

## CHRISTCHURCH EARTHQUAKE

### Landlord & Tenants: Rent Abatement Issues

This brief guide considers rental obligations and rent abatement issues when a tenanted property has been partially damaged or destroyed.

When a tenanted property has suffered partial destruction or damage, a fair proportion of the rent and outgoings should abate or cease to be payable - but only until repairs or reinstatement have been completed. This is set out in the standard form Auckland District Law Society Deed of Lease and the Property Law Act 2007.

The key question is: what proportion of rent and outgoings is a fair proportion to abate?

The onus will be on the tenant of a partially destroyed property to show what they consider to be a fair amount. This will be a question of fact in each case. What is clear is that a tenant should not simply stop paying rent or withhold rent without explanation. A tenant should also not unilaterally decide what proportion of rent it considers should cease to be payable.

A sensible approach by a tenant would be to notify its landlord of the partial destruction of the property and the extent to which this affects its operations. The tenant would be wise to obtain a valuation from a registered valuer assessing the reduction in rental. Once a tenant has obtained that assessment the report could be provided to the landlord to support what fair proportion of rental the tenant believes should be abated.

In assessing what a fair proportion would be, a valuer would consider not only the area of the property which has been damaged, and the degree to which it has been damaged, but also the significance of the affected area to the tenant's business. For example, damage to a customer area of a retail tenanted property may have considerably more impact on the tenant than damage to the same sized area from a staff or storage area of the same property. This may then justify a higher proportion of the rent being abated.

Communication and cooperation between a landlord and tenant are key to working through what, if any, rent abatement is available. Landlords and tenants and their respective valuers should try to agree on a rental abatement, but if they can't, both parties have a right under the ADLS lease to go to arbitration.

Finally, there are also many instances of a tenant being unable to gain access to undamaged properties because the tenant's

premises are located within an area cordoned off due to damage to a neighbouring property. In this situation, the ADLS lease provisions on rent abatement will not be relevant as the tenant's inability to access the property is not an issue between the tenant and its landlord.

A landlord's obligations obviously extend only to its actual property so that impact on a tenant - because of neighbouring circumstances - is not a lease concern (unless the neighbouring property is owned by the same landlord when a tenant's right to quiet enjoyment of the premises may, depending on the facts of the situation, provide the tenant with further rights against its landlord). In this case a tenant will need to rely on any insurance they may have for interruption to their business.

We encourage you to contact us to discuss how you should proceed. For more information, please contact our national property team:

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