

Tenant Representation and the Process

Simply, what is a tenant representative within the Commercial real estate process, why is there a need and what exactly do they do?

It's not so simple to answer the above, but in relative terms, FVG Property, as a tenant representative within the Commercial transaction, acts solely for the lessee/tenant, as does the owner or the landlord of the property have a real estate agent usually acting on their behalf in negotiations of a Commercial matter.

FVG Property, as your tenant representative, will represent you in each and every aspect of the Commercial leasing transaction, either directly or within a tenancy process, to assist where needed with the highest level of skill and professional aptitude. FVG Property is not simply there as a real estate agent to charge a fee once concluded. Obviously, yes, we do that, but the process of tenant representation is much, much more than that. Within the existing or proposed Commercial arrangement to lease, FVG Property provides advice as to rent reviews, new lease arrangements, inclusive of renewals, and professional advice as to existing arrangements.

Is there a need to use FVG Property? Simply, in a word, "yes". When you work with FVG Property in regard to tenant representation, you are simply not working with an agent but more so its Managing Director, Mark Ruttner. He is a "Specialist Retail Valuer" for the Victorian Small Business Commission, Australian Property Institute and Real Estate Institute of Victoria, Certified Practising Valuer and Licensed Real Estate Agent. Therefore, when appointing FVG Property within this process, you are appointing an organisation and specific individual with above average "live data", backed up by the necessary training and skillset to provide not just "talk the talk" outcomes, but with the individual providing Commercial advisory of the highest standard with analytical supportable evidence. In our view, every transaction should be able to provide a clear direction and result based on factual market evidence.

FVG Property provides our clients with a clear and undeniable basis to negotiate and hence, provide a working and importantly agreeable outcome for both Lessee and Lessor.

Within FVG Property's suite of services we provide:

- Current lease auditing, advisory and recommendations,
- Cost benefit analysis of "stay", "renew", "alternative",
- Subject premises source and analysis,
- Real estate negotiation,
- Lease documentation recommendations,
- Fitout/rent free recommendations,
- Current market rent reviews under the Retail Leases Act,
- Rental determinations,
- Dispute resolution,
- Rental premise strategy,
- Rental negotiations, and
- Exit strategies.



You may ask how can an organisation provide all these services?

Simply, FVG Property are:

- Certified Practising Valuers,
- Licenced Real Estate Agents,
- Members of Royal Institute of Chartered Surveyors,
- Australian Property Institute, and
- Real Estate Institute of Victoria.

All requiring course and day to day experience within the Commercial leasing market.

So how does the process work, and what does it entail?

FVG Property, with some 20 years' experience in this area of specialisation, provides a direct and simplistic process and usually successful outcome.

A process may include the following passage of events:

1. A defined requirement of task at hand, inclusive of timing and outcome,
2. What are the key drivers and outcomes,
3. The "meeting" between the parties. This is a big factor. There needs to be a desire by both sides to achieve the best possible outcome. If there is unison and a sound working relationship, the total process flows,
4. Outline to be provided, inclusive of exactly what will be provided, proposed timeframe, fee proposal and any other issue that is to be required by the client. This needs to be formulated, agreed and executed at the initial stages of the process,
5. Tenant's requirements to be documented,
6. Tenant representatives market research,
7. Tenant representatives market analysis,
8. Tenant representatives recommendations to Lessee,
9. Tenant representatives final findings and conclusions,
10. Submission and discussions with Landlord,
11. Negotiations between the parties to the lease,
12. Final agreement,
13. Documented outcome,
14. Lease determination,
15. Conclusion of total processes.

Obviously, there are a number of variances depending on the task at hand, however, the above forms part of a process that aligns a formalised outcome within a short space of time.

This process does not just apply to expiry of lease terms or new lease. It is imperative in today's world that the underlying success of a business, to some degree, forms a very strong correlation to outcomes.



The easiest way to point this out is the current vacancy levels in most of Melbourne's rental strips:

- Chapel Street, South Yarra,
- Toorak Road, South Yarra,
- Acland Street, St Kilda,
- Glen Huntly Road, Elsternwick, and
- Glenferrie Road, Malvern.

