

'Opinionated?'

2023 Legal Opinion Competition

Fact Scenario | Double Leasing Dilemma

Grow | Protect | Operate | Finance

August 3, 2023

Your team works in the commercial property department at a firm that conveniently bears your team name. Junior partner, Davey Seedmore, has just had a meeting with long-standing client Chris Lipkins. Davey has asked your team to consider Chris's position, research the legal issues involved and present him with a brief memorandum (no more than a couple of pages) outlining the legal issues involved and the possible options for him to put to Chris.

If he likes your outline and ideas for advising Chris, Davey will meet with your team to talk through what you have come up with and your thoughts on how to present the advice to Chris. Davey is concerned that Chris is in a bit of financial difficulty. Chris probably can't afford to meet the costs of Davey's charge out rate, so Davey is thinking of having you, instead of him, run the meeting with Chris.

Chris owns two shop buildings in downtown Dunedin, side by side. Chris operates a florist shop from one of the buildings (Building A). Davey's impression is that one of the reasons Chris is under financial pressure is that the flower business is not flourishing in the current climate, and what Chris has been putting to the market is not as popular as it once was.

Chris has leased the other shop (Building B) to Marama Shaw (copy of lease attached). Marama runs a highly successful Japanese food outlet from those premises: 'Sosoomee Sushi'.

In late July this year Chris was approached by flamboyant out of town entrepreneur Peter Winston, who was keen to lease a shop building in downtown Dunedin. Peter was happy to offer twice the rent that Marama had been paying. Chris was delighted with the offer, as Marama's lease was due to expire on 30 September 2023 and she hadn't formally committed to renewing it. Chris therefore signed up a standard, unconditional ADLS lease with Peter on the spot, commencing on 1 October 2023.

Chris understands that Peter needs two months to fit out Building B for his specialist pet shop 'Pete's Petite Pets', which he wants up and running by 1 December 2023 to catch the Christmas rush.

The only thing Chris was really going to miss about Sosoomee Sushi was that for the past year Chris's hair had been styled at the back of Building B by Marama's mate Rawiri White, a renowned hair stylist. One reason for the success of Sosoomee Sushi was that the customers Rawiri attracted to the shop could eat sushi while they waited their turn for a haircut.

On 31 July 2023 Marama finally gave Chris a written renewal notice, seeking to renew her lease for a further three years from 1 October 2023. What's more she gave Chris a Sosoomee napkin, on the back of which was an agreement to sublease the back of Building B to Rawiri to run his hairdressing business from there until 30 September 2026.

Apparently Marama had been meaning to formalise arrangements with Rawiri for quite some time, and finally got him to sign something, after a heavy wasabi session.

Chris has said nothing to Marama about the new lease with Peter, but is anxious about being caught between two competing parties. Chris is keen to know the legal position, and is seeking guidance from your firm to identify options. In particular:

- Q1:** Is Marama actually entitled to renew her lease, having missed the renewal notice deadline?
- Q2:** Is Marama's sublease to Rawiri lawful, and can Rawiri insist on being able to remain on site even if Marama can't?
- Q3:** Is Chris able to back out of the deal with Peter if it turns out Marama is there to stay?
- Q4:** What would you advise Chris to do?

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 identify the additional information you need in your memo. If you need to clarify anything from the fact scenario, please let us know.

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