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Tenant Termination Rights

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The word “terminate” ranks first among the seven words a landlord does not want to hear on the first day of a lease negotiation. The others are “abatement”, “set-off”, “allowance”, “reimbursement”, “self-help” and “the-landlord-shall”. Accordingly, the negotiation of express rights of termination for tenants in commercial, industrial and retail leases can be a challenging exercise.

This paper canvasses the challenges faced by leasing lawyers when negotiating tenant termination rights and offers strategies to overcome those challenges. In particular, it addresses (i) the types of assumptions and business terms that may need to be protected with express rights of termination, (ii) drafting techniques, and (iii) matching issues with appropriate remedies. This paper also reviews the circumstances in which a tenant’s common law rights may be relied upon as a basis for terminating a lease and considers the risks associated with doing so.

Many of the issues addressed in this paper are examined from a retail perspective in Ontario, Canada and many of the cases are taken from across Canada.

This paper is directed to lawyers and people engaged in drafting offers to lease and leases in Canada.