



## Landlord's Remedies – Drafting for Enforcement

---

---

**“Better to have [a remedy in your lease], and not need, than to need, and not have.”**

— [Franz Kafka](#) [mostly]

---

---

Bias: In favour of the Landlord

Purpose: To give the Landlord the clearest, least complicated ability to enforce the lease against the Tenant

**Lease enforcement is largely limited to the paper between the parties. We've identified a number of areas that can cause problems for enforcement and will provide suggestions/encourage discussion on drafting and other ideas to allow for leverage against defaulting tenants.**

### Common Problematic Clauses

1. Abandonment
  - a. Go dark clauses
2. Rent
  - a. When is it due?
  - b. What does it include?
  - c. When is interest added to the rental account?
  - d. Can rent be applied to the oldest rent owing – lease should set that out
    - Limitation periods
    - Leverage
3. Commencement date – new builds
4. Notice
  - a. vs. grace period
  - b. where to serve
  - c. When is service of the notice effective?
  - d. how to calculate time
    - business days, days, “days after”, “within days after”
5. Dealing with abandoned goods
6. Repair and maintenance
  - a. Right to inspect
  - b. Right to sue

- c. Right to deduct from Security deposit
    - Ensure that security deposit needs to be refreshed
    - Failure needs to be a default
      - a. Notice?
    - Give rights to the landlord to fix, but also think about rights compelling the Tenant to fix (using the Landlord's preferred contractors) – consent injunction.
  - d. Wear and tear
    - Contextual – depends on the nature of the business. Why?
  - e. Restoration at expiration or early termination
    - Critical to be simple and clear. If landlord wants it back to base building, then they should just say that (because that's what most LL's want, but often try to hedge to allow themselves the right to keep the Tenant's trade fixtures etc.)
    - Does this clause survive termination?
  - f. Fixtures
    - "Affixed in any manner" overrules the common law definition
7. Security deposit
    - a. Forfeiture clause
  8. Environmental contamination
    - a. What definition of contamination – "breach of Environmental Law"
      - What is the standard?
    - b. Rights to inspect, test
    - c. Who pays for professionals?
    - d. When does that get triggered?
  9. Enforcement costs
    - a. Ensure that the legal and other professional fee provisions are adequately drafted for the jurisdiction
  10. Non-waiver
    - a. Acceptance of rent after a default notice
  11. Builder's lien legislation
    - a. Ensure that the Landlord cannot be deemed to be an "owner" under the respective BLA so that they are not liable for unpaid work done to the building
  12. Consequences of failure to perform
  13. Survival of contract clauses post termination/expiration of the Lease



|   |  |
|---|--|
| Suite 2500, Canadian Western Bank Place<br>10303 Jasper Avenue, Edmonton, AB T5J 3N6                            |  |
| David Hiebert (Solicitor)<br><a href="mailto:dhiebert@wittenlaw.com">dhiebert@wittenlaw.com</a><br>780-441-3235 | Liam Kelly (Litigator)<br><a href="mailto:lkelly@wittenlaw.com">lkelly@wittenlaw.com</a><br>780-702-3410 |