

Speaking Notes – Affordable Housing Package

The Government remains committed to ensuring that housing remains affordable for Canberrans. That is why, as part of the 2013-14 Budget, a number of policy changes will be made to the First Home Owner Grant, the Home Buyer Concession Scheme and the Land Rent Scheme.

Out of Scope

Land Rent Scheme

Today, I am also announcing significant changes to the ACT Land Rent Scheme. The Scheme was introduced in 2008 by the previous Chief Minister.

This scheme allows households to rent land from the Government and provides an alternative option for households to enter the housing market.

Two different rental rates exist for those wishing to enter the Scheme, including a discount rate of 2 per cent for low income households and a standard 4 per cent rate for all other households.

As part of the 2013-14 Budget, the Land Rent Scheme will be modified to provide improved access to housing for low to medium income households, by retargeting the eligibility requirements to focus on those cohorts.

From 1 October 2013, access to the Scheme for new entrants will be available to applicants who meet the defined eligibility criteria.

New entrants will no longer be able to access the Scheme at the standard rate. However, existing lessees currently in the Scheme at the standard (4 per cent rate) will be able to continue in the Scheme.

Kilkelly, Emma

From: Doran, Karen
Sent: Friday, 31 May 2013 4:00 PM
To: Tatipata, Shonella
Cc: Kilkelly, Emma
Subject: RE: Budget in Confidence: URGENT MO Request for CMTD Input - FHOG & Land Rent
Attachments: Speaking Notes - tax - economy - housing affordability (2).doc

Sensitivity: Confidential

Hi Shonella

Dot points as requested.

Let me know if you require anything further

Karen

From: Tatipata, Shonella
Sent: Friday, 31 May 2013 10:30 AM
To: Doran, Karen
Cc: Nicol, David; Kilkelly, Emma
Subject: Budget in Confidence: URGENT MO Request for CMTD Input - FHOG & Land Rent
Importance: High
Sensitivity: Confidential

Hi Karen

Minister's office has requested urgent dot points by 10.30am Monday on the following please:

- a) The 2013-14 budget delivers a package of initiatives aimed at making home ownership more achievable for more Canberrans.
- b) This package includes:
 - i. An increase in the First Home Owner Grant to \$12,500 from 1 September 2013. The Grants will be retargeted to new and substantially renovated properties from 1 September 2013.
 - ii. Expansion to the Home Buyer Concession Scheme— the income threshold will rise from \$150,000 to \$160,000.

- iii. An increase in the property threshold up until which a full concession is available to \$425,000, with a partial concession for properties valued up to \$525,000.
- iv. Retargeting of the Land Rent Scheme to lower income households.

If you have any concerns, please let me know.

Thank you
Shonella

Directorate Liaison Officer | Treasury | Commerce and Works Directorate ACT Government

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Dot Points – Affordable Housing Package

The Government remains committed to ensuring that housing remains affordable for Canberrans. That is why, as part of the 2013-14 Budget, a number of policy changes will be made to the First Home Owner Grant, the Home Buyer Concession Scheme and the Land Rent Scheme.

Out of Scope

Retargeting of the Land Rent Scheme

The Scheme was introduced in 2008 by the previous Chief Minister.

This scheme allows households to rent land from the Government and provides an alternative option for households to enter the housing market.

Kilkelly, Emma

From: Goth, Kathy
Sent: Tuesday, 10 September 2013 5:15 PM
To: Kilkelly, Emma; Forner, Julia
Subject: FW: Land rent changes

Please see attached let me know if you have any comments

Kathy Goth
Senior Manager
Economic Development Policy
Ministerial Cabinet and Policy Division
(Mon - Thurs)

02 6207 8891

From: Cain, Peter
Sent: Tuesday, 10 September 2013 3:46 PM
To: Goth, Kathy
Subject: Land rent changes

Hi Kathy, this is currently being used by Advice & Assessments and Revenue Accounts but there is certainly scope to expand some of the points – any comments?



