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LawTalk Blog



My tenant has stopped paying rent on business premises

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What you need to know about retail and commercial leases

If you are the owner of premises which are rented out under the *Retail and Commercial Leases Act 1995 (SA)* ("**the Act**") and your tenant fails to meet their rental payments in a timely manner, then it is a fundamental breach of the lease agreement which you can act on. When this breach occurs, you, as the landlord of commercial or retail premises have two options:

1. You can terminate the lease; or
2. You can continue the lease and issue a notice of breach to recover the amounts owed.

Notice to Terminate or Notice of Default/Breach?

Pursuant to a standard lease you will have the right to terminate the lease.

"...terminating the lease may not be in your best interest, and before you terminate the lease you should give due consideration to certain issues."

However terminating the lease may not be in your best interest, and before you terminate the lease you should give due consideration to the following issues:

- The time, effort and money that you will need to spend on finding a new tenant.

- The cost of maintaining the premises vacant whilst you find a new tenant (you cannot sue for future rental amounts once you terminate the lease).
- The benefits of maintaining a good relationship with an otherwise good tenant.

If you decide that it would be better to continue with the lease rather than terminating the lease, then there are specific procedures that you must follow to demand overdue rent and outgoings from the tenant. These procedures differ between states.

In South Australia the Act requires that a formal Notice of Default/Breach is to be delivered to a retail tenant. If the tenant fails to comply with the notice to remedy the breach, (in this case the non-payment of rent), within usually 14 days from the date of the notice, then upon the expiry of the notice the landlord may issue a Termination Notice and re-enter the premises.

Termination Notices

You may seek payment of rent from the tenant by providing a Notice of Termination for non-payment of rent.

In South Australia, you can deliver a Notice of Termination (Form 2- Breach Notice (s 80 of the Act) ("**the Notice**") if the rental amount remains unpaid for 14 days. The notice must:

- be in proper written form;
- clearly communicate the breach and the remedy required; and
- be dated and signed by you.

Notice of Default

If your lease outlines a procedure for delivering Notice of Default/Breach, you must comply with delivery dates, prescribed form (for example, written) and give the tenant a reasonable amount of time to comply. In giving notice you must be very clear in the details of:

- the nature of the breach (detail how many weeks the rent is overdue);
- why you are giving notice (detail how much rent is owed and whether you are ultimately just seeking payment of the overdue rent or you wish to terminate the lease);
- what your tenant has to do to avoid forfeiture of the premises; and
- what is an adequate response from the tenant and by when.

Delivering a Notice of Default/Breach to the tenant can also demonstrate to the court that an attempt to resolve the dispute was put forward to the tenant before you commenced any legal proceedings.

If all the rent due and payable is not paid, or a repayment plan is not agreed to between you and the tenant within 14 days, then you are able to re-enter the premises.

The terms of your lease should provide guidance for dealing with non-payment of rent and for communicating with your tenant.

Generally, the contents of a Notice of Default/Breach should include:

- Clear title; for example "Notice to Remedy Breach of Lease for Non-Payment Rent"
- Notification date
- Landlord details
- Tenant details
- Commencement date of lease
- Address of premises
- Particulars of breach; for example "non-payment of rent"
- Amount overdue
- Feature specific words; for example "Take notice that you are in breach of your lease by failing to pay your rent in a timely manner as specified by section (x) of your lease agreement.
- Other specific words; for example "Take further notice that the landlord intends to terminate the lease as per the lease terms, unless the breach is remedied within (x) days (commonly 14 days) of the serving of this notice upon you."
- Any other provision as required by law or the terms of your lease.

Please note, this Blog is posted in Adelaide, South Australia by Andersons Solicitors. It relates to South Australian legislation. Andersons Solicitors is a medium sized law firm servicing metropolitan Adelaide and regional South Australia across all areas of law for individuals and businesses.