Index

ABANDONMENT OF PREMISES

Leaving goods behind on, **3:101**, **6:22** Tenant, by, **6:18**

ABATEMENT

Remedy, as, for easement of, **13:9** Remedy, as, for profit à prendre, **9:5** Rent, of, **6:61, 7:28, 8:20**

ACCESS TO PREMISES

Interference with, **7:18** Refusal of tenant to permit, **6:64** Show, to, **3:100**

ALTERNATE DISPUTE RESOLUTION Generally, 8:52 See also ARBITRATION, MEDIATION, REMEDIES GENERALLY

AMALGAMATION

Deemed assignment, **3:54**, **6:24** Whether assignment, **3:54**, **6:24**

AMBIGUOUS Term of lease, 3:17

AMENDMENT Generally, 4:13

AMENITIES Generally, 3:112 Provisions for, 3:112

ANCHOR TENANT Generally, 1:1

APPRAISAL

Arbitration, for, **10:15** How to review, **5:11**

APPRAISER

Dealing with, as expert witness, 10:28 Reviewing report of, 5:11

ARBITRATION

Generally, 8:54, 10:1 Action, application to stay, 10:4, 10:5 Action, effect of on, 10:4 After termination of lease, **3:91** Appeal of award, 10:2, 10:46 Appointment of arbitrator for, **10:6** - see also ARBITRATOR Appropriateness of, 10:2 Argument, 10:43 Award, 10:44, 10:45 Award, setting aside, **10:47** "Baseball," 5:9, 8:56 Challenge award, **10:45** Commencing, 10:6 Conducting, **10:1**, **10:36** Considerations before commencing, 10:2 Determine rent for renewal term, to, 5:5 Documents, disclosure of, 10:13 Documents, interpretation of, **10:34** Enforcement, defences to, 10:48 Enforcement, opposition to, **10:48** Evidence, rebuttal, 10:42 Evidence, transcript of, 10:20 Examinations for discovery, 10:14 Expert report, 10:15 Location of, **10:19** Opening statement in, **10:37** Panel, challenging jurisdiction of, 10:8 Panel, jurisdiction of, 10:3

ARBITRATION—Cont'd Pleadings, 10:12 Pre-hearing conference for, **10:11** Preparation for. 10:21, 10:22 Procedure of. 10:9 Provision in lease, considerations for. 3:91 Rebuttal report for, **10:16** Re-examination of witness at, 10:41 Report, expert, for, **10:15** Rules of, 10:10 Set aside award, 10:47 Setting aside, application for, 10:47 Stay of, **10:4** Terms of lease, to settle, 2:14 Witness, cross-examination of, 10:39 Witness, evidence of, 10:38 Witness, expert, cross-examination of, 10:40 Witness, expert, preparation of, 10:26 Witness, preparation of, **10:25** Witness, scheduling of, 10:18 Witness statement, 10:17

ARBITRATOR

Appointment of, **10:1** Appointment of, on refusal to appoint by a party, **10:7** Fees of, **10:9** Panel, challenging jurisdiction of, **10:8** Panel, jurisdiction of, **10:3**

AREA

Measurement of, **2:21** Mezzanine, of, **2:21.50** Premises, of, **2:21**

ASSIGNEE

Default of, under lease, **7:35** Liability of, to assignor, **7:35**, **15:22** Liability of, to landlord, **7:1**, **15:25**

ASSIGNMENT

Consent by landlord, **3:54**, **3:55**

ASSIGNMENT—Cont'd Continuing liability of assignor tenant, 3:54, 3:55 Covenant against, **3:54** Covenant against without consent, 3:54 Distinguished from subletting, 3:54 Effect of, **3:54**, **3:55** Effect of amendment of lease after, 3:59 Equitable, 6:30, 6:42, 12:9 Lease, of, in a bankruptcy, 6:43 Lease, of, in a proposal, 6:46 Liability of assignee after further assignment, 3:61 Liability of assignor, **3:61** Liability of assignor after renewal, 3:60 Profit rent on, 3:58 Statutory provisions about, 3:9, 3:54 Tenant, by, of lease, 3:54 Termination of lease on request for consent to, 3:57 Without consent, 6:24, 6:28

ASSIGNOR

Liability of, after amendment to lease, **3:59**, **7:35**, **15:23** Liability of, after further assignment, **3:61**, **7:35**, **15:23** Liability of, after renewal of lease, **3:60**, **7:35**, **15:21** Liability of, on bankruptcy of assignee, **15:26** Liability of, to landlord, **3:54**, **3:61**, **7:35**, **15:21** Rights of, **3:54**, **7:35**, **15:20**

AUCTIONS Sale in a distress, 8:11

BAILEE'S UNDERTAKING See DISTRESS

BAILIFF Agent of landlord, as, 8:5 BAILIFF—Cont'd Distress, on, 8:5 Required, 8:5

BAILMENT Generally, 6:22 Involuntary, 6:22

BANKRUPTCY

Assignee tenant, of, **3:102, 6:43** Default after Notice of Intention, 6:44 Exercising option to renew after Notice of Intention, 6:44 Guarantee, effect on, 3:102, 6:43 Indemnity, effect on, 3:102, 6:43 Occupation rent, payable by trustee, 6:43 Proposal, default by tenant during, 6:46 Proposal under Bankruptcy and Insolvency Act, 6:44 — see also **PROPOSAL** Rights of landlord on, of tenant, 6:43 Tenant of, 6:39, 6:43

