- ▼ The rent payable
- ▼ The outgoings and what they are
- ▼ Tenants fit out and/or refurbishment works
- ▼ Relocation/Demolition clause (if applicable)
- ▼ Additional Representatives (if applicable)
- ▼ The declaration by the landlord or landlords agent

What legal costs are involved in leasing a property?

The owner will have a lease prepared. There are no legal costs related to the preparation of the lease for the tenant (unless a non-retail lease). Any costs incurred by the tenant by their appointed solicitor are tenant costs.

A Lease is the contract between the landlord and the tenant. It sets out the obligations of each party. Whenever there is a query or dispute it is always the first document we refer to.

What are the steps involved if I want to renew my lease?

The lease will define if there is any option to renew at the end of the initial term. The tenant must advise in writing their intention to exercise the option at least three months, before the date of expiry.

Once notice of exercise is done, a lease renewal will be prepared and once again both owner and tenant will be required to show their acceptance by signing. At renewal any variation to additional option terms can be included.

What does “reinstatement” mean?

This refers to the tenant removing all of the fixtures and fittings that they installed from the property and restoring it back to the initial condition as at the original lease date.

However some aspects, like fair wear of a carpet is considered reasonable except in cases where leases specify replacement at certain times e.g. exercising an option to extend the lease for a further term.

What is maintenance?

The aspects of the premises that will fall under the category of tenant maintenance will include:

- ▼ Air conditioning
- ▼ Roller doors
- ▼ Garden and courtyard
- ▼ Amenities - kitchenette and toilet
- ▼ “General” maintenance - gutter cleaning, rubbish removal, window cleaning

Refer to the lease or to the Owners Corporation for maintenance responsibilities regarding individual properties.

SECURITY BONDS & GUARANTEES

What is the security bond?

This is a monetary amount which is held to secure the performance of the lease obligations by the tenant. The money is held in an interest bearing account as required under the Retail Leases Act.

What is a bank guarantee?

The Retail Leases Act requires landlords to offer tenants the opportunity to pay a security deposit in cash or by bank guarantee. A bank guarantee is an irrevocable undertaking by an Australian Bank to pay upon demand.

A bank guarantee can be provided as an alternative to a security deposit/bond.

Why do I need to provide credit / business references?

Credit and rental references provide some indication to the owner and Nichols Crowder that a potential tenant is reliable, timely, honest and trustworthy with regards to the payment of invoices and bills. The references could include past landlord’s managing agent.

When and why do I have to provide directors guarantees?

Director’s guarantees are there to provide additional security to the owner. In the event that the lease of a premises is under a company name and these are in place, then the directors who signed the lease are personally liable for all payments that are outstanding.

Do all directors need to sign the heads of agreement (HOA) and lease?

In a technical sense, yes they have to. If the lease is under a company name then the directors of that company must sign the lease agreement. This will depend upon the company’s articles of association (does one director have the right to sign on behalf of the other directors?)

WHAT ARE OUTGOINGS?

What is an outgoing?

Outgoings are the expenses attributable to and necessary to maintain a functional property. Most commercial leases require the tenant to pay the outgoings. These are paid by the tenant in addition to the agreed rental.

For a "gross lease", outgoings are included within the rental as a single payment. There are no further outgoings for the tenant to pay as they are settled by the owner of the property, other than such things as phone, electricity and water consumption.

What do outgoings consist of?

Property charges such as:

- ▼ Statutory charges (council rates, water rates, drainage charges)
- ▼ Building operating costs
- ▼ Insurance costs
- ▼ Land tax
- ▼ Owners Corporation fees, if a strata title property etc.
- ▼ Essential Safety Measures costs

What is an owners corporation fee and what does it include?

An Owners Corporation, formerly known as Body Corporate, manages the common property of a residential, commercial, retail, industrial or mixed-use property development.

The Owners Corporation carries out the wishes of the collective owners and collects outgoings, comprising of annual fees and charges for utilities, cleaning, building insurance etc. for the common areas. It charges a portion of these outgoings to each premises as defined by the deed of incorporation.

The Owners Corporation charges will in most cases be chargeable to the tenant as part of the lease obligations.

For further information refer to the Owners Corporation Act 2006 www.legislation.vic.gov.au.

What about GST on outgoings?

Current tax law has a special interpretation of leases and considers that any amount which becomes payable according to the terms of an agreement (lease) is to be considered "consideration for supply".

If under a lease a tenant is required to reimburse or pay an amount e.g. council rates, then as soon as that payment is made by the tenant, that amount paid is deemed to be "consideration for supply".

As soon as payment becomes due by the tenant, under a lease it changes its nature under tax law interpretation. Accordingly technically, reimbursement of rates becomes "consideration of supply" and is legally indistinguishable from rent.

The tax law deems that the payment has been received by the landlord and 1/11th of the amount received is payable by the landlord as GST.

Why do I pay outgoings?

Most commercial and industrial leases are based on the tenant paying a net rental plus outgoings and GST. The outgoings are paid for by the tenant as they are essentially the "running costs" of the premises.

What is included under the term "insurance"?

This includes the lessor's building insurance, public liability and plate glass and loss of rent insurance.

Additionally, the tenant is required to take out public liability, contents and glass insurance as provided in the lease agreement. For more specific information regarding insurance, contact your insurance broker. A copy of your insurance, in the form of a Certificate of Currency, is required to be provided to Nichols Crowder.

Do tenants pay land tax?

Under the Retail Leases Act some properties as defined, are not required to pay land tax. Nichols Crowder or your solicitor can provide more professional advice on whether land tax will be payable as an outgoing.

GST PROVISIONS

Goods and services tax (GST)

Goods and Services Tax is added to charges relating to all commercial property. Once registered, GST can be claimed back as part of the quarterly BAS Statement, depending on the business ownership and reporting structure. If you need specific information regarding GST on leased premises, speak to your accountant.

How is GST applied?

Nichols Crowder issues Tax Invoices and collects "consideration plus GST" from tenants on the behalf of owners.