



COMMERCIAL · GUIDE

Commercial vs. residential leases: why the rules are different

The tenant protections that vanish the moment a lease is commercial, and what that means for a small business signing one.

Posted Mar 5, 2026 · Updated Jul 7, 2026

If your only experience of renting is renting a place to live, you carry a set of assumptions about your rights as a tenant. When you sign your first commercial lease for a business, most of those assumptions are wrong. Commercial leasing is a different legal world, and the gap catches small business owners off guard all the time. Understanding why the rules differ is the first step to not getting hurt by them.

Residential tenants are heavily protected. Commercial tenants are not.

Residential tenancies in Ontario are governed by legislation that gives tenants strong, non-negotiable protections: limits on rent increases, strict rules about how and when a landlord can end a tenancy, a tribunal to resolve disputes, and rules a landlord cannot contract out of even if the tenant agrees. The law treats a person renting their home as needing protection, and it provides a lot of it.

Commercial leasing works on a completely different premise. The law generally assumes two businesses dealing at arm's length can look after themselves, so it largely leaves them to their contract. Ontario does have legislation governing commercial tenancies, the Commercial Tenancies Act, but it is far thinner than the residential regime: it supplies some default rules and a limited set of protections rather than the comprehensive, non-negotiable code that residential tenants enjoy, and much of it can be contracted around. The sweeping consequence is that in a commercial lease, the lease itself is largely the rulebook, and most of the protections you would expect as a residential tenant simply do not exist. If a protection is not written into your commercial lease, then unless it happens to be one of the limited matters covered by the legislation governing commercial tenancies, you usually do not have it.

What this means in practice

Here are the assumptions that get small business tenants into trouble:

- "There must be a limit on how much the rent can go up." For residential tenants, often yes. For commercial tenants, no. Your rent, including the additional rent for taxes, maintenance, and insurance, is whatever your lease says, and increases are governed by the lease, not by a statutory cap. If you did not negotiate limits, there may not be any.
- "The landlord can't just lock me out." Residential landlords face strict rules and generally cannot simply change the locks. Commercial landlords have stronger self-help remedies. If a commercial tenant defaults, for example by not paying rent, the landlord may have remedies that can include terminating the lease and retaking the premises, and in some cases seizing assets for unpaid rent, all subject to the lease and the general law. These remedies are far more immediate than anything a residential landlord can do. Falling behind on a commercial lease is dangerous in a way falling behind on an apartment is not.
- "There's a tribunal I can go to." Residential tenants have a dedicated, accessible tribunal. Commercial lease disputes generally go to court, which is slower and more expensive. There is no friendly, low-cost forum waiting to even things out.
- "I can get out if the business doesn't work." A residential tenant has defined ways to end a tenancy. A commercial tenant is generally bound for the full term unless the lease gives them an exit. Slow sales are not a legal excuse to stop paying.
- "The landlord has to keep the place in good repair." In residential tenancies, maintenance obligations sit largely with the landlord by law. Commercial leases frequently push significant repair and maintenance obligations onto the tenant, sometimes including major building systems. You take on what the lease assigns you.

Why the contract matters so much more

Because the law fills in fewer protections, every term you negotiate in a commercial lease carries more weight. In a residential tenancy, the statute is a comprehensive safety net under you. In a commercial lease, the net is a thin one: the Commercial Tenancies Act deals with only a limited set of matters, such as aspects of the landlord's distress remedy, relief from forfeiture, and overholding, and much of even that can be displaced by the lease. It is nothing like the residential code, and it will not supply the commercial protections you actually care about. The renewal right you did not ask for, the cap on additional rent you did not negotiate, the personal guarantee you did not limit, the exit you did not build in, none of those exist unless you put them in the document.

This is why we say, in our commercial lease article and again here: negotiate before you sign, and have the lease reviewed. The cost of a review is small next to the cost of discovering, in year three, that a protection you assumed you had was never in the lease.

A note on the personal guarantee

One more place the difference bites. Many small businesses lease through a corporation to limit the owner's personal exposure. Commercial landlords often respond by asking the owner to personally guarantee the lease, which puts the owner's personal assets back on the line if the business cannot

pay. A residential tenant does not face anything like this. For a commercial tenant, the guarantee can quietly undo the protection of incorporating, so it is one of the most important things to understand and negotiate before signing.

Bottom line

Commercial tenants do not get many of the statutory protections that residential tenants rely on. There is legislation governing commercial tenancies, but it is limited, largely made up of default rules the lease can override, and it does not come close to the residential regime. So the lease is largely the rulebook, the landlord's remedies on default are stronger and faster, disputes go to court rather than a tenant-friendly tribunal, and you are generally bound for the full term. That makes careful negotiation and a proper review before signing far more important than most first-time business tenants realize. If you are about to sign a commercial lease, talk to us at the offer-to-lease stage, while there is still room to put the protections you need into the document.

This is general information comparing commercial and residential leasing in Ontario, not legal advice for your lease. Commercial leases vary widely and the terms control. Talk to us before you sign.

Questions about your own situation? Book a free consultation at lucianolegal.com/contact.html, call 647-479-4585, or email info@lucianolegal.com.

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