BREACH OF LEASE

Action for damages for, 8:15 Acts not on leased premises, for, 6:4 Anticipatory, 6:7 Anticipatory refusal to pay rent, 6:16 Continuing, 6:4 Damages for, 8:15 — see also DAMAGES Fundamental. 6:6 Liquidated damages, provision for, 3:113 Maintain, of covenant to, 6:32 Operating covenant, of, 6:31 Punitive damages for, 7:5 Repair, of covenant to, 6:32 Single, 6:4 Spent, 5:4 Types of, 6:4

BREACH OF LEASE—Cont'd Waiver of, **6:8 BUILDERS' LIEN** Landlord protecting against, 3:81 Tenant's improvements, for, 3:81 CHATTELS Abandoned by tenant, 6:22 Distinguished from fixtures, 6:21 **CO-COVENANTOR** Generally, 3:102, 15:1, 15:19 Contrasted with guarantor, 3:102, 15:2 Contrasted with indemnitor, **15:2 COLLATERAL AGREEMENT** Generally, 4:10 After Lease, 4:12 Before Lease, 4:11 COMMENCEMENT DATE OF TERM Generally, 2:27 Term for. 3:42

COMMITMENT Failure of landlord to fulfill, 7:27 Landlord, by, 7:27

COMMON AREA Access to, 3:74 Insurance for, by tenant, 3:1, 3:74, 3:89 Use of, by tenant, 3:74

COMMUNITY OF INTEREST Generally, 3:68, 17:4

COMPANIES' CREDITORS ARRANGEMENT ACT Generally, 6:48 Basic steps, 6:49 Claims, filing, 6:53 Consequences of the vote, 6:57 Court approval of a plan, 6:56 Creditors, classes of, 6:53 Initial order, 6:51

© 2022 Thomson Reuters, Rel. 1, 4/2022

Index-3

COMPANIES' CREDITORS ARRANGEMENT ACT —Cont'd

Initial order, extension of, 6:52
Model Orders, 6:51
Notice of Repudiation of lease, 6:51
Notice to Disclaim or Resiliate lease, 6:51
Plan of arrangement, 6:54
Qualifying under, 6:50
Sale of assets, 6:54
Voting, 6:55

COMPLIANCE WITH LAWS Generally, 3:77

CONCESSIONS Sought by tenant, 6:61

CONDITION

Difference from covenant, **1:5** Difference from warranty, **1:5** Precedent, waiver of, **2:14, 8:44** Precedent to right of renewal, relief from forfeiture of, **8:38**

CONSENT

Generally, **7:39** Covenant not to withhold unreasonably not implied, **3:54**, **6:25** Effect of requirement for, **6:24** Grounds for withholding consent, **6:26**, **7:36** Refusal to, **7:36** Tenant's, **6:69**, **17:3** To change of use, **7:39** Withholding, reasonably, **6:26**, **7:36** Withholding, unreasonably, **7:36**

CO-OWNER

Lease by, to another co-owner, 2:19

CO-TENANCY Generally, **3:98, 17:5**

COVENANT

Difference from condition, **1:5** Difference from warranty, **1:5**

COVENANT—Cont'd

Quiet enjoyment, of, 3:3, 3:18

CREDITOR

Landlord's priority to, **6:38** Lien of statutory creditor, **6:40** Receiver, **6:42** Receiver manager, **6:42** Secured creditor, **6:41** Statutory, of tenant, **6:40** Tenant of, **6:38**

CRIMINAL

Activity by tenant, **6:67** Threat of, prosecution, **6:1**

CRISIS, TENANCIES IN Generally, 1:12 Renewal of lease, 1:13

Structuring of lease for, 1:14

CROSS DEFAULT PROVISIONS Generally, 3:93

DAMAGE

Consequential, from failure to repair, 7:26

DAMAGES

Fraudulently removing goods from premises, for, **8:7** Illegal distress, for, **8:10** Irregular distress, for, **8:9** Liquidated, provision for, **3:113** Occupation rent, **8:18** Overholding, **8:17** Punitive, **7:5** Reach of lease, for, **8:15** Remoteness, of, **8:15** Wrongful distress, for, **8:8, 8:19**

DEFAULT OF LANDLORD See REMEDIES OF TENANT

DEFAULT OF TENANT See also REMEDIES OF LANDLORD Anticipatory, 6:7 Breach of lease, 6:6

INDEX

DEFAULT OF TENANT—Cont'd

Cross, **3:93** Illegal activity, **6:67** Importance of reviewing lease, **6:2** Insolvency, by, **6:39** Types of breach of lease, **6:4** Waiver of, **6:8**

DEFENCES

Generally, **8:43** Estoppel, **8:45** Estoppel, per rem judicatem, **8:46** Estoppel, proprietary, **8:48** Estoppel by representation, **8:47** Limitation period, **8:49** Mitigation, failure to, **8:50** Waiver, **8:44**

DEMOLITION CLAUSE

Generally, **3:72** Terms of, **3:72**

DEPOSIT

Damage, **3:39** Default in paying, **3:30** Rent, **3:39** Security, claim by trustee in bankruptcy, **3:39** Security interest in, **3:39**

DEROGATION FROM GRANT Generally, 1:7, 3:19, 7:17

DISCLAIM

Lease by trustee in Bankruptcy of landlord, **6:43** Lease by trustee in Bankruptcy of tenant, **6:43**

