

Retail leases: important facts for tenants

We're here for small business

RETAIL LEASES

What you need to know

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 this is an offence under section 15 of the *Retail Leases Act 2003* (the Act).

The importance of your lease

It's 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's 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, which the landlord must give you at least **14 days** before you enter into the lease?
- Do you know 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 <https://www.vsbic.vic.gov.au/your-rights-and-responsibilities/five-year-waiver-certificates/>.

- How much is the **rent** and how can it be **increased**? \$.....
- How much is the **security deposit / bank guarantee**? \$.....
- What other costs do you need to pay (including any **fit-out costs**)? \$.....
- What is the due date for writing to the landlord to take up any option to **renew** the lease (i.e. further lease term)?/...../.....
- Have you completed an **inspection report** and taken **photos** of the premises?
- Do you need any **council or other permits** to run your business?
- Have you considered getting **legal advice**?



FREQUENTLY ASKED QUESTIONS

When does a lease start?

A lease starts when you take possession of the premises **or** you start paying rent **or** the lease is signed by both you and the landlord.

You shouldn't do any of these things unless you are happy to go ahead with the lease.

Which documents should I be given before entering a lease?

The landlord must give you a disclosure statement and the proposed lease at least 14 days before entering into a lease.

A disclosure statement contains information you need to know 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
- the permitted use
- the term of the lease and length of any options to renew
- works, fit-out, refurbishment and alterations
- outgoing (costs you must pay), rent and rent adjustments.

If the landlord doesn't give you a disclosure statement you may be able to withhold rent after notifying the landlord.

What do I need to make sure I understand before signing?

It's important to understand:

- the starting rent and rent increases
- outgoing and other occupancy costs
- the permitted use of the premises and how long it will take to get any permits
- your obligation to restore the premises to the original state at the end of the lease.

What does the Act require landlords to do?

It requires landlords to:

- give you a copy of the lease within 28 days of signing
- repair and maintain the premises, structure, appliances, fittings and fixtures provided under the lease (except if you have agreed to maintain essential safety measures)
- provide annual estimates of outgoing (if these aren't provided, you don't have to pay outgoing) and reconciliation statements
- hold a security deposit in an interest-bearing account
- pay for capital costs, cost of preparing the lease and costs of complying with the Act
- give reminder notices about lease options and renewals (if these notices aren't given, your lease can be extended automatically)
- not unreasonably withhold consent to transfer (assign) your lease (the Act includes requirements if you want to transfer your lease to a new tenant).

These requirements automatically form part of your lease and can't be overridden, even if your lease states otherwise.

HOW WE CAN HELP

The Victorian Small Business Commission provides guidance on the Retail Leases Act 2003 and a low-cost dispute resolution service for resolving disputes between landlords, tenants and guarantors.

Where a landlord and tenant have a dispute about a market rent increase and can't agree on their own valuer, we can appoint a specialist retail valuer to determine the rent.



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