

## Leases and Canterbury's shaking ground

While damage sustained to buildings (whether in the CBD or elsewhere) will throw up many legal issues, a primary concern for both landlords and tenants will be the status of their leases.

Commercial leases vary, however, provisions dealing with damage are often substantially similar. The most common form of commercial lease in Christchurch is the Auckland District Law Society Deed of Lease, commonly known as the ADLS lease. Under the current ADLS lease, if the premises or any portion of the building is destroyed or damaged making them 'untenantable', then the lease is deemed to be at an end.

Irrespective of whether the premises are untenable, the landlord will have the right to terminate the lease if in the landlord's reasonable opinion demolition or reconstruction is required. The tenant must be given 20 working days notice - within three months of the date of damage. If notice to terminate is given, a fair proportion of the rent and outgoings will cease to be payable from the date of damage.

If the damage or destruction doesn't leave the premises untenable, the landlord must use the insurance money it receives to repair the premises. However, the landlord's obligation is subject to the insurance not having been invalidated or payment refused as a result of any act or default of the tenant, and is subject also to all necessary permits and consents. The landlord must act with all reasonable speed but is not required to spend more than the insurance money received.

### A key question then is what is untenable?

Each case will turn on its own facts. Many cases will be clear but others could be cause for debate between landlord and tenant. There is little case law around the concept, with those examples available typically relating to damage or destruction from fire.

As a general rule, though, landlords will need to consider the physical state of the premises and ask whether tenants can enjoy them in the same way as previously. Some degree of permanence is required so that something merely transitory or temporary will not make a building untenable. For example, in the case of a fire which resulted in a 10 week disruption for repairs in the context of a six year lease term, the damage was insufficient to declare the building untenable.

On the other hand, in the case of a fire which required 10 months

of repair work (including demolition and rebuilding of the roof and ceiling of the premises) in the context of a four year lease term, the premises were seen as untenable.

There are a multitude of other issues that have not been considered here - for example, rent abatements and the position where commercial premises are virtually undamaged but cannot be accessed due to their proximity to damaged buildings or position within a restricted area. In each case the parties will need to consider the specific provisions of their lease and apply them to their own particular situation. Specialist legal advice should be obtained early and before action is taken. It will take a long time for Canterbury to rebuild after the earthquake and the legal issues associated with it are likely to continue to occupy businesses, their advisers and the courts for an equally long time.



**Paul Calder**

Partner, Christchurch

T: +64 3 379 2430

M: +64 21 905 525

p.calder@  
DuncanCotterill.com



**Richard Smith**

Partner, Christchurch

T: +64 3 379 2430

M: +64 21 905 510

r.smith@  
DuncanCotterill.com