



## Commercial Premises: Landlord v's Tenant

In NSW legislation provides that a landlord must not unreasonably withhold consent to a tenant who wishes to assign their interest in a lease to another tenant. A recent case highlights the consequences where a landlord unreasonably withheld its consent to a proposed assignment of lease.

The landlord was Cripps and the tenant was Dawson. A breach of the lease occurred when Cripps wrongfully refused to give consent to Dawson's request for assignment of the lease which was used in conjunction with the sale of its photographic business. The first sale fell over due to Cripps' wrongful refusal to consent to assignment of the lease. When the business was sold some ten months later, it sold for \$102,000 less than the first attempted sale. During the ten month period between the first attempted sale and the actual sale, there had been a substantial drop in the value of Dawson's photographic equipment with the advent of digital technology.

The Tribunal found in favour of Dawson and awarded \$102,000 in damages. The Tribunal concluded that the difference between the two contract prices was attributable to the loss of the opportunity to sell the equipment comprised in the business.

In response, Cripps argued that it was not within the contemplation of the parties, at the time they made the lease that a probable result of breaching the lease was loss of the value of the equipment and therefore any damage so based was too remote.

The court rejected this argument and put the matter in simple terms "had there been no breach [by Cripps] and the original sale therefore proceeded, the loss would not have occurred".

For Landlords it is important to know your rights and obligations under legislation to avoid breaching your lease. At Everingham Solomons we can advise you on all of your leasing needs because **"Helping You is Our Business"**.



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