DISCRETION

Unilateral, 3:16

DISPUTE RESOLUTION PROVISIONS Generally, 3:115

DISTRESS Generally, 8:2

DISTRESS—Cont'd After termination of lease, term in lease for, 8:3 Auction, 8:11 Bailee's undertaking, 8:5 Bailiff, use of on, 8:5 Bankruptcy, effect of on, 6:43 Considerations before, 8:4 Excessive. 7:12 Goods, following if removed from premises by tenant, 8:6 Goods, fraudulently removed by tenant, 8:7 Goods which may be seized. 8:3 Goods which may not be seized, 8:3 Illegal, 7:12, 8:3, 8:8, 8:10 Interplead on, 8:5 Irregular, 8:9 Landlord's liability for tax in Ontario, 8:2 Procedure for, 8:5 Rent in arrears, 7:13, 8:3 Rent not in arrears, 7:14 Replevin, 8:5 Replevy following, 8:5 Rescue. 7:14 Rules for, 8:3 Sale of goods seized, 8:5 Walking seizure, 8:5 Wrongful, 7:14, 8:8

EASEMENT

Generally, 1:1, 13:1 Abatement as remedy for, 13:9 Access, for, contrasted with licence, 11:5 Accommodate, 13:3 Action to enforce, 13:10 Creation of, 13:1 Dominant tenement, 13:2 Enforcement of, 13:8 Equitable, 13:7 Grant, subject matter of, 13:5 Nature of, 13:1 Rights of parties to, 13:6

 $\ensuremath{\mathbb{C}}$ 2022 Thomson Reuters, Rel. 1, 4/2022

EASEMENT—Cont'd Servient tenement, 13:2 Third parties, rights against, 13:10

EFFORTS Best, 2:14 Reasonable, 2:14

ELECTION Anticipatory breach, 6:7 Of remedy, 6:5, 6:6

ESTOPPEL Generally, 8:45 Estoppel, proprietary, 8:48 Estoppel by representation, 8:47 Estoppel per rem judicatem, 8:46

ESTOPPEL CERTIFICATE Generally, 3:111 Mortgagee and, 3:24 Subtenant and, 14:6 Tenant, by, 3:111

EVIDENCE Generally, 10:28 Documents, interpretation of, 10:34 Documents, proving, 10:34 Factual matrix, 10:31 Hearsay, 10:29 Parol, 10:30 Privilege, solicitor client, 10:32 Rebuttal, 10:42 Settlement negotiations, 10:33 Transcript of, 10:20 Witness, cross-examination of, 10:39 Witness, of, 10:38

EXCLUSION CLAUSE Generally, 3:104

EXCLUSIVE POSSESSION Generally, 3:19 Non derogation from grant, 3:19

EXECUTION Bankruptcy, effect on, 6:43 EXECUTION—Cont'd Creditor, by against tenant, 6:38 Lease, of, necessity of, 7:9

EXPERT WITNESS Generally, 10:28 Preparation of opinion, 10:28

EXPRESSION OF INTEREST Generally, 2:3, 2:13

FIXTURES Distinguished from chattels, 6:21

FORCE MAJEURE Generally, 1:12, 3:116

FORFEITURE Relief from, 6:11, 8:35 — see RELIEF FROM FORFEI-TURE Statutory, 8:42 Waiver of, 6:12

FRANCHISE Sublease under, 14:11

FRUSTRATION Generally, 8:51 Compared with force majeure, 1:12, 3:116

FUNDAMENTAL BREACH Generally, 6:6

GROSS-UP Generally, 2:14, 2:22

GROUND LEASE Generally, 2:39

GUARANTEE Generally, 3:102, 15:1, 15:7 Claim on, on termination of lease, 8:28 Defences on, 15:8 Indemnity distinguished, 3:102, 15:2 Joint, 15:3 Joint and several, 15:3

Index-6

GUARANTEE—Cont'd

Lease, of, **2:35**, **3:102** Limitation on, **15:6** Scope of, **3:102** Several, **15:3** Statute of Frauds and, **15:5**

GUARANTOR

Generally, **15:1**, **15:7** Liability of, **15:10**, **15:11** Rights of, **15:9** Rights of in CCAA, **15:10**

HVAC

Costs of as operating expense, 3:28

INCIDENTS OF TENANCY Generally, **3:6**, **15:7**

INDEMNITOR

Generally, **15:1**, **15:13** Liability of, **15:16**, **15:17** Rights of, **15:15** Rights of in CCAA, **15:18**

INDEMNITY

Generally, 3:102, 15:1, 15:13Claim on, on termination of lease, 8:28Co-covenantor, 3:102Defences on, 15:14Guarantee distinguished, 3:102Indemnity distinguished, 3:102, 15:2Joint, 15:3Joint, 15:3Joint and several, 15:3Lease, of, 2:35, 3:102Limitation on, 15:6Scope of, 3:102Several, 15:3Statute of Frauds and, 15:5

INDUCEMENTS

Generally, **2:36** Repayment of on termination of lease, **3:99** INJUNCTION Generally, 8:32 Interim, 8:33 Interlocutory, 8:33 Mandatory, 8:31, 8:32 Permanent, 8:34 Specific implement, compared to, 8:32

INSOLVENCY Lien of statutory creditor, **6:40** Proposal by tenant, **6:44** Statutory creditor of tenant, **6:40** Tenant of, **6:39**

INSURANCE

Subrogated claims Generally, **3:86** Tenant, against landlord, **3:87** Tenant's improvements, **3:88**

