

Negotiate it in the Offer!



By Brian Madigan LL.B.

That's simple enough advice. It's easy to follow. And, no one gets hurt. So, what's the problem? No one wants to do it. It's too costly, it's too time consuming and it's too much trouble.

OK, if you're going to take that approach, then you'd better leave yourself some "outs".

The best time to negotiate with the Landlord is now, before you sign anything, and before you move in. Afterwards, it's often too late.

What can you get from the Landlord:

- Lower base prices per square foot
- Lower maintenance charges (TMI)
- Lower escalations
- Less frequent escalations
- Options to renew
- Options to expand
- Earlier move-in date
- Later start paying the full rent provision
- Increased Landlord's allowances
- Right to take allowance whether you use them or not
- Elimination of restoration clause
- Right to assignment
- Free rent periods

- No personal guarantee
- Expiration date on guarantee
- Other preferred terms in lease

Basically, all these things are negotiable and on the table from the outset. If you don't ask, then the answer will be "no". So, ask! What's the trouble with that?

All too often, the agreement reached is that the Tenant will agree to execute the Lease upon the Landlord's Standard Lease Form. This is the crazy one-sided lease that they had some poor unfortunate Tenant sign once who couldn't afford a lawyer. Now, you're stuck with it too. Why? Because, you already agreed.

You can appreciate that a significant Tenant taking on a lot of space for a long period of time will not sign this standard form. They will negotiate the lease, page by page, clause by clause, word by word. You should too.

If you are going to submit an Offer through your agent, at least have it conditional upon your lawyer's approval. This way, at least you'll have an out, and get your deposit back, if the terms are too one-sided and too onerous.

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