It goes without saying that the task of a tenant representative is to provide a working outcome for their client at any given time within the Commercial leasing arrangement. It is not limited to beginning or end of a lease. Remember, if the rental you have to pay is not sustainable, you will be out of business before you know it.

Before you speak to anyone in the real estate market about tenant representation, call us, so as we can assist in achieving your goals and outcomes.

Please find herein recent amendments to the Retail Leases Act:

8 New Part 15 inserted

After Part 14 of the Retail Leases Act 2003 insert—

"Part 15—Transitional provisions—Retail Leases Amendment Act 2019

122 Validation of retail premises leases in respect of essential safety measures

(1) This section applies to a retail premises lease that— (a) was entered into before the date on which Division 1 of Part 3 of the Retail Leases Amendment Act 2019 comes into operation and is in force on that date; and (b) contains a provision to the effect that the tenant must pay the landlord, as a contribution to outgoings, for the cost, or part of the cost, of installation, repairs or maintenance work in respect of an essential safety measure.

(2) The retail premises lease has, in respect of outgoings referred to in subsection (1)(b) incurred on or after the commencement day, the same force and effect as it would have had if Division 1 of Part 3 of the Retail Leases Amendment Act 2019 had been in operation at the time the lease was entered into.

(3) In this section— commencement day means the day on which section 8 of the Retail Leases Amendment Act 2019 comes into operation."

Division 2—Other matters

9 Provision of landlord's disclosure statement and proposed lease

(1) For the heading to section 17 of the Retail Leases Act 2003 substitute— "Provision of landlord's disclosure statement and proposed lease".



(2) For section 17(1) of the Retail Leases Act 2003 substitute— "(1) The landlord, at least 14 days before entering into a retail premises lease, must give the tenant— (a) a disclosure statement in the prescribed form (but the layout of the statement need not be the same as the prescribed disclosure statement); and (b) a copy of the proposed lease in writing, including particulars of the tenant, the rent and the term of the proposed lease."

(3) After section 17(1A) of the Retail Leases Act 2003 insert— "(1B) If the proposed lease given to the tenant contains any changes to the previous copy of the lease given to the tenant, the landlord must notify the tenant of the changes when the proposed lease is given to them. Penalty: In the case of a natural person, 50 penalty units; In the case of a body corporate, 250 penalty units. (1C) If the landlord gives the tenant the disclosure statement and proposed lease less than 14 days before the lease is to be entered into, the term of the lease is taken to commence 14 days after the disclosure statement and proposed lease are given to the tenant."

(4) In section 17(7) of the Retail Leases Act 2003 omit "substantially".

10 Security deposits

In section 24(1)(d) of the Retail Leases Act 2003, for "as soon as practicable" substitute "within 30 days".

11 Landlord's disclosure on renewal of lease

For section 26(2) of the Retail Leases Act 2003 substitute— "(2) The disclosure statement referred to in subsection (1)— (a) must set out any changes to the previous disclosure statement given to the tenant in respect of the lease; and (b) must include information that is current from a specified date that is within 3 months before the statement is given."

12 Landlord to give tenant certain information before option to renew lease expires

(1) For the heading to section 28 of the Retail Leases Act 2003 substitute— "Landlord to give tenant certain information before option to renew lease expires".

(2) For section 28(1) of the Retail Leases Act 2003 substitute— "(1) This section applies if a retail premises lease contains an option exercisable by the tenant to renew the lease for a further term. (1A) The landlord, at least 3 months before the last date that an option to renew the lease may be exercised, must give the tenant written notice setting out— (a) the date by which the option to renew the lease may be exercised by the tenant; and (b) the rent payable for the first 12 months under any renewed term of the lease; and (c) the availability of an early rent review under section 28A; and (d) the availability of a cooling off period under section 28B; and (e) any changes to the most recent disclosure statement provided to the tenant, other than any changes in relation to rent."

(3) In section 28(2) of the Retail Leases Act 2003, for "If subsection (1) requires the landlord to notify the tenant but the landlord fails to do so within the time specified by that subsection" substitute "If the landlord fails to give the tenant all of the information required by subsection (1A) or to give written notice within the time specified by that subsection".



