

# As a tenant, should you register your lease?

Article from Office Leasing Expert, Rob DesBrisay

*If you are a tenant or sub-tenant of leased space, it is always good to question the validity and strength of your lease agreement.*

**A lease “runs with the land,” meaning that, even in the event of sale, a lease remains intact. However, if it is an unregistered lease, there are instances when it could be voided or unenforceable against the owner.**

If a lease is not registered on title, your claim to occupancy does not appear on the registered land title. So, if the property you are leasing is sold, the new owner may not have to recognize or abide by the terms of your lease. That could mean major headaches – maybe even an end to the business you’ve spent years building up in that location.

## I’m not a lawyer, but ...

Before going any further into this, let me say that I am not a lawyer. Should you find yourself considering registering your lease, first find a lawyer whose primary practice is in commercial leasing.

That said, I do have years of experience dealing with and constructing leases. I have made an informed study of the matter of registering them.

You may or may not know that British Columbia has one of the best land title systems in the world: the Torrens System. This system provides an up-to-date, official record of who owns the land, as well as any interests or charges pertaining to the land title.

Here’s how Wikipedia succinctly defines the

### **Torrens System:**

*Torrens title is a system of land title in which a register of land holdings maintained by the state guarantees an indefeasible title to those included in the register. Land ownership is transferred through registration of title instead of using deeds. Its main purpose is to simplify land transactions and to certify to the ownership of an absolute title to realty.*

In short, once a person, corporation or charge (such as a lease) is registered on title, it has legal standing. That goes for whatever makes it onto the registered title, including leases, sub-leases, mortgages, easements, rights-of-way and more.

Here’s what that means for tenants. If the building you are in gets sold and your lease is on title, then all the provisions of your lease remain intact.

## Is there any reason not to register your lease?

One reason not to register a lease is the cost and legal rigmarole of registering on title. An even more compelling reason is that your landlord may not grant you permission to register the lease.

Consider the owner’s perspective. Registering your lease on title is an encumbrance – a potentially serious one that may affect the future value of the property, especially if the buyer wants vacant possession. There is also the possibility that the registered lease may expire, but not be removed from title by the leaseholder. It’s even worse when tenants register leases, then move or go out of business without removing the leases from title.

For the owner, the business of clearing title can be time-consuming and costly. That’s why, if you check the title of



almost any major commercial building, you'll find few, if any, leases registered.

## So, what protection exists for a tenant who has not registered their lease on title?

How concerned should you be that your lease is not registered? Well, in B.C., for any lease for three years or less, the landlord or owner will be bound by the lease provided there is evidence of occupation. Therefore, if you operate from the premises and can produce your lease, you are protected.

However, the law does state that a party dealing with title (that is to say, change of title) is not bound by any unregistered lease that is greater than three years. It is this part of the law that causes concern.

## What can you do?

Concerns reached a peak for tenants in 2012 with a particular case involving a hotel and a financial institution. The case found in favour of the financial institution, resulting in several business leases being voided. Since this was not the first time cases have been decided against unregistered leaseholders, some people have concluded that the law favours landlords. If you are curious about this case, you can read a [summary\\* of it here](#).

It may or may not make you feel better to understand that this case did not involve a normal landlord-tenant relationship. That is, a relationship protected by an obvious occupancy and an active lease in good standing. In any event, there are a couple of things you can do to protect your tenancy if the building you are in is sold.

**First, make sure the party buying the building is aware of your legitimate tenancy.** Be in occupancy. Have signage on your door. Make sure your name is on the directory board. Make sure your online presence shows your business address.

With those items in place, I would then challenge any landlord to refute the lease.

**Second, ask your lawyer for an opinion of how great the risk is that a new landlord could refute your lease.** There have been a number of court decisions concluding that a purchaser cannot ignore the obvious presence of a tenant and attempt eviction on the basis of an unregistered lease.

Perhaps the greater concern is when a mortgage holder, such as a bank, acquires title. Mortgages tend to trump unregistered leases. To protect yourself, ask your landlord for a non-disturbance agreement from the mortgage holder, in return for not registering your lease. This is particularly important if you occupy a property that may be acquired to be developed for other purposes. At the very least, it gives you bargaining power to be compensated for the expense and hassles of having to move.

If your current lease is a liability, then none of this may be a concern. However, if your lease is below current market rents and is of substantial value to your business, you may want to look further into registering your lease, or protecting yourself in some other way.

## Is it worth it?

Upon a first look at the law, there may appear to be risks to your tenancy. However, I am not aware of any case where a main tenant with a valid lease and an active occupancy has had an owner successfully refute their lease.

So, should you try to register your lease? Probably not. Most of the time you won't need the protection of a registered lease. There is also a good chance your landlord will not allow it. For those reasons, it simply may not be worth the cost and effort. Still, there may be no harm in requesting a non-disturbance agreement. ■

## Here's a typical clause on a lease regarding registration

*The Tenant agrees with the Landlord not to register this Lease, provided that the Tenant at the request of the Landlord and at the cost and expense of the Tenant, will cause this Lease to be registered; provided that the Tenant may at its own expense register notice of this Lease subject to prior approval by the Landlord of the form of such notice.*

*Notwithstanding the provisions of section 13.02, in the event the Landlord requires this Lease to be registered in priority to any mortgage, trust deed or trust indenture which may now or in the future hereafter affect in whole or in part the Leased Premises or the Building and whether or not any such mortgage, trust deed or trust indenture shall affect only the Leased Premises or the Building or shall be a blanket mortgage, trust deed or trust indenture affecting other premises as well, the Tenant covenants and agrees with the Landlord that the Tenant shall execute promptly upon request by the Landlord any certificate, priority agreement, or other instrument which may from time to time be requested to give effect thereto.*



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\*Summary Link:  
<http://caselaw.canada.globe24h.com/0/0/british-columbia/supreme-court-of-british-columbia/2011/02/01/vancouver-city-savings-credit-union-v-serving-for-success-consulting-ltd-2011-bcsc-124.shtml>