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— COMMERCIAL · GUIDE

## Signing a commercial lease

The lease terms that quietly shape your business for years, and what to watch for.

Posted Jun 23, 2026 · Updated Jul 7, 2026

A commercial lease is one of the biggest commitments a small business makes, and it gets far less attention than it deserves. People will negotiate hard over a piece of equipment and then sign a five-year lease, worth far more, after a quick read. Commercial leases are also very different from residential ones, and the strong tenant protections you may know from renting an apartment mostly do not apply (we cover why in a separate article). You are dealing at arm's length, and the lease says what it says. Here is what to look at before you sign.

### Rent is not just "rent"

The first thing to understand is that the rent number you are quoted is often not the number you actually pay. Most commercial leases are some form of net lease, which means on top of the base rent you also pay your share of the building's operating costs, property taxes, insurance, and maintenance. This is sometimes called additional rent or TMI (taxes, maintenance, and insurance).

So a space advertised at one rate per square foot can cost meaningfully more once additional rent is added. Before you sign:

- Ask for the base rent and the additional rent separately, and ask what the additional rent has actually been over the last couple of years.
- Find out whether additional rent is capped or can rise without limit.
- Understand exactly what is bundled into it, and watch for vague catch-all categories that let the landlord pass through costs you did not expect.
- Confirm how your share is calculated, usually based on your square footage relative to the building.

### The term and your exits

How long are you committing, and how do you get out?

- Length of term. A longer term gives you stability and often better rent, but it is also a longer obligation. If your business is new, balance the security of a long term against the risk of being locked in.

- **Renewal options.** A right to renew, at a defined or determinable rent, is valuable. Without it, you are at the landlord's mercy when the term ends, and moving a business is expensive and disruptive.
- **Early termination.** Most commercial leases do not let you leave early just because business is slow. If you might need flexibility, that has to be negotiated in. Do not assume it.
- **The landlord's right to end or move you.** Read this one carefully, because it cuts the other way. Many commercial leases give the landlord rights you would not expect: a right to terminate the lease in certain circumstances, or a relocation right that lets the landlord move your business to a different unit in the building or complex. Relocation rights are common in shopping centres and multi-tenant buildings. Being relocated can be hugely disruptive, and a landlord termination right can leave you without the security you thought the term gave you. If these rights are in your lease, understand exactly when they can be used, how much notice you get, and who pays your moving and fit-out costs if you are relocated. Where you can, negotiate to limit or remove them, or at least to be compensated for a forced move.
- **Assignment and subletting.** If you sell your business or need to move, can you transfer the lease or bring in a subtenant? Most leases require the landlord's consent. Try for language that the consent cannot be unreasonably withheld, and understand whether you stay on the hook even after you assign.

## **The personal guarantee**

This is the one that catches owners of small companies off guard. If your business operates through a corporation, the landlord will often ask you to personally guarantee the lease. That means if the company cannot pay, the landlord can come after you personally: your savings, sometimes your home.

This is often negotiable. Depending on your bargaining position, you can sometimes limit a guarantee in amount, limit it in time (for example, the first couple of years only), or cap the landlord's recovery. There is no guarantee the landlord will agree, but you rarely get a limit you do not ask for. At a minimum, know exactly what you are signing. The whole point of incorporating is to limit your personal exposure, and a broad personal guarantee gives a lot of that protection away.

## **What you can do with the space**

- **Permitted use.** The lease will define what you are allowed to use the premises for. Make sure it is broad enough to cover what you actually plan to do, and any reasonable pivot you can foresee.
- **Exclusivity.** If you are a retail or service business, can the landlord lease the unit next door to your direct competitor? An exclusivity clause can prevent that. It is worth asking for.
- **Zoning and permitted use are not the same thing.** The lease might let you run your business, but municipal zoning has to allow it too. Confirm the use is actually permitted at that location before you commit.

- Fixturing and your improvements. If you are spending money to build out the space, understand who owns those improvements at the end, what you have to remove (restoration obligations can be expensive), and whether you get a rent-free fixturing period to do the work.

## **Repairs, maintenance, and the state of the premises**

Who fixes what? Commercial leases often push a lot of maintenance and repair onto the tenant, sometimes including things you would not expect, like the heating and cooling unit serving your space. Understand:

- What you are responsible for maintaining and repairing.
- What condition you have to return the space in at the end, and whether you have to remove your improvements.
- Whether you are taking the space "as is" or the landlord is doing work first.

## **A few practical points**

- Get the deal in writing before you commit money or sign anything. An offer to lease is often binding, so do not treat it as a casual step.
- Negotiate before you sign, not after. Once it is signed, your leverage is gone. The time to ask for the renewal option, the cap on additional rent, or the limited guarantee is before the landlord has your signature.
- Have it reviewed. A commercial lease is a long, dense document, and the costly terms are rarely the obvious ones. A review before signing is far cheaper than discovering the problem in year three.

## **Bottom line**

Commercial leases reward the tenant who reads carefully and negotiates early, and they punish the one who signs quickly to get into the space. The base rent is just the headline. The terms that really shape your business over the years are the additional rent, the renewal and exit rights (including the landlord's own rights to terminate or relocate you), the personal guarantee, and what you are allowed to do with the space. Get those right before you sign. Talk to us early, ideally at the offer-to-lease stage, while there is still room to negotiate.

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This is general information about commercial leasing in Ontario, not legal advice for your specific lease. Commercial leases vary enormously, and the terms that matter depend on your business. Talk to us before you sign.

**Questions about your own situation?** Book a free consultation at [lucianolegal.com/contact.html](http://lucianolegal.com/contact.html), call 647-479-4585, or email [info@lucianolegal.com](mailto:info@lucianolegal.com).

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