



## SAMPLE SCENARIO

# Non-Retail Commercial Lease

**Embracing the belief that "the best way to learn is by doing," we have crafted sample scenarios to provide you with a hands-on experience that makes learning Smarter Drafter a breeze. Dive right in, and discover the power of our product firsthand.**

### How it works

We've created a Sample Scenario for the [Smarter Drafter Non-Retail Commercial Lease](#) (click [here](#) to go directly to the precedent).

Work through the sample set of client instructions and complete the Q&A form. Once you've completed the form you can generate the client facing document. Review the document in either PDF or MS Word to become familiar with the types of clauses automated with Smarter Drafter.

### Note:

Most clients start to become more comfortable with using Smarter Drafter after running several test documents. So why not change each case study slightly and run another submission. Or search our [Help Centre](#) for other sample scenarios covering **Employment Contracts**, **Loans** or even a **Last Will & Testament**.

## Kevin Smith

Kevin Smith (Kev) inherited a beautiful colonial home from his mother 3 years ago. Following a recent rezoning of the property, Kev undertook major renovations to convert it into a character commercial office suite complete with immaculate landscaping and parking on premises.

Kev's nephew Peter Brown (Peter) is a promising barrister who is setting up his own legal practice. He has asked Kev if he would help him by leasing the property to his new firm, Adequate Advocates, at a hugely reduced rent and has offered his personal guarantee. After much thought, Kev has outlined these terms that he will be willing to extend to Peter:

- **Lease duration:** 3-years with 1 option to renew for a further 3 years. Annual rent: \$60,000 (half of the current market rent of \$120,000) and increasing by 26% annually. (Kev worked out that an annual 26% increase will return the rent to about its full market level from the 4th year onwards.) No GST on rent.
- **Option to renew:** Peter can renew the lease for a further 3 years only if that the rent is returned to the full market rate and increases by 5% annually thereafter. It is also important at that point that Peter will have been punctual with his payments and kept the property well.
- **Periodic rent:** If, after the initial term, Peter will not be able to renew the lease, Kev will be willing to let Peter remain at the property on a month-by-month basis until he finds another place or until Kev finds another tenant. However, the rent must still increase by 5% after the initial 3-year term and annually thereafter, and Kev wants to be able to put in another tenant within 3 months if he so decides.
- **Guarantee:** Peter to give his personal guarantee.
- **Expenses:** With a hugely reduced rent, Peter will pay for all expenses relating to the property including insurances. Each will pay their own costs associated with this lease.
- **Property condition:** The property will be carpeted throughout and beautifully completed with quality interior and fixtures. Kev is concerned that the property be maintained and returned in its original pristine condition at the end of the lease.

Kev has instructed you to draft the commercial lease.

## Kevin Smith Client Instructions

<b>Lessor</b>	Name:	Kevin Smith
	Address:	1 First Road, Sydney NSW 2000
	Email:	kevin.smith@gmail.com
<b>Lessee</b>	Name:	Adequate Advocates Pty Ltd
	Address:	23/1 Margaret Street, Sydney NSW 2000
	Email:	peter@peterbrown.com
<b>Guarantor</b>	Name:	Peter Brown
	Address:	11 Keston Avenue, Mosman NSW 2088
	Email:	peter@peterbrown.com
<b>Property</b>	Address:	12A Parliament Avenue, Sydney NSW 2000
	Estimated Size:	80sqm
	Title:	Certificate of Title 1/SP 97496
<b>Car parking</b>	There will be space on the property for about 4 cars	
<b>Lease duration</b>	3 years plus 1 option to extend for a further 3 years	
<b>Commencement</b>	01/01/2020	
<b>Annual Rent</b>	\$60,000.00, increasing by 26% annually	
<b>Fixtures</b>	Kevin will provide a complete list of all fixtures to be included in the lease.	
<b>Outgoings</b>	The Firm must pay for all of the following which are expected to total about \$6,000.00 including GST:	
	<ul style="list-style-type: none"> <li>• Insurances on the building and loss-of-rent</li> <li>• Land tax</li> <li>• Rates for waste removal, water, sewage</li> <li>• Fire compliance costs</li> <li>• Garden maintenance costs</li> </ul>	
<b>Security</b>	A bank guarantee for the equivalent of 3-month's rent and outgoing.	
<b>Permitted use</b>	A lawyers' office trading as "Adequate Advocates"	
<b>Insurance</b>	The Firm must maintain insurances for public risk, workers compensation and plate glass	