INSURE

Covenant by landlord to, **3:86** Covenant by tenant to, **3:86**

INTERESSE TERMINI Generally, **2:24**, **7:6**

INTEREST Criminal rate of, 3:38 Payment of, 3:38

INTERPLEAD See DISTRESS

JOINT AND SEVERAL LIABILITY Generally, 2:16

JOINT LIABILITY Generally, **2:16**

Joint and several, compared, 2:16

JOINT TENANTS

Generally, **2:16** Death of, **2:16** Lease to self as, **2:19** Liability of, **2:16**

JOINT TENANTS—Cont'd Tenants in common, compared, 2:16 JURISDICTION Arbitration panel, of, 10:3 LANDLORD Lease to self as joint tenant, 2:19 Liability of purchaser for claims against vendor, 7:11 Party to lease, as, 2:15 Refusal of new, to recognize lease, 7:10 Sublandlord, 14:1 Trustee, as, 2:18, 6:15 LAWS Compliance with, 3:77 LEASE Generally, 2:1, 3:1 Arbitration to settle terms of, 2:14 Carefree. 3:25 Co-owner, by, to another co-owner, 2:19 Essential terms, 2:1, 2:2 Execution of, necessity for, 7:9 Failure of landlord to deliver. 7:7 Format of, 3:10 Form of, standard, 2:14 Fully net, 3:25 Gross, 3:25 Ground, 2:39 Guarantee of. 2:35 — see also **GUARANTEE** Implied terms, 3:3 Importance of execution of, 7:7 Incidents of, 3:6 Inducements, 2:36 Interpreting terms of, 3:13 Licence to use property, contrasted with, 11:6 Merger of, 2:37 — see also MERGER Net. 3:25 Net net. 3:25

LEASE—Cont'd Net net net, 3:25 Parties to, 2:15 Premises. 2:20 Purchaser, refusal to recognize, 7:10 Rectification of, 4:2 Registrable, obligation to provide, 3:109 Registration of. 2:12 Retaining reversion on sublease, 2:34 Security deposit for, 2:34 Short form of, 2:5 Standard form of, modifications to, 2:14 Standard form of, offer to lease and, 2:14 Sublease, 2:34 — see also **SUBLEASE** Surrender of, 2:37 — see also SURRENDER OF LEASE Term, 2:26 Terms, 2:1, 3:1, 3:2 — see also TERMS OF LEASE Terms not implied. 3:5 Triple net, **3:25** Usual terms, 3:4 **LEGAL FEES, LANDLORD'S** Recovery of, 3:94 LESSEE See TENANT LESSOR See LANDLORD LETTER OF INTENT Generally, 2:3, 2:13 LIABILITY, LIMITATION OF

Generally, 3:104

LICENCE Generally, 1:1, 11:1 Access, to, contrasted with easement, 11:5

Index-8

LICENCE—Cont'd Coupled with legal interest, 11:9 Creation of, 11:3 Distinguished from lease, 1:1, 11:1, 11:2 Harvest natural resources, to, contrasted with profit à prendre, 11:7 Nature of, 11:2 Relief from forfeiture for, 11:8 Remedies for, 11:8 Termination of, 11:2, 11:3

Term of, **11:2** Types of, **11:4** Use property, to, contrasted with tenancy, **11:6**

LICENSEE Remedies of, 11:8

LIMITATION PERIODS Generally, 6:3.50

MAINTAIN Breach of covenant to, by landlord, 7:23 Breach of covenant to, by tenant, 6:32 Contrasted with repair, 3:29 Covenant to, 3:29

MAINTENANCE Contrasted with repair, 3:29 Of premises, 3:82

MANAGEMENT FEES Generally, 3:28

MEDIATION Generally, 8:53

MERGER

Compared with surrender, **2:37** Effect of, on covenants in lease, **2:38** Effect of, on lease, **2:37** Lease, of, **2:37** Survival of covenants on, **2:38** MINIMUM RENT See RENT

MISREPRESENTATION Fraudulent, 4:5 Innocent, 4:5 Negligent, 4:5

MISTAKE Rent, in calculating, by landlord, 6:17, 7:37 Terms of lease, in, 4:2

MITIGATION Generally, 6:10, 8:43 As defence, 8:43

MONTH TO MONTH TENANCY Creation of, 2:26, 12:4 Termination of, 12:4

MORTGAGE OF LEASE Generally, 3:110

Non-disturbance agreement and, **3:110**

NEGLIGENCE Duty of care, 1:16 Misrepresentation, in making, 4:5

NEGOTIATIONS Contrasted with representations, 4:3 Effect of, 4:4

NO AMENDMENT CLAUSE Generally, 3:114

NON-DISTURBANCE AGREEMENT

Generally, **3:24**, **3:56**, **14:6**, **14:8** Landlord and subtenant, **14:6** Mortgagee and, **3:24** Mortgagee of lease and, **3:110**

NOTICE

By SMS text, **3:107** Electronic, **3:107** Provision for, **3:106**

© 2022 Thomson Reuters, Rel. 1, 4/2022

Index-9

INDEX

NO WAIVER PROVISION Generally, 3:105

NUISANCE

Defined, **6:65** Landlord, by, **7:16**, **7:19** Tenant, by, **6:65** Tenant, by, liability of landlord for, **6:66**

OCCUPANCY PERMIT Generally, 2:9

OCCUPATION

Adjacent land, of, **12:10** Legal possession distinguished from physical occupation, **2:9** Pop-up, as, **12:11** Trespass, as, **12:6**, **12:7** Without a lease, **12:5** With permission withdrawn, **12:8**

