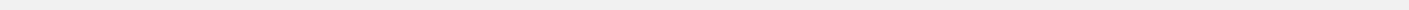


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Lease Agreements / September 2025



Lease Agreements: Common Pitfalls and Points of Caution

Overview

Lease Agreements outline the rights and obligations of a landlord and the tenant with respect to the tenanted premises. In the event of a dispute, reference will be made to the wording of the terms and conditions stated in the lease agreements to ascertain the parties' intentions. One should exercise caution when using standard lease agreement templates without any amendments, as this may potentially expose oneself to unwanted repercussions. One should, at the very least, review the terms of the standard lease agreement template and clarify points of doubts or contradictions.

This article highlights three key points to consider when executing lease agreements.

Letter of Intent

It is not uncommon that parties may sign a template document entitled a Letter of Intent ("LOI") prior to entering into a formal lease agreement. An LOI expresses the prospective tenant's interest and intention to lease the property in question from the landlord. An LOI may sometimes be accompanied by a good-faith deposit, to indicate that the prospective tenant is not considering other properties and would like to negotiate and thereafter enter into a tenancy agreement with the landlord.

It is important to discuss the terms of the LOI as it sets the stage for the tenancy agreement which follows. One should apply their mind to the following terms / provisions:

- (a) the date the parties shall sign the tenancy agreement;
- (b) the terms of the lease, such as the commencement date, the fitting out period, the rental amount and duration of the lease;
- (c) option to renew (if required);
- (d) the amount to be paid as security deposit;
- (e) the amount to be paid as good-faith deposit;
- (f) whether the good-faith deposit will be converted to security deposit or be applied towards the first month of rent payable when the lease starts;
- (g) what happens to the good-faith deposit if either party decides not to enter into the tenancy agreement.

While the use of a template document is convenient, amendment may be necessary to suit the needs of the situation. If an amendment is required, it would be prudent to have it stated in clear and unambiguous words.

As the LOI sets the stage for the tenancy agreement, it is crucial that all terms as agreed upon between the parties are captured and set out in the LOI. Thereafter, these terms should also be included in the tenancy agreement.

Generally, an LOI is not legally binding because it is crafted as subject to contract (i.e., the tenancy agreement). However, if the parties intend and agree for the LOI to form part of the tenancy agreement governing their relationship during the lease, the LOI, together with the tenancy agreement, could have contractual force. That said, this must be clearly stated in both the LOI and the tenancy agreement that these two documents form the complete contract as between the parties.

In the case of *Neil Simon Abbott v Tan Meow Hia* [2017] SGMC 37, one of the issues before the Magistrates' Court was whether the main tenancy agreement incorporated the terms and conditions contained in the LOI and/or the inventory list and handwritten notes therein. In that case, the defendant contended that the contract between the parties is merely the terms as stipulated in the main tenancy agreement, whereas the plaintiff's position was that the LOI and the inventory list were also part of the contract between the parties. The Court found that the parties had intended the LOI to be part of the agreement. First, the main tenancy agreement included a handwritten Addendum, which in turn contained a reference to the LOI. Secondly, the LOI outlined the obligations to be carried out by the defendant, for which there was evidence showing that these obligations were being carried out. Lastly, the inventory list had handwritten terms, again referring to the LOI. As seen from the evidence, both the main tenancy agreement (via the Addendum) and the inventory list contain a reference to the LOI. Although the LOI contained a subject to contract clause, the Court found that the fact that there was a formal tenancy agreement (i.e., the main tenancy) did not detract from the fact that the terms of the agreement between the parties are to be taken as a whole based on what can be evinced as the parties' intentions. Naturally, such disputes could have been avoided had there been clearer stipulations that the LOI has been incorporated into the Lease Agreement.

Lastly, before signing off the LOI and paying the good-faith deposit to the landlord, there is little downside to checking whether the supposed landlord is the registered owner of the property. This is important because you do not want a situation where the landlord is not the owner and has no authority to deal with the tenanted premises.

Security Deposit

Security deposit serves as a safeguard for the landlord to offset any losses incurred due to the tenant's breaches of the tenancy agreement and/or damage to the property. As stated in the lease agreement, subject to any permissible deductions, the security deposit is refundable within a specified period after the lease expires.

With respect to residential leases, it is not unusual for the amount to be pegged to the duration / term of the lease. For instance, a lease period of 1 year requires a security deposit equivalent to 1 month's rent, and a lease period of 2 years requires a security deposit equivalent to 2 months' rent.