## Approach and Important Considerations

### Premises

The lease appears to be of a whole, non-strata property. Verify the details of the property and the registered proprietor against the land registry's record.

### Car Parking

Since the parking spaces are within the lease premises, terms relating to the leased premises will extend to them. There is no need to provide for any lessee's licence for the use of common parking spaces.

### Fixtures

Add Kev's list of fixtures and fittings to an annexure to the lease. The lease will include PPSA-compliant default provisions in relation to the lessor's fixtures and fittings including those on retention of title and grant of security interest under the PPSA.

### Term, Option to Renew and Holding Over

Provide details on the lease duration, commencement date and option to renew. Allow for Kev to consent to a holding-over. You will be asked to provide details on the rent in the initial term, the renewal term and the holding-over period. By default, the Firm cannot exercise the option to renew if there is any subsisting default on its part. You will be able to choose the latest (and any earliest) date for the Firm to exercise the option.

### Outgoings

By default, the Firm will pay for outgoings in advance by instalment, calculated based on the lessor's estimate for the year's total, and adjusted at the end of the year. Kev can opt to collect outgoings on demand by notice to the Firm.

### Rent Reviews

The rent should be reviewed for the 2nd and 3rd years of the initial term to apply an automatic increase of 26% at the commencement of each. For the option lease, there should be a market review to determine the appropriate market rent for the start of the option lease, and fixed percentage increases of 5% at the commencement of each of the 2nd and 3rd years.

Regarding the market rent, the lease will have default provisions for the determination of the market rent, dispute resolution and related costs. For the holding-over period, a fixed percentage increase of 5% should apply to each of its commencement, 2nd and 3rd year.

## Security

3 month's rent as security is common. Since the Firm will be responsible for some outgoings, you will have the choice to also include outgoings instalments for the same period to be added to the security amount. Kev will not collect GST on the rent since she is not GST registered although certain outgoings payable by her may include GST. The total security amount will be automatically calculated based on the rent and estimated outgoings you provide.

The lease will enable Kev to require the Firm to top-up the security amount whenever the rent increases or when Kev has called on any part of the security. A bank guarantee will be easier for Kev administratively as compared to a cash deposit. The lease will include related default provisions including those for the delivery of documents, non-expiration of the bank guarantee, and release only after there are no further potential claims.

## Guarantee

The default terms of the guarantee in the lease will extend the guarantee to the performance of all the Firm's obligations as well as any enforcement costs. As the guarantor, Peter will grant a charge over all his property including any after-acquired property, agree to grant mortgages over all his real property and agree to the registration of security interest over all personal property under the PPSA.

Use the Deed of General Security in a more complex situation such as where the guarantor's property is subject to other secured interests, the guarantor's property includes third-party debt, there is risk of the guarantor's insolvency, or the guarantor is a trading entity with goods, plant and equipment.

## Maintenance

Review the options on maintenance and repairs. In view of Kev's concern over the upkeep of the property, retain the default options relating to the maintenance of carpets and air condition systems. You may also wish to retain the provisions on repainting the premises at the end of the lease and advise Kev.

## Assignment and sublease

It is not within contemplation of Kev or the Firm that the lease will be assigned, or the premises sublet. Given that Kev is leasing the property to the Firm at a huge discount, she is not likely to want an assignment or sublease. By default, the lease will require the lessor's consent to any assignment or sublease, expressly exclude statutorily implied terms against unreasonably withheld consent and grant the lessor a right to terminate the lease upon any breach of such provisions.