OCCUPATION RENT

Liability of receiver for, **6:42** When occupation permitted by trustee, **6:43**

OFFER TO LEASE

Generally, **2:3**, **2:14** Enforceable as lease, **7:2** Execution of lease required, **7:3** Inducements and, **2:14**

OPERATING COVENANT

Generally, **3:69** Breach of, **6:31** Lease term consenting to injunction for breach of, **3:70, 3:92**

OPERATING EXPENSES

Generally, **3:28** Allocation based on actual usage, **3:31** Allocation of, **3:31** Corporation Capital Tax as, **3:28** Cost of repair as, **3:28** Disputes about, **3:33** Estimating, **3:32**

OPERATING EXPENSES—Cont'd Imputed rent for landlord's

premises as, **3:28** Payment of, term for, **3:28** Reconciling, **3:32**

OPTIONS FOR ADDITIONAL SPACE Generally, 2:25

OPTION TO RENEW

Generally, 3:42, 5:1 Arbitration for determining rent, 5:7 Basis for determining rent for. 3:46. 3:48 Condition precedent, relief from failing to meet, 8:38 Conditions precedent to, 3:45 Creation of new term, 5:12 Delivery of notice to exercise, 5:3 Determining rent, mechanisms for, 3:47 Determining rent for renewal term, 3:46, 5:5 Exercise of, 5:3 Finalizing, 5:12 Fulfillment of conditions precedent to. 5:4 Further option to renew, 3:50 Inclusion of improvements in determining rent for, 3:48 Method for exercise missing, 5:4 New terms on renewal, 3:52 Perpetual, 3:43 Rent for renewal term, 3:46, 5:5 Requirement to negotiate in good faith, 5:5 Subsequent step required for validity, 3:45 Terms relating to, 3:42 Time limits for exercise missing, 5:4 Unenforceable, 3:44 Valuation to determine rent for, 5:8 Whether to exercise, 5:2

INDEX

OVERHOLDING TENANT

Deemed tenancy from year to year, 3:96 Goods left behind, 6:63, 12:4

Remedies of landlord for, **6:63** Term for overholding tenant, **3:96**

PARTNERSHIP

Limited, as tenant, 2:17 Tenant, as, 2:17

PERCENTAGE RENT

Generally, **3:34** Liability of trustee in bankruptcy for, **6:43** Termination of lease for failure to pay, **3:34, 17:7**

POP-UP LICENCES OR LEASES Generally, 12:11

POSSESSION

Damages for overholding, **8:17** Exclusive, **3:19** Injunction for, **8:32 — see also INJUNCTION** Interesse Termini, **2:24**, **3:23** Occupation rent, claim for, **8:18** Refusal of landlord to deliver, **8:2** Refusal of tenant to give up, at end of term, **6:63** Specific performance for, **8:31**

PREMISES

Access, **1:7**, **3:20** Access, interference with, **7:18** Access to show, **3:100** Area included, **2:21** Area of, **2:21** Boundaries of, **2:20** Breach of covenant to repair or maintain, by landlord, **7:23** Breach of covenant to repair or maintain, by tenant, **6:32** Condition of, **3:78** Condition of, at commencement of term, **3:80** PREMISES—Cont'd Contamination of, implied term against, 3:3 Exclusive possession, 3:19 Gross up of. 2:22 Location. 2:20 Measuring area of, **2:21** Overholding, 8:16 Overholding deemed tenancy from year to year, 3:96 Overholding tenant, remedies of landlord for, 6:63 Overholding tenant, term for, **3:96** Releasing on termination. 8:29 Re-letting on termination, 8:29 Right of access, 3:20 Right to inspect. 3:79 Subdivision of, 2:23 Suitability of, for tenant's purposes, 2:10, 3:5 Tenant's improvements, 3:81 Unusable by tenant, 7:20

PRIVITY

Assignment, effect on, **7:35** Contract, of, **1:4** Estate, of, **1:4**

PROFIT À PRENDRE

Generally, **1:1**, **9:1** Abatement, **9:4** Action to enforce, **9:6** Defined, **9:1** Enforcement of, **9:4** Licence, contrasted with, **11:7** Nature of, **9:2** Statutory modifications of, **9:3**

PROFIT RENT Generally, 3:58

PROPERTY MANAGERS

Generally, **16:1** Authority of, **16:10** Contract with landlords, **16:3** Duties of, **16:6, 16:9**

PROPERTY MANAGERS—Cont'd

Liability of, 16:11 In negligence to the landlord, 16:13 In negligence to the tenant, 16:14 In negligence to third parties, 16:14 Under contract, 16:12 Under legislation, 16:15 Licensing of, 16:2 Professional issues for, 16:5 Termination of the contract of, 16:7

PROPOSAL

Default by tenant during, **6:46** Disclaiming lease under, **6:46** Rights of landlord under, **6:44** Under Bankruptcy and Insolvency Act, **6:44**

QUIET ENJOYMENT

Aspects of, **3:18** Covenant of, **3:3**, **3:18** Covenant of, breach of, **7:16** Displacing implied covenant, **3:3**, **3:23** Exclusive possession, **3:19** Landlord's right of access, **3:22** Modifications to, **3:22** Non-derogation from grant, **3:19** Nuisance, **3:21** Right of access, **3:20**

