

# Make good obligations under a lease

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Worthwhile read for: Landlords, Tenants

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With both landlords and tenants considering their circumstances due to COVID-19, inevitably many tenants will not be renewing their lease and either vacating their premises or downsizing their space requirements. As such, it is important all parties understand their end of lease or make good obligations.

Make good obligations should be considered when the lease is being negotiated with the landlord, otherwise, it is likely to involve significant expense. Unfortunately, this does not always happen, and it is often when the end of the lease approaches that the parties review the lease provisions to determine their liability.

It is essential to review the relevant provisions of the lease, however, typically make good clauses include any of the following obligations:

1. remove all tenant's property from the premises including all signage and fix any damage caused;
2. reinstate the premises to the same configuration as at the commencement of the lease, or to return the premises to a base building standard;
3. service all air conditioning units within the premises;
4. refurbish or redecorate the premises, which may include: painting or otherwise treating interior surfaces, replacing carpets or other floor coverings, replacing window coverings and any broken or non-operational light fittings; and
5. in lieu of performing make good obligations paying the landlord a sum of money calculated on an agreed basis or as determined by the landlord.

Make good clauses may also require the tenant to return the premises to a standard as described in a condition report. Condition reports should be obtained at the start of the lease, and will often include pictures. This report should clearly document the condition of the premises when handed over to the incoming tenant, while also establishing the baseline condition the premises must be returned in at the end of the lease.

In Queensland, unless contracted out of in the agreement between the parties, the *Property Law Act 1974* (Qld) creates an implied obligation on a tenant to yield up the premises in good and tenantable repair, having regard to the condition of the premises at the commencement of the lease. This implied obligation does not extend to a lease that is less than three years. Queensland tenants also have protection against overzealous landlords under section 112(1) of the *Property Law Act 1974* (Qld), which states that where a lease requires premises to be left in good repair at the end of a lease, any recovery of damages for breach is limited to the reduction in the value of the premises.

It is important to note that any works required under a make good clause usually must be performed by the end of the lease period. If the lease allows performance after the end of the lease, there is usually an ongoing obligation to continue paying the rent and other moneys payable under the lease until the make good works have been completed to the landlord's satisfaction.

It is prudent for all work to be completed by the expiry of the lease. If a landlord is unable to let premises because a tenant has failed to perform their make good obligations, the tenant may be

liable for damages and ordered to account for the landlord's lost income. If you are a tenant approaching the end of your lease, you should start budgeting for the cost of delivering the premises to the landlord in line with your make good obligations.

It is important that Tenant fixtures which are installed or subsidised by way of a landlord's contribution are documented in writing so that it is clear which party will ultimately own those fixtures, and whether they are to be removed at the expiry of the lease.

Ultimately, the obligations a tenant must perform and the manner in which they must be performed will be detailed in the agreement between the tenant and landlord. While it may not appear to be an important consideration while negotiating the lease, each party understanding their respective obligations that will arise at the end of the lease will avoid unnecessary headaches and prevent disputes arising.

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