

# How to Avoid the Arbitration Process when Renewing your Lease



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As a veteran of two decades of arbitration, it appears that what was supposed to have been a simple, inexpensive and convenient method of negotiation has been turned into a drawn out, expensive and complex procedure. There are many ways to save money and time with a lease renewal and formal arbitration can be set aside. I have worked with one major bank and a trust company over the years when their leases were due and we were able to resolve the issues without sizable fees.

This article relates to simple arbitration where you (the tenant) and your landlord only want to work out a fair and equitable rental for the next period. For more complex matters, lawyers are needed.

There are solutions to avoiding costly and time consuming arbitration and this article will give you some methods to avoid high costs.

Make no mistake about it, if you have never been involved with an arbitration, the costs today can be horrific. Ten thousand dollars buys you a simple arbitration if all procedures are followed, but costs of \$30,000 or more per party are not unheard of today for simple retail space.

With the demise of work in real estate and automobile claims and with more lawyers entering the profession each year, lawyers must look at every avenue for new sources of business and they seem to have found it in arbitration.

An arbitration was supposed to be an alternate and less costly method than court, but lawyers are acting as if an arbitration is just another court case and a matter that could be dealt with in one day or less can be stretched into an entire week.

Something has to be done. There are alternate methods of dealing with lease renewals that could cost as low as \$3,000 for a total expense for both you (the tenant) and your landlord. The question therefore, is why are the costs 10 times this amount and how do you save?

The first thing to do is to insist that all parties agree as to the gross (or net) rentable area. Most leases do not spell out the size and even those that do can be biased towards the landlord. Establish with the landlord that you want the space measured.

You both should agree to split the cost and to use one professional. I prefer a land surveyor and for a basic store \$350 to \$500 would be reasonable. Determine exactly the rules of measurement. There are standards. Agree and get this issue resolved before starting on any other course. Remember, a small variance of say 100 square feet at \$15 per square foot for five years is extra rent of \$7,500 plus other charges. Even if your space is newer and the landlord is a major player, it pays to have your space measured.

Now to get to the next stage. Most leases have an arbitration clause that if the landlord and tenant cannot agree, then an arbitration is to proceed, but too many clauses were drafted during the boom years of the 1980s and the details of the arbitration clauses I have reviewed in many cases are lacking.


Here are my tips on keeping the costs as low as possible, provided that both you and your landlord have only one goal, to solve the issue within the fastest time and at the lowest costs.

- 1) Decide to share all costs down the middle and hire mutual and independent professionals.
- 2) Use only one arbitrator. If your lease states that each side should have their own arbitrator as well as appointing a third, you and your landlord can amend this clause by mutual consent. Figure that professional arbitrators charge around \$2,000 per day each and you have now saved \$4,000 per day, from the hearing costs.
- 3) You provide one list of three potential arbitrators to the landlord and he three to you. If one name is similar on both lists, go with that person.
- 4) Only chose an arbitrator who is knowledgeable of real estate. Ask for references and check them carefully.
- 5) You and your landlord should sign a simple letter stating that you both desire to keep the costs moderate.
- 6) Have the arbitrator sign a declaration of acknowledgment that he is working for both sides.
- 7) Have the arbitrator hire an appraiser to determine the market rent and the one appraiser serves both parties.
- 8) Have the arbitrator make a simple written judgment within an allocated time period and the costs are kept in check.

9) For those who want to save even more costs there is another option. Hire one appraiser to serve both sides. The rental study that the appraiser produces is to be accepted by landlord and tenant. This eliminates the arbitrator.

The last item is one that I am finding more common today, as everyone tries to avoid high costs with rental renewal. Over the past three years I have been retained by both parties on numerous occasions. The difficulty with this is not to speak to one party more than to another. I have one strict rule - when I inspect the property, both landlord and tenant must be present and if either party wants to telephone me, then we have to set up a conference

Of course there is one issue that cannot be overlooked. The courts and arbitration hearings are full of foolish people who want justice and their day in court. Tenants and landlords don't have to get along. Some truly don't like each other and they cannot communicate except through a third party. In that case, I have another inexpensive alternative - mediation. This will be a topic of a future article.

Good luck and remember the money you save in keeping your renewal simple is money you do not have to earn. 

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call. The appraiser must be perceived as neutral at all times.

For typical retail space, hiring one appraiser costs as low as \$2,000 to about \$5,000, but split in half there is no simpler method of a professional arbitration alternative within the market. The lawyer's role in all of these simple procedures is to draft the renewal of lease after you and your landlord have come to terms.

I am not advocating that all arbitrations or renewals can be simple. The purpose of this article is to show that simple renewals should stay simple. If you have a complex space, unique in its nature, then a formal hearing may be your only alternative. Make sure that your lawyer knows the arbitration process. Throughout Canada there are lawyers who are well known for arbitration.