RADIUS CLAUSE Generally, 3:63

RATIFICATION OF ACT OF AGENT

Generally, 2:15

REASONABLE WEAR AND TEAR Generally, 6:33

RECEIVER

Appointed by secured creditor, **6:42** Assignment of lease by, **6:42**

RECEIVER—Cont'd

Liability of, for occupation rent, 6:42 Receiver manager appointed, 6:42 Remedias against accuments 6:42

Remedies against occupants, **6:42** Sale by, **6:42**

RECTIFICATION Generally, 4:2

RELIEF FROM FORFEITURE See also FORFEITURE Generally, 6:11, 8:35 Circumstance for refusing, 8:37 Circumstances for granting, 8:37 Condition precedent, for, 8:38 Landlord, for, 8:39 Statutory provisions for, 8:35, 8:41 Terms of, 8:40 Test for, 8:36 Waiver of forfeiture, 6:12

RELOCATION OF PREMISES Generally, 3:72

REMEDIES GENERALLY

Alternate dispute resolution, 6:13 Arbitration, 3:91 Bankruptcy, effect on, 6:43 Criminal proceedings, threat of, 6:2 Default of tenant, for, 3:92 Importance of reviewing lease, 6:2, 7:2 Injunction, 8:32 — see also **INJUNCTION** Mediation, 5:6, 6:13 Mitigation, 6:10 Nuisance, for, 7:19 Proposal, effect on, 6:44 Rectification, 4:2 Specific performance, 8:31 Statutory, for landlord, 3:92

REMEDIES OF LANDLORD

Generally, **6:1** Abandonment of goods by tenant, **6:22**

REMEDIES OF LANDLORD —Cont'd

Abandonment of premises by tenant, on, 6:18, 6:20 Anticipatory abandonment, on, 6:19 Anticipatory refusal to pay rent, on, 6:16 Arrears of rent, 8:2, 8:14 Bankruptcy, effect on, **6:43** Breach of lease, 8:15 Criminal proceedings, threat of, 6:2 Distress. 8:2 — see also DISTRESS Distress contrasted with termination, suing, **6:14** Execution creditor of tenant, against, 6:38 Goods, following if removed from premises by tenant before distress. 8:6 Goods, fraudulently removed by tenant to defeat distress, 8:7 Guarantors, against on termination of lease, 8:28 Importance of reviewing lease, 6:2 Injunction, 8:32 — see also **INJUNCTION** Landlord's error in rent paid, 6:17, 7:37 Maintain, breach of covenant to, 6:32 Mitigation, 6:10 Non payment of rent, 6:14 Occupation rent, 8:18 Overholding tenant, 8:17 Proposal, default by tenant during, 6:46 Proposal, effect on, 6:44 Recovery of landlord's legal fees, 3:94 Rectification, 4:2 Releasing premises, 8:29 Re-letting premises, 8:29 Relief from forfeiture. 8:39 — see also RELIEF FROM FOR-FEITURE

REMEDIES OF LANDLORD -Cont'd Rent, mistake in calculating, 6:17, 7:37 Rent, suing for arrears of, 8:14 Repair, breach of covenant to, 6:32 Restrictions on. 6:14 Specific performance, 8:31 Strategy, 6:9 Suing for arrears of rent, 6:14 Termination contrasted with other remedies. 6:9 Termination of lease. 8:21 — see also TERMINATION Terms in lease for, 3:90 Use clause, breach of, 6:35 Waiver of default, 6:8 Waste, for. 6:37 **REMEDIES OF TENANT** Generally, 7:1 Abatement agreement, breach of, 7:28 Access, interference with, 7:18 Assignee defaults, 7:35 Commitment, failure of landlord to fulfill, 7:27 Competing business, 7:22 Consent to assignment, wrongful refusal by landlord, 7:36 Consequential damage from failure to repair, 7:26 Covenant of quiet enjoyment, breach of, 7:16 Derogation from grant, for, 7:17 Distress, excessive, 7:12, 8:8 Distress, illegal, 7:14, 8:10 — see also DISTRESS Distress, irregular, 8:9 Distress, rent in arrears, 7:13 — see also DISTRESS Distress, wrongful, 7:14, 8:8 — see also DISTRESS Eviction, by landlord, 6:40, 7:29

Eviction, wrongful, **7:31** Importance of reviewing lease, **7:2**

REMEDIES OF TENANT—Cont'd Injunction, 8:32 — see also **INJUNCTION** Lease, failure of landlord to deliver, 7:7 Maintain, breach of covenant to, 7:24 Nuisance, for, 7:16, 7:19 Possession, for, refusal of landlord to deliver, 7:6 Rectification, 4:2 Relief from forfeiture, 8:35 — see also RELIEF FROM FOR-**FEITURE** Rent, mistake in calculating, by landlord, 6:17, 7:37 Rent reduction agreement, 7:28 Repair, breach of covenant to, 7:24 Rescue, 7:14 Specific performance, 8:31 Strategy for, 7:3 Terms in lease for, **3:90** Vacancies in development, 7:38

REMOTENESS OF DAMAGES Generally, 8:15

RENEWAL See OPTION TO RENEW

RENOVATION

Interference with tenant's use, **3:72** Structural, **3:82** Terms relating to, **3:71** When breach of lease, **7:21**

RENT

Generally, 2:28, 3:25 Abatement of, 6:61, 7:28, 8:20 Accelerated, 3:92 Acceptance after end of lease, 6:63 Additional, 2:30 Adjustment of, 3:36 Agreement for reduction or abatement, 6:61, 7:28 Arrears, 6:14, 8:14 Base, 2:29

