



## What are make good obligations in commercial and retail leases?

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Date: **Sunday April 28, 2024**

Most [retail and commercial leases](#) will have a clause dedicated to the issues relating to repairs and maintenance of the premises while a tenant is in occupation. Generally speaking, when the term of the lease ends, the tenant has an obligation to make good the premises to the condition that they were in at the commencement of the lease. However, the lease usually also has certain obligations with respect to making good the premises.

## What is the extent of make good provisions in leases?

Make good provisions commonly comprise the obligation to:

- remove all the fixtures, fittings, plant and equipment which the tenant has brought onto the premises;
- remove internal partitioning and walls installed in the premises by the tenant (unless otherwise negotiated with the landlord);
- make good any damage caused in removing the fixtures, fittings, plant and equipment and any internal partitioning and walls;
- redecorate the premises. This usually requires that the walls and, where appropriate, the ceiling be repainted and the floor coverings replaced or otherwise provided in a clean and usable condition;
- remove all rubbish from the premises; and
- generally, leave the premises in a clean and tidy state and condition.

In some cases, a make good clause would require the tenant to return the premises to an 'empty shell', and in other clauses there may be obligations to leave various items in the premises. It is essential that the terms of the specific clause in the lease are

considered carefully.

## What if make good conditions of a lease are not met?

The obligation to make good the premises is an obligation at the end of the lease. It usually has to be completed in the final few days of the lease. If the make good is not done before the end of the lease, then certain outcomes may apply, such as:

- the tenant may still be liable for payment of rent and outgoings during the period that the make good work is being carried out;
- the landlord may engage their own contractors, at the tenant's expense, to make good the premises;
- the landlord may retain the right to take possession of the premises, including the tenant's fixtures and fittings.

In the event that an outcome between landlord and tenant is not achieved, then the likely next step is litigation if it is a commercial lease and a dispute resolution process as set out in the *Retail Leases Act* if it is a retail lease.

## What happens with make good obligations where there is an assignment of the lease?

When a tenant is taking or has taken a transfer of an existing lease, then that tenant's obligation is usually to make good the premises to the condition they were in when the lease was originally entered into, not the condition when the new tenant took over the lease.

In this case, it is imperative for a tenant to do due diligence to understand what the condition of the premises were originally in and consider what may need to be addressed by way of make good at the end of the lease.

Similarly, where a tenant is the original tenant of the premises, it is important that they collect evidence (for example, photos) as to the condition of the premises at the beginning of the lease. If, prior to the end of the lease, they choose to sell their business, such evidence can assist in avoiding being drawn into later arguments between the landlord and the purchaser of the business as to the obligations to make good when the lease later ends.

## Avoiding issues with make good clauses?

The costs of making good the premises at the end of a lease can be significant. And there is no benefit in getting into arguments at that time as to what is required to make the premises good again.

### Tips for tenants regarding make good clauses

- Read the lease terms carefully to understand the extent to which the landlord requires the premises to be dealt with at the end of the lease;
- Take extensive photos to show the condition of the premises at the commencement of the lease;

- Consider engaging an expert to prepare a condition report and perhaps negotiate with the landlord as to what part of the premises should be repaired or improved by the landlord before the lease starts.

## Tips for landlords regarding make good clauses

- Ensure that your specific requirements for make good obligations are clearly expressed in the lease;
- Take extensive photos to show the condition of the premises at the commencement of the lease;
- Consider engaging an expert to prepare a condition report before the lease starts.

## Get help from a commercial leases lawyer

We emphasise that as landlord or as tenant, you should read through the relevant make good provisions of your lease to understand the extent of your rights and your obligations prior to entering into a lease.

Our commercial lawyers have extensive experience with drafting and reviewing leases. Contact a member of our team for advice and assistance about your lease.

## Contacting E&A Lawyers

For more information or to arrange a consultation with a lawyer, you can call or email us.

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