



Lease Option Notice Guide for landlords (Under the Retail Leases Act)

Overview

Adhering to the procedures at the end of a lease term, in respect of the take-up of any option by a tenant, is a necessity.

A landlord who fails to follow well-established and legislated procedures may diminish their rights with relation to the property.

Option Notice

Before a lease term ends, a landlord must give proper notice to a tenant with relation to the take up of any option (if any). Not providing proper notice may entitle a tenant to further time in occupancy of the premises.

A landlord must provide to a tenant a "Notice of date after which option cannot be exercised" if there is an option for a further term, OR a "Notice of Landlords intention not to offer a renewal of lease" if there is no further option for renewal.

This notice must be provided - *at a minimum*, 6 months before the end of lease and *at a maximum* 12 months before the end of the lease.

Failure to provide Option Notice

If a landlord fails to give proper notice (as per the above), a lease will be automatically extended 6 months from the date the option notice is actually provided.

If the total lease period has been less than 5 years, and a 5-year waiver certificate has not been provided to the tenant at the commencement of the initial lease, if the tenant is otherwise not in default of the existing lease, the tenant may remain in the premises until the full 5 years expires.

Communication should be in writing

It is a legislative requirement that all property transactions in Victoria should be in writing.

The negotiation and communication of lease option take-ups are considered property transactions and accordingly, must also be in writing.

Please therefore ensure all communication with the tenant in relation to options, is made in writing. Note - an email constitutes "In writing" for this requirement.

Additionally, this wording must be in unambiguous and clear terms.

Holding Over

A lease may have ended either by the non-take-up of an option or if there is no option to take up. If the tenant is permitted to stay on in this circumstance, and a new lease has not been executed, the tenant is said to be in the premises on a 'monthly' basis. In such a case, one months' notice to the other party is required for either party for to terminate the lease.