



RETAIL LEASES – IMPORTANT FACTS FOR TENANTS

A landlord must provide this information brochure and a copy of the proposed lease to a person as soon as they enter into lease negotiations with that person. Failure to do so is an offence under section 15 of the *Retail Leases Act 2003* (the Act).

The importance of your lease

If you are entering into a retail lease it is important to understand your rights and responsibilities under your lease and the Act. A lease is an important, enforceable and legally binding document so it is a good idea to get advice from a lawyer experienced in leasing law before you sign anything.

CHECKLIST

- Have you **read the lease** in full?
- Have you read the **disclosure statement** that the landlord must give you at least **seven days** before the lease is entered into?
- Do you understand you are entitled to a **minimum five-year lease** (including any option for a further lease term) unless you choose to accept a lesser term? To do this you need to apply for a certificate at www.vsbcc.vic.gov.au/ waiver.
- What is the **rent** (\$.....) and how can the rent be **increased**?
- How much is the **security deposit** or **bank guarantee** (\$.....)?
- What other costs must you pay including any **fit-out costs** (\$.....)?
- What is the date by which you must write to the landlord to take up any option (further lease term) to **renew** the lease
- Have you completed an **inspection report** and taken **photos** of the premises?
- Do you require any **council or other permits** to conduct your business?
- Have you considered getting **legal advice**?

Entering into a lease

A lease starts when:

- you take possession of the premises, or
- you begin to pay rent, or
- the lease is signed by both you and the landlord.

You should not do any of these things unless you are happy to go ahead with the lease.

Documents you should receive before entering the lease

At least seven days before entering into a lease the landlord must give you a disclosure statement and proposed lease. A disclosure statement contains information you need to make an informed decision about entering into a lease including details about:

- the premises, including a plan if available and the lettable area
- structures, fixtures, plant and equipment provided by the landlord
- permitted use
- term of lease and length of any options to renew
- works, fit-out, refurbishment and alterations
- outgoings (costs you must pay), rent and rent adjustments.

If the landlord fails to give you a disclosure statement you may be able to withhold rent after notifying the landlord.

Before signing a lease make sure you understand the following

- the starting rent and rent increases
- outgoings (costs you must pay) and other occupancy costs
- the permitted use of the premises and how long it will take to obtain any permits
- your obligation to restore the premises to the original state at the end of the lease.

During the lease the landlord has important obligations

The Act also requires landlords to:

- give you a copy of the lease within 28 days of it being signed
- repair and maintain premises, structure, appliances, fittings and fixtures provided under the lease
- provide annual estimates of outgoings (if not provided you do not have to pay outgoings) and reconciliation statements
- hold a security deposit in an interest-bearing account
- pay for capital costs, lease preparation and costs of complying with the Act
- give reminder notices about lease options and renewals. If these notices are not given, your lease can be automatically extended
- not unreasonably withhold consent to transfer your lease (the Act contains requirements if you want to transfer (assign) your lease to a new tenant).

The above requirements automatically form part of your lease and cannot be overridden even if your lease states otherwise.

The Victorian Small Business Commission (VSBC)

The VSBC provides guidance on the Act and a low-cost dispute resolution service which can be used to resolve disputes between landlords, tenants and guarantors. The VSBC also appoints specialist retail valuers to determine rents where a landlord and tenant have a dispute about a market rent increase and cannot agree on their own valuer.

For more information on your rights and responsibilities or if you have a dispute about your tenancy, visit www.vsbcc.vic.gov.au, phone 13VSBC (13 87 22), or toll free 1800 136 034 or email enquiries@vsbc.vic.gov.au.

The information in this brochure is current as at September 2018.