Valuer update: A refresher on rent reviews and what to look out for

In brief: Rent reviews are there to help ensure the rent being paid is consistent with market rates. However, how and when a rent review can take place may be subject to the Retail Leases Act 2003 (Vic) (the Act).

The Act limits the methods of a rent review under a retail lease. A rent review can only be one of a fixed percentage, consumer price index (CPI), a fixed amount or a market review. A retail lease can provide for different methods of review, such as CPI one year and a fixed percentage adjustment the next year, as long as the methods are not mixed.

What you need to know:

- If acting on behalf of the landlord and you want to ensure that the rent does not decrease, then market reviews must be avoided as a market rent review under a retail lease cannot provide that the rent must not fall.
- In a low inflation environment a fixed rent increase give landlords the certainty of the rent payable. It is important that a rent is not specified as being the greater of CPI and say 3%, as this is void and can result in a market rent determination under the Act.

Background

We were recently requested to advise as to whether in a retail lease of a supermarket it was possible to have a rent review based on the average of the rent paid in the preceding few years. This is a common mechanism used in Coles supermarket leases.

Whilst this may be a convenient way of adjusting the rent, such a mechanism is void under the Act. If the lease includes such a mechanism, this will be void and a market review can follow to determine the rent.

As such, where advising a landlord or a tenant under a lease which is governed by the Act, it must be remembered that rent reviews are limited to one of a fixed annual amount, CPI adjustment, a fixed percentage adjustment or a market review. Further, rents can rise or fall to reflect the method chosen.

Conclusion

Due to the operation of the rent review mechanism under the Act, it is vitally important that a determination is made as to whether the Act applies to a lease. If it does, any rent review is limited in the manner specified above. In particular, market rent review clauses cannot have a floor, so that the rent may fall.

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