WHAT HAPPENS IF YOU CANCEL YOUR LEASE EARLY?

“There ain’t no such thing as a free lunch” (Wise old adage)

You sign a two year lease for a nice little apartment (or a large family house if you have a spouse, 3 kids and a dog) but after 6 months your employer transfers you and you have to cancel early.

“Fine” says your landlord “but you are breaching your lease and I am holding you liable for the remaining 18 months’ rental”.

What are your rights? As is often the case in life, that depends…

Check the terms of your lease

First things first, generally your most important consideration is this: “What does my lease say about termination?”

Most leases specify what happens if you don’t comply with the terms of your lease and our law will generally hold you to your agreements. So if you have agreed to be bound to a two year lease, your starting point should be that you are at risk if you cancel early.

Before you concede anything however, consider the following –

Does the CPA apply?

First step is to decide whether the Consumer Protection Act (CPA) applies to your lease.

The CPA gives its protections to “fixed-term agreement” tenants but only if your landlord is leasing to you “in the ordinary course of business” and it’s unfortunately not yet clear how our courts will interpret that definition in property leasing scenarios. For example, if your landlord is a property investor running a full-on letting business with a whole selection of apartments or houses, you will definitely fall under the CPA. But what about a private home owner who is overseas for a year and rents to you on a temporary basis? Or a pensioner letting out a “granny flat” to boost their retirement income? You can certainly argue that in both cases the landlord is making “a business” of the letting out, but expect your landlord to disagree.

The 20 day notice provision in the CPA

If the CPA does indeed apply, this is the crux: The CPA allows you to give your landlord 20 business days’ notice, at any time, and for any reason.

“Hooray” I hear you shout, “I get off scot free”. But not so fast!

The CPA also allows your landlord -

To recover any amounts still owed by you in terms of the lease up to the date of cancellation, and

To impose a “reasonable cancellation penalty”. The principle here isn’t to punish you by allowing your landlord to, for example, automatically hold you liable for the full remaining period of your lease. The idea rather is to let the landlord recover all actual losses resulting from your early cancellation – rental lost until a new tenant is in place, re-advertising costs, new agent’s fees, new lease preparation costs and so on. Particularly if you are cancelling a fixed-term lease early on, expect to pay for the privilege.

Note that this all applies regardless of what your lease says – you can’t be contracted out of these protections. In other words if your lease imposes a set “early cancellation fee” or the like, it must still be a reasonable one. Note also that you must give the required notice “in writing or other recorded manner and form” (keep proof).

What if the CPA doesn’t apply?

In this case, you have no specific right of early cancellation and will be bound by the terms of your lease.

But you still aren’t entirely at your landlord’s mercy. Any penalty imposed on you must still be reasonable. Per the Conventional Penalties Act, a court can reduce a penalty if it is “out of proportion to the prejudice suffered” by the landlord.