RENT—Cont'd

Capital tax, as, 3:25 Covenant to pay, **3:26** Default in payment of, 6:14 Determining for renewal term, 3:46 Inducements, 2:36 Interest on. 3:38 Mechanisms for determining on renewal, 3:47 Mechanisms for determining on review, 3:47 Method of payment of, 3:37 Minimum, 2:29 Mistake in calculating, by landlord, 6:17, 7:37 Operating expenses as, 3:28 Partial payment of, 6:15.50 Payment of, "punctually," 2:28 Payment of, "regularly," 2:28 Payment of, "without set off," 2:28 Percentage, 3:34 Place of payment, **3:37** Prior periods, claim for, 6:17, 7:37 Profit rent. 3:58 Provisions for payment of, 2:28, 3:25 Radius clause and, 3:63 Renewal term, for, **3:46**, **3:48** Rent free periods, 3:41 Review, **3:48** Suing for, **6:14, 8:14** Taxes as. 3:27 Taxes as a usual term. 3:4 Terms for. **3:25** What constitutes, 2:2, 2:28, 2:32

REPAIR

Breach of covenant to, by landlord, **7:23, 7:24** Breach of covenant to, by tenant, **6:32** Contrasted with replacement, **3:29** Landlord's implied licence to enter to, **7:24** Maintenance, **3:29**

REPAIR—Cont'd

Notice to, **3:82** Reasonable wear and tear, **6:33** Responsibility for, by landlord, **3:30, 3:82** Responsibility for, by tenant, **3:28, 3:82** Scope of covenant, **7:23** Standard of, **3:82** Terms for, **3:82** Wear and tear, reasonable, **6:33**

REPLEVIN

See DISTRESS

REPLEVY See DISTRESS

REPRESENTATION

As an additional term, **4:7** Before lease, **4:3**, **4:5** Before Offer to Lease, **4:3**, **4:5** Contrasted with collateral agreement, **4:10** Contrasted with negotiations, **4:4** Contrasted with "umbrella agreement," **4:6** Estoppel by, **8:47** Fraudulent, **4:5** Innocent, **4:5** Negligent, **4:5** Parol evidence rule and, **4:3** Types of, **4:5**

RESCUE

Generally, 7:14

RESTRICTIVE COVENANT

Breach of restrictive covenant in favour of another tenant, **6:36** Community of interest, **3:68** In favour of tenant, **3:64** Interpretation of, **3:67** Interpretation - static or dynamic, **3:66** Multi-tenant properties, **3:66** Not implied, **3:65** RESTRICTIVE COVENANT —Cont'd Remedy of tenant for breach of, 7:22 Requirements for, 3:64 Run with the land, 1:6, 3:46 Scope of language used, 3:67 Shopping centre, in, 3:68 REVERSION Generally, 2:34, 14:2 Liability for arrears on transfer of, 6:14 RUNNING WITH LAND

Generally, 1:6

SALE Lease back, 2:4

SETTLEMENT

Dispute, of, **6:12** Fraudulent preference, as, **6:12** Tax consequences of, **6:12** Waiver of forfeiture, **6:12**

SHOPPING CENTRES

Generally, 1:11, 17:1 Administration fees, 17:8 Common areas, 17:11 Community of interest doctrine, 3:68, 17:4 Gross up provisions, 17:9 Management fees, 17:8 Merchants associations, 17:17 Operating costs, 17:10 Parking, 17:13 Percentage rent provisions, 17:7 Promotional funds, 17:17 Public areas, 17:14 Redevelopment by landlord, 17:16 Restrictive covenants, 17:3 Rules and regulations, 17:12 Service areas, 17:15 Sign leases, 17:18 Signs, 17:18 Use clauses. 17:3

SHOPPING CENTRES—Cont'd Vacancies in, 6:64

SIGNS Generally, 3:70 In shopping centres, 17:18 Leases, 17:18 Provision relating to, 3:70

STATUTE OF FRAUDS Generally, 2:6, 15:5 Electronic documents, 2:6

STRATEGY Landlord, for, 6:9 Tenant, for, 7:3

SUBDIVISION Lease, by, 2:23

SUBLANDLORD Bankruptcy of, effect on sublease, 14:10 Reversion, requirement for, 14:2

SUBLEASE

Generally, 2:34, 14:1 Bankruptcy of sublandlord, effect on. 14:10 Consent for, 3:56 Consent to sublease, wrongful refusal by landlord, 7:36 Disclaimer of head lease in CCAA proceeding, 6:60 Distinguished from subletting, 3:54 For term greater than head lease, 6:28 Franchise, 14:11 Head lease, rights under, 14:3 Importance of reversion for, 2:34, 6:28 Intentional interference with, by head landlord, 14:9 Landlord's rights against subtenant, 14:5 Merger of head lease, effect on, 14:7 Profit rent. 3:58

SUBLEASE—Cont'd

Reversion, requirement for, **14:2** Rights of subtenant on termination of head lease, **3:54, 14:8** Surrender of head lease, effect on, **14:7**

Termination on request for consent to, **3:57**

Where consent unreasonably withheld, 6:25

Without consent of landlord, 6:24

SUBLETTING

For term greater than head lease, **6:28**

Importance of reversion for, 2:34, 6:28

Where consent required, **3:54**, **6:24** Without consent where required, **6:28**, **7:36**

