REAL ESTATE

What Landlords and Tenants Get Wrong in Lease Negotiations

By Ari Tuchman | Tuchman Law, APC | Los Angeles, CA

Most lease-negotiation advice treats landlords and tenants as making the same mistakes from opposite sides of the table. They're not. Each side is anchored on its own primary concern — rent, term, use — and that anchor creates a specific blind spot for exactly the provisions that don't matter until years into the lease, when they suddenly matter enormously. The mistakes below split into what landlords systematically underweight, what tenants systematically underweight, and what both sides get wrong for the same reason.

What Landlords Underweight

Operating expense and CAM mechanics get less scrutiny than rent, even though they cause more disputes. Landlords spend real negotiating effort on base rent and escalation schedules, then let common area maintenance reimbursement provisions go in with loose or boilerplate language — what counts as a reimbursable expense, whether there's a cap on annual increases, how gross-up for vacancy is calculated. Ambiguity here doesn't cost anything at signing. It costs plenty three years later, either in a tenant audit challenging years of charges or in a landlord under-collecting because the definitions were never tight enough to support what it actually intended to pass through.

Assignment and change-of-control provisions get treated as boilerplate. A landlord who leases to a tenant based on that tenant's specific creditworthiness and business model can end up bound to a completely different entity if the lease doesn't address what happens when the tenant is acquired or restructured. Without a real consent right tied to changes in ownership or control — not just a formal assignment of the lease itself — a landlord can find itself with a tenant it never would have approved, and no lease provision that lets it object.

Exclusivity conflicts don't surface until a new lease triggers them. In a retail or shopping-center context, granting a new tenant a use clause that overlaps with an exclusive-use right already granted to an existing tenant creates an immediate landlord default — one that often isn't noticed until the incumbent tenant's attorney sends a letter. This requires actually cross-referencing existing leases at the property, not just negotiating each new lease in isolation.

What Tenants Underweight

Renewal and expansion options that look protective but aren't actually usable. An option to renew or expand feels like real security, but if the notice window is short and easy to miss, or the rent for the option period is set by a “fair market value” mechanism with no real appraisal process behind it, the option can be functionally unenforceable exactly when the tenant wants to exercise it. A right that exists on paper isn't the

same as a right that works in practice.

Default and cure provisions are read for reassurance, not for what they actually say. Tenants generally assume standard grace periods and modest consequences for a late payment or a minor breach. The actual lease language may allow the landlord to accelerate the entire remaining term's rent, or terminate on a much shorter cure period than the tenant assumed, after a single missed payment. This is precisely the kind of clause that reads as routine right up until the tenant is late on rent during a slow month and discovers what “default” actually triggers.

Relocation and common-area alteration rights can quietly gut a location-dependent business. A clause letting the landlord relocate the tenant's space within the building, or significantly alter common areas and access during renovations, can be devastating for a retail tenant whose value depends on foot traffic and visibility — and it's easy to sign without registering the risk, because it reads as a minor operational provision rather than something that could undermine the entire reason the tenant chose that location.

Personal guaranties without a burn-off provision tie an individual to the lease indefinitely. A tenant's principal signing a personal guaranty to get the lease approved is common. Signing one without a negotiated burn-off — a release of personal liability after a defined period of on-time performance or once certain financial thresholds are met — means that liability follows the individual for the entire lease term regardless of how the business performs.

What Both Sides Get Wrong

Treating the letter of intent as a formality gets both sides. Substantive business terms often get set informally at the LOI stage, on the shared assumption that “we'll work out the details in the real lease.” By the time the actual lease is drafted, there's deal momentum on both sides and real reluctance to reopen anything that feels already agreed — even when the LOI language was vague enough to leave the real question unanswered. The LOI deserves the same scrutiny as the lease itself, because in practice it often becomes the lease.

Long lease terms get drafted as if nothing will change. A five, ten, or fifteen-year commercial lease covers a span where the tenant's business could be sold, insurance requirements could shift, or a casualty could require a rebuild — and both sides frequently adopt generic template language that doesn't actually address how any of that gets handled, on the assumption that conditions at signing will hold for the life of the lease. They rarely do, and the lease that doesn't plan for change becomes the source of the dispute when change happens.

Final Thoughts

Neither side's blind spot is really about negligence — it's about where attention naturally goes during a negotiation focused on rent and term. The provisions that cause real disputes are almost always the ones that felt secondary at signing, on both sides of the table, which is exactly why they deserve deliberate attention rather than being left to whatever the template happens to say.

About the Author

Ari Tuchman is a Los Angeles transactional attorney and founder of Tuchman Law, APC. He focuses on real estate transactions, business acquisitions, and general counsel services for companies and investors throughout California.

This post is for general informational purposes only and does not constitute legal advice or establish an attorney-client relationship.