

MLR

M A A R T E N S & L E R O U X
A T T O R N E Y S

Is it possible to cancel a residential lease agreement prior to its expiry date?

It is of paramount importance to read and understand all the terms and conditions in a lease agreement before signing it. A lease agreement should protect the rights of the landlord as well as that of the tenant.

A situation, which often arises, is where the tenant finds her/himself in the position where she/he has signed a lease agreement, which makes provision for a cancellation penalty, which is payable should the lease agreement be cancelled by the tenant before the expiry date.

The Consumer Protection Act (CPA), if applicable to the lease agreement, allows a landlord to charge a reasonable cancellation penalty for early termination, however, this penalty charge cannot be determined or agreed on, at the date when the lease agreement is concluded. In other words, the contract cannot contain a penalty clause specifying the amount to be paid should the tenant cancel the lease early; it can only be determined as set out in the CPA.

The CPA provides that a cancellation penalty may be charged if it is reasonable. What is reasonable is determined by several factors, including, the duration of the initial lease agreement, the period of time given between cancellation and termination together with the chances of the Landlord finding an alternative tenant. You will need the assistance of an attorney in this respect.

A landlord has an obligation to find an alternative tenant and cannot merely rely on the tenant to do so. In other words, the landlord cannot sit back and claim damages suffered as a result of the premises being vacant; the landlord must attempt to minimize any damage which she/he may potentially suffer.

MLR

M A A R T E N S & L E R O U X
A T T O R N E Y S

Should the landlord incur any expenses in her/his endeavours in finding an alternative tenant, such as advertising costs, the tenant should request proof thereof. If the landlord can provide the tenant with the requested proof, then the tenant may be liable to bear the reasonable costs thereof.

Conclusion

A penalty may only be charged by a landlord when she/he has in fact suffered a loss as a result of a tenant's early cancellation of a lease agreement. The amount of loss, which the tenant is liable to pay, is only able to be determined when the lease is terminated and not at any stage before then. A landlord cannot merely charge a cancellation fee, when she/he has not suffered any loss.

This article does not constitute legal advice, as all cases are different. It is therefore important to seek the advice of an attorney, with specific reference to your matter. Please contact MLR Attorneys for comprehensive advice.

© MLR Attorneys 2019