Land Rent
Changes#2.doc

Peter

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Land Rent Scheme (LRS) changes from 1 October 2013

(Please note that the *Land Rent Amendment Bill 2013* is listed for debate and passage during 17-19 September 2013)

- retargeting entrance to the LRS to only those new entrants eligible for the discount land rent rate of 2 per cent (while ensuring that those entrants already participating in the Scheme at the standard rate are unaffected);
- aligning the determined income threshold with household income as opposed to lessee or lessees income (same as HBC at \$160,000);
- clarifying that the date of exchange of contract (being pre- or post-1 October 2013) determines which land rent scheme potential applicants are eligible for;
- restricting the subsequent transfer of land rent leases entered into on or after 1 October 2013 to those eligible for the discount land rent rate of 2 per cent;
- ensuring that those applicants who are no longer eligible for the discount land rent rate are provided with a 2-year time period to convert the lease to a nominal Crown lease or transfer the land rent lease to an eligible applicant;
- providing for the assessment of discount land rent eligibility prior to obtaining a land rent block; and
- making minor amendments to the Act to align the charging of interest on overdue land rent with that of general rates and land tax, as well as narrowing the definition of 'owner' in relation to a land rent block to include both a beneficial and legal interest.

Kilkelly, Emma

From: McDonald, Tom
Sent: Wednesday, 11 September 2013 11:05 AM
To: Kilkelly, Emma
Subject: RE: Land Rent - assistance with Scrutiny comments

Of course, Emma. I called you back, but the call rang out. Come up any time this morning if you like. I will review the document now.

Tom McDonald | Director Legal and Insurance Policy Branch and General Manager ACT Compulsory Third Party Insurance Scheme | Chief Minister and Treasury Directorate | ACT GOVERNMENT GPO BOX 158 CANBERRA ACT 2601 | 1 Constitution Avenue CANBERRA 2601 | www.act.gov.au |
P: (02) 6207 0284 | F: (02) 6205 4376 | mobile: 0418 278 934 E: tom.mcdonald@act.gov.au

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-----Original Message-----

From: Kilkelly, Emma
Sent: Wednesday, 11 September 2013 10:17 AM
To: McDonald, Tom
Subject: Land Rent - assistance with Scrutiny comments

Hi Tom,

Just wondering if have a spare 30 minutes today to talk about the comments from Scrutiny regarding the Land Rent Amendment Bill 2013?
I would appreciate any comments/assistance you may have.

Kind regards, Emma.

Kilkelly, Emma

From: Kilkelly, Emma
Sent: Thursday, 12 September 2013 4:59 PM
To: Salisbury, Kim
Subject: FW: Land Rent position - requested change of word

Hi Kim,

I spoke to Karen following our discussion this afternoon. I explained that Section 26A(4) refers to the specific parcel of land (as a land rent lease). I understand that the Courts will have their own discretion in determining how the blocks will be on sold in the future. Karen was happy with this approach.

Thanks for clarifying.

Cheers, Emma.

Kilkelly, Emma

From: Salisbury, Kim
Sent: Tuesday, 17 September 2013 2:30 PM
To: Kilkelly, Emma
Subject: FW: Briefing with _____ - follow up request

KIM SALISBURY | COMMISSIONER, ACT REVENUE OFFICE | PO BOX 293 | CIVIC SQUARE ACT 2903

TEL: (02) 820 70013 | FAX: (02) 820 70011 | EMAIL: kim.salisbury@act.gov.au

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From: Salisbury, Kim
Sent: Monday, 16 September 2013 9:54 AM
To: Smithies, Megan
Subject: RE: Briefing with _____ - follow up request

There was a largely technical explanation of events should a post 1 October land rent holder become ineligible (ie, option to convert to a crown lease or on-sell to a preapproved purchaser, and the exercise of the Commissioner's discretion in such cases)

Exempt s41

The scrutiny of Bills issue was not raised.

The FHOG question came out of discussion on deferred duty and how many people might lose access to duty deferral if the amendment is not passed.

