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Rent Abatement in Commercial Leases

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The word “abatement” when used in the context of “rent” ranks second among the seven deadly words a landlord does not want to hear in a lease negotiation. The others are “termination”, “set-off”, “allowance”, “reimbursement”, “self-help” and “the-landlord-shall”. Accordingly, the negotiation of express rights of abatement for tenants in commercial, industrial and retail leases can be a difficult task.

This paper will canvas: five categories of circumstances in which rent abatement is relevant; drafting considerations for abatement clauses; availability of insurance; and the impact of insurance on the negotiation of abatement rights. We also review whether the circumstances give rise to common law or statutory rights of abatement.

This paper is written for lawyers and people engaged in drafting offers to lease and leases for retail, office, specialty and industrial premises in Ontario, Canada.