As for qualifying leases of retail premises, the Lease Agreements for Retail Premises Act 2023 mandates compliance with the Code of Conduct for Leasing of Retail Premises in Singapore, which sets out, among other things, leasing principles for key tenancy terms such as security deposit. One of the objectives of the Code is to serve as a set of mandatory guidelines providing guidance to landlords and tenants of qualifying retail premises to enable fair and balanced lease negotiations. You may wish to refer to our Firm's earlier article on our website.

A "qualifying lease" refers to a lease for retail premises with a tenure of at least one year where the agreement for the lease, or extension or renewal thereof, is signed on or after 1 February 2024, whether or not the lease, extension or renewal is expressed to be governed by the law of Singapore. Premises are considered retail premises if they are used primarily for the sale of goods by way of retail or the supply of services.

In the recent case of *Li Jialin and another v Wingcrown Investment Pte Ltd* [2024] SGCA 48, the Court of Appeal had the opportunity to clarify the law and the analytical framework applicable to deposits. It was found that contractual deposits must be reasonable in amount at the time of contracting but need not be a genuine pre-estimate of loss. The Court of Appeal then laid down the following test to be applied where a plaintiff sues for the return of a deposit:

(a) First, the court determines whether there is a contractual right to forfeit the sum alleged to be a deposit upon the payer's breach. This will involve consideration of the parties' intentions and the terms of the contract, and may be express or implied. If there is no contractual right to forfeit, then there is no need to make any further inquiry as to the reasonableness of the sum and its recoverability will be determined under the general law notwithstanding the payer's breach.

(b) Second, where there is a contractual right to forfeit, the court determines whether the sum is a true deposit that is reasonable as an earnest. The sum will be reasonable if it is customary or conventional. If it is higher than customary, it may nevertheless be reasonable if the payee can show special circumstances to justify the deposit.

(c) Third, if the sum is reasonable as an earnest, it is a true deposit and can be forfeited. However, if the sum is not reasonable as an earnest, it is not a true deposit and cannot be forfeited. The right to forfeit, whether express or implied, is thus unenforceable and the claimant's right to recovery of the deposit will be left to be decided under the general law.

While the Court of Appeal observed that the importance of deposits extends beyond the conveyancing context, it remains to be seen whether the principles would apply to deposit under a lease agreement.

Payment of Utilities

Prior to the entry into a lease agreement, it is important to discuss and/or negotiate with the landlord regarding the apportionment or payment of utility bills and have it stated explicitly in the tenancy agreement.

If a new / separate utility account is required, the tenant may need to make arrangements to set up their own account with the utility provider. In such cases, the tenant pays the utility provider directly for the monthly utility usage.

However, if there is a pre-existing utility account, it would be prudent for parties to discuss the method of apportionment of utilities at the tenanted premises. This is particularly important if the tenanted premises have more than one tenant and there is only one meter to monitor usage. In the event of a dispute, factor such as whether the apportionment is appropriate and equitable between the parties may be taken into account to determine the reasonableness of the apportionment.

In an unreported decision of the Magistrates' Court in Kai Hospitality Pte Ltd v Mevan Asia Pte Ltd, one of the issues to be determined by the Court was whether the claimant's reimbursement claim of the utility bills was the result of an appropriate and equitable apportionment of utility bills between the parties at the tenanted premises. The Court analysed and considered the claimant's methodology and found, inter alia, that there were issues with the nature, reliability and accuracy of the methodology and sources of data it had chosen to rely on to establish the rates of usage relied on for its calculation. There was also insufficient evidence / particulars provided by the claimant to support various assumptions, calculations and rates of usage. Given that the burden of proof is on the claimant to prove the quantum of damages it was seeking, if a claimant fails to prove either the fact of damage or the quantum of its loss, typically only nominal damages may be awarded. In this case, the landlord was claiming from the tenant an apportionment of the utilities it paid, as parties were sharing use of the premises; the terms of the tenancy agreement was unclear as regards the apportionment of the utilities.

In light of the above, parties should discuss and agree upon the methodology and/or calculation for the apportionment of utility early, preferably before the entry into the tenancy agreement, and have the agreed method / calculation stated clearly in the tenancy agreement. This is to ensure that parties' intentions are clearly set out, thereby avoiding any miscommunication during the lease.

For more information, or should you have any queries or require assistance, please feel free to contact Wang Liansheng at Lswang@bihlilee.com.sg, Aileen Chua at achua@bihlilee.com.sg or Vanessa Ng at rwng@bihlilee.com.sg.

The information provided herein does not constitute or is deemed to constitute legal advice. You should obtain specific legal advice from a lawyer before taking any legal action.

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