

retailer's guide

FOR INDEPENDENT RETAILERS AND STORE MANAGERS

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10 TIPS FOR *BETTER* *LEASING*

Signing the right lease takes time,
planning and the right attitude

BY ROBERT PRICE

Most retailers sign only a handful of leases in their lives, so the chances of developing an expertise in lease negotiations is slim. How much a retailer can leverage when it comes time to renew their lease depends on how well they negotiated their first lease. But what goes into signing the right lease the first time? It's a critical topic, and with so many retailers feeling the pressure of higher rents, strategic lease negotiations are ever more important.

This *Retailer's Guide* offers 10 Tips for Better Leasing that will help retailers know what to ask when they begin the process of negotiations.

TIP 1: IF IT'S NOT WHAT YOU NEED, WALK

When pursuing a location for a store, take into account the proximity to customers, suitability of the space for the merchandise and other aspects like accessibility issues, age of the building and

cleanliness. If the building isn't a Grade-A location, don't pay Grade-A prices. And whatever you do, don't start negotiations with an apology. When it comes to renting space, the retailer is the customer.

Liz Crocker, owner of P'lovers, a five-location store that sells environmental product, moved her Halifax store from the space she rented for 17 years. The landlord wanted to double the rent and wasn't interested in brokering a better deal for the store. Crocker asserted her rights as the customer, and got up and left.

The new location of the store, Crocker says, is "1,014 per cent better."

"We're paying less rent per square-foot, have more space and have natural light. We're in a brand new retail building that has seven retail spaces, six owned by local independents. We're finally in the kind of community that we could never create in the mall," says Crocker.

When it comes to leasing, Crocker says retailers need to know what else is on the



market and be willing to walk if they can't win favourable terms from the landlord.

"If you're a good, solid business, I think it's important to remember that you are the purchasing client and you do not have to buy what they are selling. There are alternatives."

TIP 2: NEGOTIATE AN EXTENSION CLAUSE FROM THE OUTSET

Before retailers sit down to negotiate a lease, it's important to get a handle on the lingo. If a retailer hires a lawyer, they won't need to memorize all that legalese. But there is one distinction retailers should keep in their mind. When they sign the first lease, they want to ask for "extensions" not "renewals" of the contract.

What's the difference?

With renewals, the scenario can play out like this. Let's say a retailer signs a five year lease with an option to renew for another five years. When the original deal expires, the option to renew kicks in.

But something happens in the split second between the end of the lease and the option to renew: all the personal covenants between the tenant and landlord fall away. (Personal covenants are the agreements the landlord and tenant have arranged, such as an option for the retailer to purchase the building at the end of the

lease, or for the retailer to lease the adjoining space when it becomes available. Personal covenants are separate from covenants that run with the land. Covenants that run with the land are agreements inherent to the principle of leasing, such as the tenants obligation to pay rent on time, make repairs, pay taxes and so on.)

But let's say the retailer has the right to extend the terms of the lease. When the original deal expires, the personal covenants built into the original deal flow into the lease extension.

"What I say is forget about renewals—don't use the term "renewal"—use the term "extension," because the courts have said that under an extension, all the rights that the tenant had and the landlord had all continue to flow," says Harvey Haber, a lawyer specializing in commercial leasing.

"I can't tell you how many tenants come back to me and say, 'Harvey, I've been there for ten years, I've paid the rent on time, they've never had a problem with me, but they don't want to extend my term. Somebody else is prepared to pay much higher rent,'" says Haber. This happens because the retailer only has the right to renew, not to extend.

Extensions preserve personal covenants, so negotiate extension clauses into the first lease.

TIP 3: WORK WITH PROFESSIONALS

The old line about mechanics performing surgery on themselves, rather than hiring a surgeon, applies to leasing negotiations. When entering into the specialized field of lease negotiations, hire an expert.

Bill Hanner, a lawyer specializing in leasing, says retailers want to consult with two kinds of professionals: leasing lawyers and retail brokers.

Lawyers know the ins-and-outs of the complex laws surrounding leases. The landlord, surely, has tested the lease against the lawyer and so should retailers. While legal bills can become costly, in the long run a well-negotiated lease could end up saving the retailer money if their lawyer can win favourable terms and extensions.

Hanner also recommends retailers consult with a retail broker. Brokers know the market and can help retailers find the right space. They can also help to negotiate favourable terms. A good retail broker can bring market research and hard evidence to the table that can aid the retailer's case.

"At least you come to the table with some information for when the landlord says rent is going from 20 bucks to 45 bucks per square-foot. You can at least have a sense of whether the market supports that view or not," says Hanner.

Brokers can also scope out alternative locations that can give retailers leverage during negotiations.

"Ideally the retailer will have other options that may bring the landlord down to reality if the retailer doesn't think the landlord is at reality," says Hanner.