KIM SALISBURY | COMMISSIONER, ACT REVENUE OFFICE | PO BOX 293 | CIVIC SQUARE ACT 2903

TEL: (02) 820 70013 | FAX: (02) 820 70011 | EMAIL: kim.salisbury@act.gov.au

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From: Cain, Peter
Sent: Thursday, 19 September 2013 5:38 PM
To: Marina, Angel
Cc: Salisbury, Kim; Redden, Sarah; Bennett, Jason; Kilkelly, Emma; Monger, Brett; Lim, Phang-Chun; Goth, Kathy; Chapman, Maggie
Subject: Land Rent Amendment Bill 2013

Angel, the above Bill was passed not long ago in the Assembly. There were some amendments passed, presented by Rattenbury MLA with support from the Liberals – the Treasurer opposed the Green’s amendment.

Clause 28 was amended so that section 26A(4) will now read that “the court may” instead of “the court must”. The trigger for this was last week’s Scrutiny Committee report and comments on the possible impact of the 1996 High Court case *Kable v DPP*. In addition, the power to make other orders as seen fit by the Court was added - current section 26 was also amended accordingly.

I’ll send through the actual new wording once this is made available to us.

The Commissioner and I attended the debate stage. The amendments to the Land Rent Act will be effective from 1 October 2013.

28 New section 26A

insert

26A Sale of post-1 October 2013 lease for loss of eligibility to pay land rent

- (1) This section applies if—
 - (a) a land rent lease is held by a lessee under a lease from the Commonwealth for a term of years; and
 - (b) the commissioner has given the lessee a notice under section 16AA (2) (Post-1 October 2013 lease—loss of eligibility to pay land rent) in relation to the land rent lease; and
 - (c) the lessee has not within 2 years after the day the notice is given—
 - (i) varied the lease to reduce the land rent payable to a nominal rent; or
 - (ii) transferred the lease to an eligible transferee.
- (2) The commissioner may apply to a court of competent jurisdiction for an order for the sale of—
 - (a) the land rent lease; and

- (b) any improvements made on or to the parcel of land under the land rent lease.
- (3) In the application, the commissioner may ask that the proceeds of the sale also be applied in paying the total amount of any land rent, land tax or rates in arrears for the land rent lease, and any land rent, land tax or rates in arrears for 1 or more related parcels of land stated in the application.
- (4) If the court is satisfied that this section applies to the land rent lease, the court must—
 - (a) order the sale by public auction of the land rent lease, and any improvements made on or to the parcel of land under the land rent lease, to pay the total of the following:
 - (i) costs and expenses in relation to the declaration, application and sale in relation to the lease;
 - (ii) if the commissioner has made a request mentioned in subsection (3) in the application in relation to the lease or another parcel of land—
 - (A) the total amount of any land rent, land tax or rates in arrears for the lease at the time the court makes the order; and
 - (B) if the court is satisfied that a parcel is a related parcel of land—the total amount of any land rent, land tax or rates in arrears for the other parcel, at the time the court makes the order; and
 - (b) order that the proceeds be paid into court; and
 - (c) order that the title to the lease be transferred to the purchaser free from mortgages and other encumbrances.

Regards

Peter Cain | A/g Manager | Policy, Legislation & Objections

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Kilkelly, Emma

From: Cain, Peter
Sent: Thursday, 19 September 2013 9:50 AM
To: Kilkelly, Emma
Cc: Salisbury, Kim; Bennett, Jason; Redden, Sarah
Subject: FW: Daily Program - Thursday, 19 September 2013
Attachments: Q A - Land_Rent_Amendment_Bill_18Sept13.doc; ScrutinyReport11_ltr.pdf

Emma, as discussed revised Q&A attached (new 11 & 12) as well as copy of letter to Scrutiny Committee (sent yesterday but dated today! – I alerted Victoria to this after I received it).

Jason, thanks for your part in yesterday's responses.

Kim, Emma will also join us for the debate.

