



DENTONS

# 'Opinionated?'

## 2024 Legal Opinion Competition

Fact Scenario | A lease of two halves

Grow | Protect | Operate | Finance

July 2024

Your team works in the commercial property department at a Wellington law firm conveniently bearing the name of your team. Your supervising partner Magik Starr has just had a meeting with longstanding firm client Alex Lisa. Alex made a fortune in diamonds and gold digging in Australia, and now has a small portfolio of commercial properties that Magik and the firm advise on. Magik has asked you to consider Alex's plight, and present him with a brief memo (no more than two pages) outlining the legal issues involved and the possible answers for him to put to Alex.

If Magik rates your memo, he may ask you to meet with him to talk through what you have come up with and your thoughts on presenting the advice to Alex. Magik is concerned that Alex may now be struggling a bit financially, having failed to strike gold in the last few attempts, so may not be able to afford Magik's hourly charge out rate. If he thinks you have a good handle on the issues, he might get you to run the meeting with Alex to go over your advice.

Here's what Magik has told you about Alex's issues:

- Alex is a diehard netball enthusiast. Back in 2019 the firm helped in the documentation of the lease of the top floor of Alex's building on Bad Manners Street to local netball coaching guru Nola Tara. Nola was particularly attracted to the premises because of their high stud, ample skylights, and massive floor plate, making them an ideal base for her to run her junior netball coaching clinics from a central city location.
  - Alex was able to provide that massive floor plate due to the fact that the building was historically two buildings, that were combined together at the turn of the century. That means that there is a seismic gap between the two original buildings. Until late last year you would never have known about the gap, as it was seamlessly plugged with a state-of-the-art steel plate flooring system.
  - Unfortunately, the great quake of 30 November 2023 blew apart those plates, rendering the building unable to be safely occupied for a brief period. Alex was able to swiftly address the issue by bolting down some thick plywood covers for the gaps, rendering the building completely safe to occupy by the start of February this year. Fortunately, other damage to the building was superficial.
- All the tenants on the other floors of the building were happy to move back in at the end of February, with the building confirmed by an independent structural engineer as tenantable. Alex's delight with the apparent effectiveness of what was originally intended to be a temporary plywood fix has led to the deliberate delay (for the time being at least) of the reinstatement of the steel plate system. That's one way to save money.
  - Nola, however, is unimpressed. While she kept paying rent on the premises through to the end of May this year, she has refused to re-enter occupation, citing safety concerns: "I can't have my little girls tripping over these ugly new plywood covers".
  - Nola wrote to Alex in June, saying she wanted out and was terminating the lease under clause 27.4A.
  - Alex has been trying to sort a deal with Nola, but to no avail. It turns out that Nola has been able to secure alternative premises in Good Manners Street at a cheaper rent, and has been running her coaching clinics there since June.
  - Alex stands to take a significant financial hit. Nola's lease had another 5 years or so to run at a rent that is significantly above current market rates. To rub salt into the wounds, not only is Nola refusing to pay any more rent, she is demanding repayment of the 6 months' worth of rent that she paid for the period from 1 December to 31 May, when she stopped paying. Quoting Alex, 'It's outrageous. All my other tenants have congratulated me on how swiftly I was able to get the building back into a safe state. Now here's this opportunistic upstart wannabe taking advantage of the earthquake, using it as an excuse to try and get out of her legal obligations and save herself some money.'

A copy of the lease entered into by Alex with Nola Tara's trading entity, Mystic Pulse Limited, is attached.



**The following questions arise:**

- Q1:** Is Nola Tara's purported cancellation of the lease lawful?
- Q2:** Does Alex need to refund the rent paid since Mystic Pulse ceased occupation?
- Q3:** Is it relevant that all the other tenants have resumed occupation, and the building is now tenantable and safe?
- Q4:** What remedies are available to Alex to pursue?
- Q5:** What actions do you recommend to Alex?

**Please answer each question in sequence, and set out your memo accordingly. If you need more information in order to be more definitive in your response, please outline in your memo the information you need.**

***NB: Please don't forget to provide an outline of the teamwork approach that you took in this exercise!***