



Tenant Termination Rights: **15 Key Protections in a Tenant Termination Right**

1. **Be specific about why the Tenant can terminate** – cotenancy trigger, sales kick-out, etc.
2. **Set a specific window to terminate, or Tenant loses the right** – even if tied to a specific trigger like sales performance or cotenancy.
3. **Require notice from Tenant in writing in strict compliance with notice provisions of Lease** – we definitely do not want to miss this notice.
4. **Get as long a notice period as possible of Tenant’s termination** – give yourself ample time to lease the space to a new tenant.
5. **Stipulate that Tenant’s notice of termination is irrevocable** – i.e., “there’s no going back, so take this seriously.”
6. **Make sure the Lease provides that “time is of the essence” for the exercise of termination rights** – otherwise, the law implies a “close enough” standard
7. **Make Tenant pay a termination fee** – this is especially true if the termination is related to a sales kick-out or other non-cotenancy event
8. **Make the termination fee payable at the time Tenant exercises the termination right** (rather than at the end of the notice period).

9. **Make the termination fee payable in cash or certified funds** – that way we do not have to chase the Tenant for a bounced check.
10. **Make sure Tenant's obligations under the Lease survive the termination** – this includes rent up to the termination date and any indemnity obligations.
11. **Stipulate that the termination right goes away if Tenant ever goes into default** – or, at a minimum, cannot be exercised if Tenant is in default at the time of notice, or on the effective termination date.
12. **Be specific about the condition Tenant must leave the space in upon termination (especially with anchor tenants).**
13. **If Tenant is not out by the termination date, treat them as a holdover** – and charge holdover rent.
14. **Provide that Landlord's obligations under the Lease terminate at the Lease termination date** – i.e., Tenant cannot audit CAM or seek any reimbursements for anything
15. **Make the termination right personal to the named Tenant** – i.e., the termination right goes away if the Lease is ever assigned or the space is subleased and cannot be exercised by an assignee or subtenant.

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