TIP 4: ASK OR DON'T GET

"If you don't ask, you don't get," says Haber.

During the Offer to Lease stage, the point in negotiations when the landlord expresses interest in having the retailer move into the space, Haber says that retailers should "ask for the world." Ask for a right to extend. Ask for a tenant allowance. Ask for the first right of refusal to rent the space next door. Ask or don't get. Negotiate down, not up.

TIP 5: DON'T SIGN THE STANDARD OFFER TO LEASE

Haber says it's also important that retailers not sign the standard Offer to Lease form.

Typically, the Offer to Lease says that the retailer will sign the lease without making changes to the lease. By signing the Offer to Lease, the retailer is agreeing not to make changes to the lease. And this isn't what the retailer wants.

Haber says retailers should insert a clause to the Offer to Lease that says the lease "shall contain such reasonable amendments as are mutually agreed to between the landlord, tenant and their respective lawyers." A clause like this gives the retailer the right to request changes to the lease.

Start the second round of lease negotiations on the first day in the store—by building a healthy relationship with the landlord.

TIP 6: CONSIDER RESTRICTIVE COVENANTS CAREFULLY

Most retailers dread this scenario. They move into a new space and set up shop. (Let's say it's a pet store.) A year later, another pet store opens two doors down. How did this happen? And what can retailers do to prevent competitive businesses from infringing on their territory?

One way to protect the store is to insert restrictive covenants into the lease. In the case of the pet store, a restrictive covenant may indicate that the landlord cannot rent another space in the building to another pet store.

Sounds simple, but Haber says it isn't so black and white. "The problem is," says Haber, "exclusives always come back to haunt you, no matter how you draft them."

WHY IS THIS SO?

Let's look at the pet store again. The store may say the landlord can't rent a space in the same building to another pet store. But the landlord can rent space in the adjacent building. And what constitutes a pet store anyways? Can the

landlord restrict the grocery store from selling dog food and kitty litter? Unlikely. Can the landlord stop the hardware store from selling leashes and bird feed? Probably not.

Restrictive clauses have a role to play in negotiation, but retailers should work with their lawyers to make sure they don't waste time on what could be a dead-end.

Renting has benefits—just look at what pop-up retailers can do with a short-term lease.

TIP 7: START EARLY ON THE SECOND ROUND OF NEGOTIATIONS

Ask a friend how she's doing and she's liable to say, "Good, but busy." We're all busy. But we never want to be too busy to prepare for lease negotiations.

Start the second round of lease negotiations on the first day in the store—by building a healthy relationship with the landlord.

And, about a year before the lease expires, start conducting research to make the extension negotiations go smoothly. Look for alternative locations. Check to see what kind of rent the market will support, what level of rent increase is fair and what kind of increases in rent the store can afford. What improvements does the store need? What value does the store bring to the landlord's retail mix?

TIP 8: ASK FOR FAVOURABLE EXIT AND RESTORATION OBLIGATIONS

Before signing a lease, retailers should make sure the lease has exit and restoration obligations that are favourable to the retailer. The less money the retailer has to invest in returning the space to its original state, the better.

In many standard forms, landlords have a clause that says that if the landlord wants to sell, demolish or redevelop the site, they can terminate the lease on a certain number of months, often without compensation to the tenant. A good lawyer will try to eliminate the clause from the lease or at least get the retailer's unappreciated costs of improvements paid of if the landlord does try to terminate the lease.

TIP 9: ASK ABOUT THE LANDLORD'S PLAN

The landlord will want to know about the retailer's plan before signing the lease. So should a retailer want to know the landlord's plans. How much does the landlord expect to spend on upkeep and renovations? What kind of vision does the landlord have for the property? What kind of retail mix does the landlord aspire to create? How will the landlord work to make sure the retailer prospers at this location?

Retailers may also want to visit other tenants and get the down-low on the landlord. Would these tenants recommend the landlord to another retailer?

TIP 10: ASK IF IT MAKES SENSE TO BUY

Renting has benefits—just look at what pop-up retailers can do with a short-term lease. For retailers with long-term plans, buying property can make a lot more sense.

Sydney Hansen, a bookseller in Halifax, recently purchased a building to house the store she co-owns with John Doull.

One of the key reasons for purchasing rather than renting came down to finances—with an inventory of more than 300,000 books, there wasn't a rental space the store could afford. If rent went up, the store would go under.

"With bookstores, there is only so much you can sell. The total possible sales are finite. The number of books you can fit into a given space is finite. If rent goes up, you can't really increase the cost of your books."

Hansen says she prefers to own because it gives her an asset, a sense of assurance, and complete control over the building's look and upkeep. She says she can't see herself ever going back to renting.

"I think in the back of my mind, I'd be thinking — what about rent, what about guarantees, how much will my rent increase?" **RE**

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