

Your Legal Questions

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Q. I have a lease of a cafe which was severely damaged by flooding. The landlord insures the building, but I cannot operate my business and I am worried about the rent. What do I do now?

A. From what you tell me, it appears that the landlord insures your property and you will probably be reimbursing him the premium or a proportion of it depending on whether your cafe is in a bigger block. The lease will ordinarily set out the risks that the landlord must insure against. This will also include provision for the landlord to insure against loss of rent. Where the property is then destroyed or damaged by an insured risk, the insurance the landlord has taken out to cover loss of rent then applies. The loss of rent insurance will be for a specific period i.e. 2 or 3 years after which the rent then becomes payable again. This gives the landlord that period to recover the insurance for the repair and the building and carrying out the works. Where the landlord has not carried out the works within the loss of rent insurance period, your lease may include provision allowing either side to serve notice upon the other bringing the lease to an end.

If the landlord is not obliged to insure against flooding, but does in any event, then technically the rent is not suspended because the property has not been damaged by an insured risk stipulated in the lease. This means that you may still have to pay the rent notwithstanding the insurance.

Insurance provisions in leases are complex and you should take advice when agreeing the lease in the first place to cover yourself for future events.

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