

## Removal and Restoration Clause



**By Brian Madigan LL.B.**

This particular clause in a lease can be quite problematic.

Ordinarily, you'd think that the Landlord would want to keep all those valuable improvements that were made by the Tenant. Well, not always!

Sometimes, what is valuable to the Tenant has little or no value to the Landlord, no matter what it cost.

Think perhaps of a small jewellery store in a shopping mall. The premises have been fully upgraded with expensive fixturing, marble floors and oak walls. You might think that the Landlord would have a "windfall" if this store went out of business. But, perhaps not. It went out of business because it was too high end. A store that catered to the rich, however, the mall really served the middle class, and the real upper end stores were all located in another mall downtown.

On the closure on this jewellery store, the next Tenant might be selling discount T-shirts. The oak and the marble are just not a fit. Perhaps, the Landlord needs the space to assemble sufficient space to house a large lower end clothing store, such as Old Navy, with its polished cement floors. The marble on a small portion of floor would look rather silly.

So, here's the "removal and restoration" clause to the rescue. When the Tenant vacates, the Landlord has an option:

- 1) keep the premises intact, or
- 2) remove and restore the premises to their original condition.

So, the Landlord if another jewellery store is the likely Tenant, will take the premises intact, but if Old Navy is the new Tenant, then the Landlord will likely insist upon the removal and restoration option.

What does this mean? Actually, it means just what it says. The Tenant is obligated to remove everything that was installed, both by the Tenant, and previous Tenants at its own expense. The obligation is to strip the premises right down to the bare walls. This means, rip out the marble floor, and rip out the upgraded plumbing fixtures.

This requirement to remove leasehold improvements and restore premises on lease expiry could indeed be a very expensive provision. It is designed to offer some compensation to a Landlord faced with a departing tenant. And, it's the Landlord's choice.

It may also provide some incentive for the jewellery Tenant to renew rather than relocate. If the Landlord is undertaking a spatial assembly, to accommodate a larger Tenant like Old Navy, then the Landlord will likely offer to move the Tenant for free.

Astute Tenants will usually include a clause in their offers relieving them from this requirement. Landlords generally respond by requiring Tenants to remove certain improvements such as stairwells (in two floor office towers), raised flooring, cabling, vaults, trade fixtures and similar items.

It is important that this clause and its potential costs be considered at the outset, and prior to the Tenant moving in. Sometimes, the costs associated with the removal can exceed the costs of tenant's improvements upon entry into the premises in the first place.

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