(4) In section 28(2)(a) of the Retail Leases Act 2003, for "6 months" substitute "3 months".

(5) For section 28(2)(b) of the Retail Leases Act 2003 substitute— "(b) subject to subsections (2A) and (2B), if that date is after the term of the lease ends, the lease continues until that date on the same terms and conditions as applied immediately before the lease term ends, unless the landlord and tenant otherwise agree; and".

(6) After section 28(2) of the Retail Leases Act 2003 insert— "(2A) If the tenant requests an early rent review under section 28A and the rent determination under that review is less than the rent payable under the lease during a term extended under subsection (2)(b), the rent payable during the extended term is to be equal to the rent determination. (2B) If the tenant does not request an early rent review under section 28A but the rent specified in a written notice under subsection (1A) is less than the rent payable under the lease during a term extended under subsection (2)(b), the rent payable during the extended term is to be equal to the rent specified in the notice."

13 New sections 28A and 28B inserted

After section 28 of the Retail Leases Act 2003 insert—

"28A Early rent reviews

(1) If a retail premises lease provides for a rent review to be made on the basis of the current market rent of the premises, the tenant may request the landlord for an early rent review in accordance with this section. Note For reviews based on the current market rent of the retail premises, see section 37.

(2) The tenant may request an early rent review by giving the landlord written notice of the request within 28 days after the landlord gives notice under section 28(1A).

(3) The tenant must notify the landlord in writing as to whether the tenant exercises the option to renew the lease on or before the last date that the option to renew the lease may be exercised.

(4) If a specialist retail valuer is appointed to determine the current market rent but the tenant is not notified of the rent determination at least 14 days before the last date that the option to renew the lease may be exercised, that date is extended to 14 days after the date on which the tenant is notified.

(5) If the tenant exercises the option to renew the lease, but the last date that the option may be exercised is extended under subsection (4) until after the lease term ends, the term of the lease is extended on the same terms and conditions to that date, unless the landlord and tenant otherwise agree.

(6) If the tenant does not exercise the option to renew the lease, and the date that is 3 months after the last date that the option to renew the lease may be exercised is after the lease term ends, the term of the lease is extended on the same terms and conditions to that date, unless the landlord and tenant otherwise agree.



(7) Despite subsections (5) and (6), if the rent determination under an early rent review is less than the rent payable under the lease during an extended term, the rent payable during the extended term is to be equal to the rent determination.

28B Cooling off period—option to renew lease

(1) If a tenant has exercised an option to renew a retail premises lease and has not requested an early rent review under section 28A, the tenant may give the landlord a written notice, in the cooling off period, that the tenant no longer wishes to exercise that option to renew the lease.

(2) If the tenant gives the landlord a notice under subsection (1)— (a) the term of the lease is extended by 14 days; and (b) the lease is not, and is taken not to have been, renewed; and (c) the tenant is not able to exercise an option to renew the lease.

(3) In this section— cooling off period, in relation to a retail premises lease, means the period ending 14 days after the day on which the tenant exercises an option to renew the lease."

14 New sections 123 to 125 inserted

After section 122 of the Retail Leases Act 2003 insert—

"123 Security deposits

The amendments made to this Act by section 10 of the Retail Leases Amendment Act 2019 apply to a retail premises lease entered into and in operation immediately before the day on which that section comes into operation.

124 Disclosure statements on renewal of leases

The amendments made to this Act by section 11 of the Retail Leases Amendment Act 2019 apply to a retail premises lease entered into and in operation immediately before the day on which that section comes into operation (unless there are less than 21 days before the end of the current term of the lease).

125 Information to be given to tenants before options to renew expire

The amendments made to this Act by section 12 of the Retail Leases Amendment Act 2019 apply to a retail premises lease entered into and in operation immediately before the day on which that section comes into operation (unless there are less than 3 months before the last date that the option to renew the lease may be exercised)".

Please contact Mark Ruttner for all your tenant representation requirements

● **0411 419 674** ●