SUBTENANT Generally, 14:1 Position of, in CCAA proceeding, 6:60

SURRENDER OF LEASE Generally, 2:37 Effect of, 2:37 How effected, 2:37 Statutory provisions in respect of, 3:9

TAXES

Capital, as rent, **3:25** Disputes about, **3:32** Payment of, as usual term, **3:4** Payment of, term for, **3:27**

TENANCY

At sufferance, 12:2 At will, 12:3 Month to month, 12:4 Periodic, 12:4 Year to year, 12:4

TENANCY AT SUFFERANCE See TENANCY

TENANCY AT WILL See TENANCY

TENANT

Abandonment of premises by, 6:18 Amalgamation of, 3:54 Anchor, 3:8, 7:38 Bankruptcy of, 6:43 Government as, 2:15 Illegal activity by, **6:67** Limited partnership as, 2:17 Municipality as, 2:15 Obligation to repair, 3:75, 3:81 Operating name of, 3:76 Proposal in bankruptcy made by, 6:44 Refusal of, to give up at end of term, 6:63 Shell, dealing with, 6:23 Subtenant, 14:1 Termination of lease by, 6:62

TENANT IMPROVEMENT ALLOWANCE Generally, 3:41

TENANT'S FIXTURES Generally, 3:81, 8:3 Contrasted with chattels, 6:21 Right to remove, 6:21

TENANT'S IMPROVEMENTS Generally, 3:81 Builders' liens, 3:81 Insurance on, 3:88 Right to install, 3:81

TENANTS IN COMMON

Generally, **2:16** Death of, **2:16** Joint tenants compared, **2:16** Liability of, **2:16**

TERM

Generally, **2:26** Ambiguous, **3:17** Commencement, **2:27** TERM—Cont'd End of, 2:20 Extension after end of term, 6:68 Implied. 3:3 Implied by construction, 3:8 Implied by statute, 3:9 Modified by statute. 3:9 Month to month, 2:26, 12:4 New created by renewal, 5:12 Not implied, 3:5 Periodic, 2:26, 12:4 Refusal of tenant to give up possession at end of, 6:63 Termination of, by tenant, 6:62 Termination of lease, as, 3:97 Types of, 2:26 Usual, **3:4** Void. 3:17 Year to year, 2:26, 12:4

TERMINATION

After distress, 6:16, 8:3, 8:5, 8:12 Breach of the lease, for, 6:1, 7:1, 8:21 Court order, by, 8:27 Default. for. 3:92 Demolish, to, 3:72, 7:32 Destruction of building, 3:73 Distrained, landlord already, 7:33 Early, by tenant, 3:97, 7:3, 7:36, 8:30 Eviction, by landlord, **6:40**, **7:29**, 8:21 Eviction, wrongful, 7:31 Goods left behind on, 3:101, 6:22 Inducement, tenant, repayment of on, 3:99 Month to month tenancy, 12:4 Notice required, 8:21 On request for consent to assignment, 3:57 Overholding tenant, 3:96 Periodic tenancy, 12:4 Procedure. 8:21 Re-entry, by, 8:26

TERMINATION—Cont'd Renovate, to, 3:72 Requirement for notice, 7:29 Showing premises on, 3:100 Statutory right of, 8:23, 12:4, App E:1 Strategic considerations, 8:22 Tenant, by, **3:97, 7:3, 7:36, 8:30** Tenant's right to remove tenant's fixtures after termination, 7:34 Term of the lease for, 3:97 Year to year tenancy, 12:4 TERMS OF LEASE Ambiguous, 3:17 Amendment of, effect, 3:12 Common. 3:7 Continuity of, during renewal term, 3:49 Crossed out, 3:12

Crossed out, **3:12** Implied, **3:3** Implied by construction, **3:8** Incorporated by Short Form, **3:11** Interpretation of, **3:13** Lease, of, arbitration to settle, **2:14** Modified by statute, **3:9** Not implied, **3:5** Performance by landlord, **6:3** Performance by tenant, **6:5** Short Form, **3:11** Usual, **3:4** Void, **3:17**

TIME

At common law, **3:108** Calculation of, **3:15** In equity, **3:108** Limits, in lease provisions, **3:15** Of essence provision, **3:108**

TRADE FIXTURES See TENANT'S FIXTURES

TRESPASS

Altering land, **12:6** Damaging land, **12:6**

TRESPASS—Cont'd Occupation as, 12:6

TRIPLE NET LEASE See LEASE

UMBRELLA AGREEMENT Generally, 4:3, 4:6

USE OF PREMISES Generally, 3:53 Breach of restrictive covenant in favour of another tenant, 6:36 Breach of use clause, 6:35 Permitted use, 3:62 Radius clause, 3:63 Restrictions on use, 3:62 Restrictive covenant, 3:64 — see also RESTRICTIVE COVE-NANT Restrictive covenant not implied, 3:65 Types of, 3:62 Vacancies in development, 7:38

VACANCIES Development, in, 7:38

VALUATION

Generally, **8:55** Determining rent for renewal term, for, **5:8**

WAIVER

Defence, as, **8:44** No waiver clause, **3:105** Retraction of, **8:44**

WALKING SEIZURE See DISTRESS

WASTE

Categories of, **3:83** Defined, **3:83** Remedies for, **6:37**

WEAR AND TEAR, REASONABLE Generally, 6:33

INDEX

YEAR TO YEAR TENANCY See TENANCY ZONING Generally, 2:8