

MODEL LEASE CLAUSE

Limit Tenant's Remedies if Existing Cotenancy Violation Continues Past Deadline

The following Model Lease Clause was drafted with the help of Toronto attorney Stephen J. Messinger.

Show this clause to your attorney before adding it to your lease's operating (or "ongoing") cotenancy clause.

RETURN TO FULL RENT AFTER COTENANCY VIOLATION

a. Return to Full Rent. If this Lease shall not be terminated as provided in Clause [*insert # of operating cotenancy clause*] hereof, Tenant shall, upon the earlier of:

- (i) The curing of the Major Store Violation or the Small Store Violation in question; or
- (ii) The expiration of the [*insert #, e.g., 60*]-day period within which Tenant was permitted to terminate this Lease under Clause [*insert # of operating cotenancy clause*] hereof,

recommence paying Minimum Rent (such date being referred to as "Rent Recommencement Date") and any Percentage Rent, as well as all other charges, all as provided in this Lease without regard to (and notwithstanding) the provisions of Clause [*insert # of operating cotenancy clause*] hereof; provided, however, that the provisions of such Clause shall again apply to any subsequent, new Major Store Violation or Small Store Violation first occurring thereafter, whether of the same character as before.

b. Uncured Small Store Violation. Notwithstanding anything herein to the contrary, if a Small Store Violation remains uncured by the Rent Recommencement Date and the percentage of gross leasable area of the Center devoted to non-Major Stores which are open and operating decreases by more than [*insert # percentage points, e.g., 10 percentage points*] from that existing at the Rent Recommencement Date (the resulting percentage after such decrease is referred to as the "Minimum Threshold") for [*insert #, e.g., six (6)*] consecutive months, then Tenant shall not have the right to pay Alternative Rent, but as its sole remedy shall have the right, at any time within [*insert #, e.g., 60*] days following the expiration of such [*insert #, e.g., six (6)*]-month period, as long as the percentage of gross leasable area of the Center devoted to non-Major Stores which are open and operating remains at or below the Minimum Threshold to elect to terminate this Lease upon written notice to Landlord. If Tenant so elects, then this Lease and the term hereof shall end [*insert #, e.g., 90*] days following the date of Tenant's said notice, all as if such early termination date were the natural expiration date of the term hereof (and without further recourse to or remedy against Landlord on account of any violation of this Clause [*insert # of operating cotenancy clause*] hereof), except that if the percentage of gross leasable area of the Center devoted to non-Major Stores which are open and operating increases to at least the percentage as of the Rent Recommencement Date within said [*insert #, e.g., 90*]-day period, then Tenant's right and election to so terminate shall become null and void.