



Posted on: March 16, 2016

GUARANTEES AND INDEMNITIES: WHAT EVERY LANDLORD SHOULD KNOW

One of the forms of security that a landlord may require when negotiating a lease is the provision of a guarantee or an indemnity from an individual that is related to the tenant. An indemnity or guarantee provides the Landlord with an additional financial resource to tap into if the Tenant is not able to meet its obligations under the lease. An example of this is where a tenant is a site specific entity, in which case, the landlord may require that the principal of the tenant guarantee the lease or provide an indemnity.

What's the difference and does it matter?

There is an important difference between a guarantee and an indemnity, and – yes – it matters. A guarantee is a secondary obligation which means that the landlord must first pursue an action against the tenant before seeking recourse against a guarantor. An indemnity, however, is a primary obligation which means that the landlord may pursue an action against an indemnifier upon a default by the tenant, without first having to proceed against the tenant. For this reason, a landlord will usually prefer an indemnity, rather than a guarantee.

Avoid Inadvertently Releasing the Indemnifier or Guarantor

Landlords should be aware that they can inadvertently release their guarantors or indemnifiers through their conduct or dealings with the tenant. The following are some examples in which a landlord might inadvertently release its guarantor or indemnifier:

- where the landlord and tenant amend the lease, without the written consent of the guarantor, resulting in a material variation in risk to the guarantor, even where the guarantor has initially agreed in the guarantee to be bound by any amendment to the lease
- where a landlord repeatedly and unreasonably fails to respond to requests from its tenant to sublease, causing prejudice to the indemnifier
- where a guarantee does not specifically provide that it applies to extensions or renewals, the guarantee probably expires after the initial term
- where a guarantee does provide that it applies to extensions or renewals, but the extension agreement agreed to between the landlord and tenant contains terms which, effectively, amend the



RICHARDS
BUELL
SUTTON

Established in 1871

lease agreement in a manner that increases the risk to the guarantor

Indemnities and guarantees can provide a Landlord with a useful form of security. However, care needs to be taken when initially drafting them to ensure that they provide the Landlord with the security that it requires and then, again, in reviewing them, when a lease is amended, renewed or extended.



700 - 401 W GEORGIA ST.
VANCOUVER, BC V6B 5A1
CANADA

TELEPHONE
604 682 3664

FAX
604 688 3830

RBS.CA