

# COMMUNICATION BREAKDOWN

**THIS MONTH JONATHAN KAPLAN HIGHLIGHTS SOME OF THE TYPICAL ISSUES THAT ARISE IN MEDIATIONS HE HAS OFTEN BEEN REQUIRED TO PRESIDE OVER.**

I have noticed that in an overwhelming number of cases, many issues in dispute have been due to the tenant not being able to deal directly with the landlord. Usually the landlord engages a managing agent and the line of communication is between the tenant and the managing agent, then the managing agent and the landlord and the communication process then returns that way.

This might take even longer where input is required by third parties, for example, tradesmen, or where insurers become involved.

Most landlords have no interest in dealing directly with tenants, so unless there is an emergency, in which case tenants usually have rights under retail tenancy legislation, it is best to maintain a good relationship with the managing agent. When this relationship fractures, effective communication often goes array.

In other cases problems could have been avoided had the tenant (and also the landlord) sought considered legal advice prior to executing the lease documentation, frequently on the standard form of contract not adapted to suit specific needs.

I recall one particular case in which a tenant was considering exercising

an option to renew a lease. It was alleged by the tenant that the landlord's agent had provided the tenant with documentation to sign, which the agent had assured contained merely details of, "an expression of interest to exercise the option". The tenant was urged to sign the document on the assurance of the landlord's agent. Some months later when the tenant informed the landlord's agent that they were vacating at the end of the lease term, the landlord's agent contended that the documentation signed was actually an exercise of the option to renew. He denied the prior assurance. Needless to say, allegations of misleading and deceptive conduct were made against the landlord's agent. Had the tenant, who claimed to be inexperienced in these matters, instructed a solicitor to review that documentation the situation would most likely not have occurred.

In another case, a tenant, when executing a renewal of a lease, had deleted the name of one of the original guarantors. The landlord returned the documentation requesting the tenant to reinstate the guarantor's name and to arrange for execution by the guarantor, but the tenant was (wrongly) advised by a non-legal advisor to ignore the request. As a consequence the tenant was not only in breach of the original lease, but had also not returned the properly executed lease to the landlord within the prescribed time, the consequence being that the option had lapsed due to non-compliance by the tenant. The tenant had therefore merely occupied on a monthly holding over basis with all the insecurity that goes with that.



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Fortunately, due to the benevolence of the landlord, the matter was amicably resolved and the tenant remained. The moral of the story is to obtain considered legal advice and not to rely upon gratuitous advice from unqualified "bush" lawyers presuming to know the law.

Disputes also frequently occur in relation to reimbursement of the security bond. Ensure what your maintenance and repair obligations are as well as your "make good" obligations when vacating the premises. Before any fit-out work is done, take detailed photographs of the premises and make a detailed

inventory which you should provide to the landlord's agent together with the photographs. Failure to do so can be quite costly, especially when there is pre-existing damage and the landlord seeks to have you pay for that at the end of your lease.

To conclude, should you find yourself in mediation with your landlord you will significantly enhance the likelihood of a good outcome if you have maintained a diligent record of all communications with the agent or your landlord in relation to the premises. ■■■

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