



MoneyTalk

Negotiating with a landlord

Do not sign a lease for a business premises without negotiating it in detail with the landlord first, no matter how big the landlord is, says lease lawyer Reid Corin. Study the lease in minute detail, making sure you understand the implications of each clause, and negotiate.

Little old me negotiating with a giant landlord? Yes, says Corin. There is no such thing as a "standard" lease. South African landlords are so used to small tenants signing draconian leases without even reading them properly that when they do come across a sharp-eyed, negotiating tenant, they tend to give way remarkably. "A lot of my clients take the (proposed lease), they read through it and they just draw lines through (the clauses) they don't like, and initial it. By and large they get away with it." Many business owners are so overwhelmed by the fact that a large landlord wants them in their centre, that they forgo common sense. "They see this as: 'wow! They don't actually understand (that) all the landlord wants is rent,'" says Corin.

Here are some of his tips to use before you sign your next lease:

As an owner-managed business, you don't have much bargaining power. But, ultimately, you have the sanction of walking away - a difficult thing to do if you have your heart set on a certain spot. Walk away if you have to.

The most bargaining power you will ever have with a landlord is just before you sign the lease. At that time, the landlord has identified you are a desirable tenant - he wants you in his building. That is the time to negotiate changes to the "standard" lease he is going to put in front of you.

Don't just accept your rental without at least trying to negotiate it down. There is no "going rate" for rentals. In shopping centres, they range from as little as R30 per square metre with a 1 or 2% turnover rental for anchor tenants such as Pick 'n Pay, to R700 per square metre with a 15% turnover rental. It all depends what the landlord thinks he can get out of you. Don't ever make the mistake of thinking that the landlord really cares if your business succeeds or not. In fact, he is probably gambling with your business - seeing if you can make it with a high a rental as possible. If you can't, well, he'll just get someone else in. The best negotiating stance here is to know exactly how much your business will be able to afford. Corin's rough guideline for retail rent is that it should never be more than 30% of your gross profit.

This rough guideline - 30% of gross profit - should include the numerous levies that landlords charge, such as rates and taxes, maintenance and a levy for marketing the shopping centre to customers. If they all add up to more than 30% of your gross profit, then negotiate a lower rental, or walk away.

For retailers, renewal is a crucial aspect of the lease. Consider this: you sign a three-year lease with a landlord. You work till your bones ache until at last, at the end of three years, you are making a decent income, because people now know where your shop is. The lease comes up for renewal and the landlord hits you with an 80% increase in rent. He knows that you have very little choice but to accept, because if you move your shop to another centre, you will have to start from scratch. If you are unlucky, the landlord will simply replace you with another tenant, without offering you any rental increase.

If you are confident about your business's prospects, negotiate as long a lease as

possible, although small tenants seldom get more than five years, but try to get an "option to renew", in other words, after five years, the lease is guaranteed renewal if you want it.

Mostly, the option to renew only applies once, so that you'll get ten years at most, after which the chances are good that the landlord will replace you with another tenant because he wants to modernise "the mix" of the tenants in the mall. Shopping centre tenants must understand that their stay is temporary. When the day finally comes that your lease is up and the landlord wants you out, you will lose all the value that you've built up in that location. Hopefully, by that time, you would have expanded your business to more than one outlet so that you are not wholly dependent on the mercy of one landlord only.

Make sure the annual escalation of your rent is tied to the official inflation rate. Don't just accept a 10% annual escalation, says Corin. This is a leftover from the days of double-digit inflation.

Landlords want you to cover the lease with your assets. In other words, if your business fails, they want to be able to sell your house and take the money to cover the rent that you would have paid them for the rest of your lease. Try your utmost to get out of this. Corin suggests that you offer them a bank guarantee to cover four months' rent instead of signing surety. Or, if they don't bite, that you offer collateral, but limit it to three or four months' worth of rental only.

The renovation clause is a nasty one in retail leases that says the landlord can give you notice if he wants to renovate the building. Shopping centres need to rejuvenate in order to stay attractive to customers, but this is often done without regard to the small tenant, whose businesses are destroyed by having their leases simply cancelled. Make sure that the clause says you will have an option to rent in the renovated building. Even better, that you will be entitled to the same or better position. Better still, that they will share the cost of the disruption with you.

Don't sign hastily because the landlord says there is a queue of businesses waiting to take the space. There probably isn't a queue, and if there were, he probably chose you because he thinks he can squeeze the most rent out of you. Take your time, do your homework and negotiate before you sign.

Don't sign an "offer to lease" unless you've done your homework very carefully. This document is presented to a gullible prospective tenant as a kind of "expression of interest", giving you an option on a desirable premises without being a formal lease. In fact, it is binding on the most important matters - rental, premises and the lease period. Don't sign it.

Don't expect a lawyer to advise you on rental. A lawyer can advise you on the implications of the clauses of the lease, but not on whether the rental you are charged is reasonable. A lawyer knows the law, not your specific kind of business. This information you will only get by speaking to other business owners in your industry.

Speak to as many other tenants and ex-tenants of the building you want to enter before signing your lease. It will give you an idea of the rental range, the nature of the landlord, as well as the pain points experienced by the tenants. Don't simply take what they tell you at face value. They don't like talking to other tenants. Some may think you are a spy from the landlord, and others tend to fib, bragging about what hotshot business people they are by being able to negotiate low rentals.

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