Landlord Remedies

Decision Framework

RAR LITIGATION

Has the Tenant Breached the Lease?

YES

Has the Tenant Breached the Covenant to Pay Rent?

YES

Does the Landlord Wish to Terminate the Lease?

NO

Available Remedies
- Sue for arrears only
- Exercise right of distress
- Sue for fraudulent removal of goods (s.50 CTA)

Exercise Right of Distress
Available where tenant is in arrears of rent. Subject to statutory requirements and procedural safeguards.

Distress – Defences & Limitations
Distress may be challenged where:
- Illegal, irregular or excessive
- Lease terminated or surrendered
- Receiver appointed
- Tenant bankrupt

Fraudulent Removal of Goods (s.50 CTA)
Applies where tenant removes goods to defeat the landlord's right of distress.
Liability: double value of goods removed.

YES

Does the Lease Specify the Method of Termination?

YES

Lease Provisions Govern
- Default notice requirements
- Service requirements

NO

Section 18(1) - Commercial Tenancies Act
If rent remains unpaid for 15 days after due date:
- The landlord may terminate without prior demand
- The landlord may claim damages for the unexpired term (with proper notice)

Termination – Required Steps
To terminate, the landlord must:
- Physically re-enter and post Notice of Termination; or
- Obtain court-ordered termination and a writ of possession

Tenant Challenges to Termination
Termination may be challenged on the basis that:
- It was improper; or
- Relief from forfeiture should be granted

Relief from Forfeiture (s. 20, CTA)
The court may grant relief, considering:
- Nature and seriousness of breach
- History of default
- Balance of harm
- Clean hands
- What is just and equitable

Waiver
If the landlord's conduct affirms continuation of the lease, the termination may be found to be waived.

NO

Does the Lease Deem This Breach to Be a Rent Default?

YES

Treat as a Rent Default

NO

Does the Lease Govern the Landlord's Remedies For This Breach?

YES

Lease Provisions Apply

NO

Does the Landlord Wish to Terminate the Lease?

YES

Section 19(2) - Commercial Tenancies Act
Where the tenant breaches a covenant other than payment of rent:
- The landlord must serve written notice
- Notice must specify breach
- Provide reasonable opportunity to remedy
- Require compensation

If not complied with the landlord may terminate.

NO

Other Remedies
- Declaration / injunction
- Perform obligation at tenant's cost (if lease permits)
- Sue for damages

Download Flowchart

Ian Cantor
RAR Litigation Lawyers
416-262-4754
icantor@rarlitigation.com
rarlitigation.com