Tips for commercial lease negotiations

Negotiating a lease agreement can feel daunting, but having a clear understanding of your clinic's needs, your goals for the location and business needs, and your budget will go a long way toward securing the right lease for your new space, or confidently walking away from a deal that doesn't align with your business objectives.

1. Evaluate your needs

Consider your clinic's current and future space needs and determine your budget and preferred location. If you're uncertain about near-term needs, consider a shorter lease (for example, two or three years). It may be worth it to pay more for a shorter-term lease to avoid a long-term commitment.

2. Understand your costs

Review the incidentals you are being asked to pay and make sure the total cost fits your budget. Any future increases in base rent and incidentals should be clearly specified.

Doctors of BC's overhead expense calculator helps you estimate your income, lease or mortgage, and monthly overhead, empowering you to accurately assess your bottom line.

3. Understand your lease options

Based on the type of lease being presented, the costs covered can vary greatly.

- **Gross rent lease** - you pay a single amount to the landlord that covers base rent and all incidentals. Those typically include utilities, property tax, insurance, maintenance, repairs, and common area expenses, such as snow removal, janitorial services, landscaping, grass cutting and property management. Another option is a modified gross lease, in which you and the landlord share some combination of incidental costs.
- **Various net leases** - you pay some incidentals directly, usually resulting in a lower rent. The main differences between net leases are:
    - **Net lease** - you may pay the base rent plus one of the following: property taxes (most common), insurance, or utilities. Your landlord pays for all other expenses.
    - **Double net lease** - you pay base rent plus property taxes and insurance.

- **Triple net lease** - you usually pay base rent, plus property taxes, building insurance and utilities, as well as other operating and maintenance costs. **Note**: These are standard definitions and landlords sometimes add maintenance or common area expenses to your costs as part of a single or double net lease, so always double check what costs you are responsible for.
- **Percentage rent lease** - you pay a base rent plus a percentage of your gross sales over a certain minimum. These are usually used in malls and other multi-tenant retail locations.

4. Check market rents

Get an idea of market rents in the area you are considering and compare them with the landlord's asking rent and what is included in the rent, utilities, property tax, parking and more. Speak with a commercial realtor to get current market lease rates which may help you negotiate a lower rent if the asking figure is high.

5. Research the property

Gather information about the property that might be useful for your lease negotiations.

- Look at the building's tenant mix and neighbours to make sure they're compatible with your business. Are there any competitors?
- Find out what the building's traffic is like. If other tenants use most of the parking spaces, will you have enough for your needs? You may be able to negotiate lower common area payments if other tenants have much more traffic than you do and use the building more.
- Talk to other local businesses to find out about the neighbourhood and any issues that could affect your business. For example, the volume of local foot traffic, and whether the neighbourhood is growing or in decline. Recent declines in a neighbourhood's prospects or market rents could help you bargain for more favourable lease terms.
- Look into the landlord's reputation to see whether there are any red flags. You can ask realtors or existing tenants. For example, you may find other tenants are trying to get out of the building because of difficulties with the landlord or constant issues with the building.

An accurate description of the property should be included in the lease and referenced as a site plan in a schedule attached the lease. This can be difficult in situations where the premise is under construction or going through renovations. It is important that the measurements of the "Rentable Area" is accurate to avoid any future disputes.

6. Seek tenant inducements

Discuss with the landlord any available inducements to rent the space. The landlord may be especially eager to entice you to rent, if the space has been vacant for a while, for example.

Common Tenant Inducements:

- **Tenant Improvement Allowance (TIA)** - Funds provided by the landlord to cover or subsidize renovation costs.
- **Free Rent Period** – Months without paying base rent, often at the start of the lease which can assist as you set up the space.
- **Turnkey Improvements** – The landlord manages and pays for renovations based on the tenant's specifications.
- **Moving Cost Coverage** – Some landlords may cover moving expenses.
- **Reduced Rent Rate** – A lower than market base rent negotiated for the term.

It's important to consider tax implications for tenant inducements as they are often deemed taxable income by the Canada Revenue Agency (CRA). In the case that an inducement is used for renovations, tenants can file an election with the CRA to reduce the cost of property improvements rather than declaring it as income.

7. Review termination conditions

Check the circumstances under which either party may terminate the lease. For example, can you be immediately evicted for missing a rent payment? What happens if the building is sold?

To avoid a surprise termination, you may want to ensure there is a termination notice-period stated in the lease. A termination notice can refer to the whole contract, and/or can set different notice requirements for different events. For example, many leases have 'demolition clauses' that allow the landlord to evict the tenant for redevelopment. One of the best ways to provide certainty and protection from short notice lease termination is to try to negotiate longer notice periods in your lease. As lease owner, you should consider the requirements of College of Physicians and Specialists of BC requirement to closing practice or relocation, in the event you cannot practice medicine.

If you no longer need the space or you want to expand to a bigger one, how can you terminate the lease? Some leases require you to pay all or part of the remainder of the rent.

Considering negotiating the ability to sublease the space. If your circumstances change, subleasing the whole space could allow you to leave without paying a hefty lease termination penalty. Alternatively, you could add sublease participants to some of the space to help cover the rent.

8. Negotiate leasehold improvements

It may be necessary to renovate a new space to suit your needs. Make sure the lease and zoning allow for any planned leasehold improvements. It is possible to seek a clause requiring the landlord to reimburse some or all your leasehold improvement costs if the landlord breaks the lease.

9. Check for special clauses

You can ask for a competitor clause in the lease that requires the landlord to get your consent to rent space in the building to a competitor. Also check for inclusion of a Pandemic clause, also known as a Force Majeure clause, which is intended to manage the landlord-tenant relationship when something unavoidable happens that substantially affects the tenant's ability to operate their business.

10. Look at renewal conditions

The duration of your commercial property lease can range from month-to-month to several years. Understand when and how the lease will be renewed and the notice requirements for renewal, and ensure you have the option to renew the lease at the end of the term, if needed.

If you do have a renewal clause in your existing lease and intend to renew, ensure you provide notice prior to the date stated in the clause as failure to do so can render a renewal term invalid.

11. Involve a lawyer

Involve a qualified commercial lawyer who understands leases in your negotiations. A lawyer can help analyze lease terms, such as operating costs, maintenance responsibilities, and assist with identifying risks that could negatively impact you as a tenant such as restrictive use clauses, unreasonable rent increases, and termination conditions. A lawyer can also customize your commercial lease agreement to ensure the contract fits your specific needs.

You may be able to negotiate other options, such as the right of first refusal to lease an adjoining unit for expansion, If the rental market has declined,the landlord might give you a better deal when you renew. Alternatively, if this is a location you want to practice long-term, ensure to include a rental rate increase agreement. This is to protect you from being required to sign into a new term at a substantial increase that you weren't expecting but allows for regular and expected inflation.

12. Don't be quick to sign

Landlords typically submit their own lease to prospective tenants. It's critical to carefully review this document and the proposed responsibilities of the tenant and landlord.

To see an example of a lease and what is typically included, view the BC Law Society's practice checklist for drafting commercial leases.

You can connect with a qualified commercial leasing professional to learn more or obtain a representative as you negotiate your lease agreement.