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## **RENEWING OR EXTENDING A LEASE - THERE IS A DIFFERENCE**

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By RBS Lawyers

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This article summarizes the legal difference between renewing or extending a lease term.

Although a lease renewal and lease extension may have the same practical effect, when drafting a renewal clause or an extension clause in a lease agreement, it is important to be aware that the courts have concluded that there is a separate and distinct legal difference between the two.

A lease renewal is a new lease agreement. Under a lease renewal, there is a legal instant in time between the expiry of the original term and the commencement of the renewal term. Unlike a lease renewal, an extension of the original lease is a continuation of the original lease, without interruption.

The following are some of the key differences between the consequences of a lease renewal and a lease extension:

- a renewal term can extinguish or limit personal covenants and rights that benefit either the landlord or the tenant, unless dealt with by specific wording, whereas they will probably continue during an extension of term (personal rights include a free rent period, a tenant improvement allowance or a right of first refusal held by the tenant on additional space)
- a renewal term may, in the absence of language to the contrary, result in a tenant's improvements being taken into account in the determination of the fair market rent for the renewal term, where an extension of the term would likely not
- in cases where a lease has been assigned, there is a risk that the original tenant's liability will end when the original term ends, however with an extension of term, the previous tenant may remain liable, unless the lease provides for its release
- to the extent that a breach by the tenant gives rise to a right for the landlord to terminate the lease, the landlord may be able to terminate the lease during the extension term for a breach which occurred during the original term





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Generally speaking, tenants may prefer an option to extend the lease because it continues all rights under the lease that are personal to the tenant, whereas landlords may prefer to grant an option to renew the lease. However, an option to extend the lease may have potential benefits to the landlord as well, such as in cases where the lease has been assigned and the landlord intends for the original tenant to remain liable during an extended term, or where the tenant's use of the premises is for an industrial activity or creates or uses potential contaminants, making the tenant's covenant during the original term to repair and maintain the premises a key concern.

The decision as to whether to structure a tenant's right to continue its occupancy of the premises as an option to renew or an option to extend should be considered carefully, taking into consideration the potential benefits and drawbacks of each. Perhaps more importantly, regardless of how the option is labelled, clear and explicit language reflecting the parties' intentions in regards to which personal covenants and rights are intended to continue or not continue during the new or extended term will help avoid some of the unintended consequences of drafting a right to renew or a right to extend the lease term.



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