**Leases**

A **lease**, or **tenancy**, is a contract for the transfer of use and possession of land from the landlord to the tenant.

**The two key characteristics of a lease are** **that:**

\_ The interest in land is for a definite period of time .

\_ The tenant is entitled to exclusive possession.

In other words, the tenant controls the land and has the right to exclude all others, including the owner (subject to the right to inspect with notice as set out in legislation and/or the contract), for a fixed period.

Figure 01 describes four types of tenancies. It is sometimes said that the third and fourth types are not really leases because there is no set term (in the first case) or there is no longer any lease at all (in the second case).

**Figure 01: Types of Tenancies**

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| **Type of tenancy** | **Duration of tenancy** |
| **Fixed-term tenancy** | The lease is set for a specified time period, with no renewal rights or options. |
| **Periodic tenancy** | The lease is for a set period of time but renews automatically at the end of the term until one of the parties provides notice of termination. |
| **Tenancy at will** | There is no set term, and either party can terminate the lease at any time. |
| **Tenancy at sufferance** | The tenant continues to possess the premises at the end of a fixed-term tenancy without the landlord’s permission. |

A lease of three years or longer duration must be in writing to be enforceable, by virtue of the Statute of Frauds.

**Covenants and their Breach:** A commercial lease normally provides certain covenants or promises, as set out in Figure 02.

The landlord has access to five remedies for breach of a lease contract:

1. Damages (for any breach of covenant other than payment of rent)

2. Recovery of rent

3. Eviction

4. **Distress** (right to seize assets of the tenant found on the premises and sell them for arrears of rent)

5. **Injunction** (right to order the tenant to stop a prohibited use.

The tenant has three remedies: damages, injunction, and termination of the lease.

**Figure 02: Standard Covenants in Commercial Leases**

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| --- | --- |
| **Rent** | Tenant covenants to pay rent. |
| **Quiet enjoyment** | Tenant obtains an assurance against the consequences of landlord's title being defective and an assurance that landlord will not interfere (or permit anyone obtaining an interest in the land from it) with tenant's enjoyment of the premises. |
| **Assignment and subletting** | Either tenant or landlord can **assign** their contractual rights to a third party. The original tenant or landlord can still be liable under the lease if assignee fails to perform obligations under the lease unless the other party agreed to release the assignor from its obligations.  Tenant may also **sublease** leased premises to a third party, in which case she remains a tenant under the lease with original landlord but is also the landlord to the third party.  A lease may contain a term prohibiting assignments and/or subleases or requiring landlord’s consent. Ontario law implies a term that such consent cannot be unreasonably withheld. |
| **Restriction on use of premises** | Landlord will often require an express covenant that restricts use of premises to particular trades.  Tenant, in turn, may obtain a covenant that landlord will not rent adjoining premises to a competing business. |
| **Fitness for occupancy** | Courts have found that the course of dealings between parties may create an implied covenant that premises will be fit for tenant’s purpose if disclosed to landlord. |
| **Repairs** | Landlord is not liable to make repairs unless there is an express covenant, but landlord may be liable to repair structural defects that interfere with quiet enjoyment and is liable for maintenance of halls, stairways, and elevators.  Tenant is not liable to make repairs, but s/he must not cause excessive wear or commit waste. |
| **Insurance** | In absence of an express provision, neither landlord nor tenant must insure premises; however, a prudent landlord will usually insure the building to protect its investment. |
| **Fixtures** | It is wise to include an express agreement about which fixtures (personal property attached to land or building) remain tenant’s property. |

**Termination of a Lease:** A lease may be terminated by one of the following:

1. **Surrender** – The tenant vacates the premises at the expiration of the lease (or during the lease, by agreement with the landlord).

2. **Forfeiture** – The landlord evicts the tenant.

3. **Notice to quit** – A periodic tenancy is ended by either the landlord or the tenant serving a **notice to quit** upon the other party. The length of notice required is normally set by provincial legislation, although the parties may alter the period by an express term in the lease.

4. **Renewal** – A lease for a term certain often provides for a renewal at the option of the tenant.