

# ENSURE CLARITY BEFORE SIGNING

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A fixed term lease agreement between a tenant and landlord provides security to both parties, assuming that both are in position to honour all the terms and conditions contained in the agreement.

Let us take a five year lease, this would give the tenant security of tenure and assured rental income for the landlord for the duration of the lease.

If the landlord prematurely terminates the lease without any legal basis, the tenant can sue. The landlord would have the right to sue as well if the tenant, without legal cause, decides to vacate the premises (dwelling or commercial property).

Should the lease contain a clause that states that any variation or changes to the original agreement is binding upon the parties only if this is reduced to writing and signed by both parties, no verbal agreement will be of any legal effect.

What happens if the landlord decides to increase the rental before the lease comes to an end and serves a notice to the tenant? The rental for the five year period was fixed and there was no clause allowing for any escalation.

If the tenant refuses, the landlord has to wait for the full term. However, if the tenant agrees and signs an addendum prepared by the landlord to the effect that the tenant agrees to pay an increase and that the parties specifically have agreed to alter the relevant clause dealing with rental or insert a new clause allowing for an annual escalation, a new rental agreement is reached.

The tenant, on hindsight, who informs her landlord that she wants to revert to the original terms but the landlord is disinclined, is compelled to abide by the new rental agreement. Should the tenant refuse to honour the new alterations, she will be a guilty of a breach.

It is therefore advisable to seek legal help before making any change or even before signing a lease agreement.

Often, the phrase "I signed under duress" is used by tenants, in which instance the tenant would have to prove that such was the situation.

In a sense, what most tenants mean is that if they refused, notwithstanding their legal rights, the landlord because of the undersupply of housing has the advantage.