Peter

From: Pullen, Victoria
Sent: Thursday, 19 September 2013 9:34 AM
To: Smithies, Megan; Trute, Carolyn; Thompson, Kirsten; Cumming, Nadine; Divorty, Jill; Fletcher, John; Hays, Tony; Knowd, Carolene; Liddicoat, Phil; Marina, Angel; Miller, Lana; Monger, Brett; Prowse, Fay; Salisbury, Kim; Keft, Maree; Smith, Shannon; Cain, Peter
Subject: Daily Program - Thursday, 19 September 2013

Hi all –

The Daily Program for Thursday, 19 September 2013 is attached.

Pat Donaldson was really impressed with how quickly Peter and crew turned around the additions to the Land Rent Bill debate package.

Thank you
Vicky

EXECUTIVE BUSINESS – continued

Orders of the day

No. 1 Land Rent Amendment Bill 2013 — Resumption of debate (Mr Smyth) on agreement in principle; detail stage; agreement to Bill.

Victoria Pullen

Directorate Liaison Officer | Treasury Directorate and Commerce and Works Directorate | ACT Government

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Questions & Answers

1. What legislation is amended by this Bill?

- The *Land Rent Act 2008* and the *Land Rent Regulation 2008*.

2. What does the Bill do?

- The Bill will retarget the Land Rent Scheme, from 1 October 2013, to ensure that it is only available to new lessees who meet the determined eligibility criteria. Only those people who satisfy the eligibility criteria for the discount rate will be able to enter the scheme.
 - To be eligible for the discount rate, applicants must meet income, ownership and residency tests.
- There are a number of other amendments introduced by this Bill to ensure that the Land Rent Scheme continues to be retargeted to the appropriate and intended cohort, being low to middle income earners. This includes restrictions on land rent lease transfers and the requirement to transition out of the scheme should a lessee no longer be eligible for the discount rate (refer to Question 4 for details).
- A number of minor technical amendments are also introduced with this Bill.

3. When will the amendments take effect and who be affected?

- The amendments will apply only to those land rent leases entered into on or after 1 October 2013. The *Land Rent Act 2008* contains distinct provisions for those lessees already in the scheme, and for those who enter the scheme after 1 October 2013.
- Those participants already in the Land Rent Scheme will not be affected by this Bill, and both the standard rate of 4 per cent land rent and the discount rate of 2 per cent will remain available to these lessees, with no lease transfer restrictions.

4. What are the main changes being implemented to the Land Rent Scheme with this retargeting?

- All retargeting amendments below will only affect those lessees who enter the Land Rent Scheme on or after 1 October 2013. All land rent lessees already participating in the scheme will continue participation under the current arrangements, with the rights of these lessees protected through grandfathering provisions in the legislation.
- **RETARGETING ENTRANCE TO THE SCHEME:**
 - From 1 October 2013 only those lessees who are eligible for the discount rate of land rent will be able to enter the Land Rent Scheme.

- Lessees will be required to obtain a 'pre-approval' from the ACT Revenue Office regarding their eligibility for the discount rate. This pre-approval will be valid for a six-month period and can be used by the lessee to show eligibility to the appropriate parties when entering the process of obtaining a land rent block.

- **REMAINING ELIGIBLE FOR THE LAND RENT SCHEME:**

- Once a lessee has entered the Land Rent Scheme on or after 1 October 2013, they must remain eligible for the discount rate of land rent in order to stay in the scheme.
- Lessees who become ineligible for the discount rate will no longer be able to remain in the Land Rent Scheme and will be obligated to transition out of the scheme.
 - This may occur through transferring their Land Rent Crown Lease to a nominal Crown Lease or transferring the land rent block to another eligible applicant.
- Should a land rent participant exceed the income threshold for 2 consecutive years, they are provided with a 2-year period in which to transition out of the scheme and transfer to a nominal Crown Lease.
 - However, if lessees were able to show that the income increase was not the norm and that their future income would reduce, they will be able to remain in the scheme.
- Should applicants purchase any other property, or if at least one lessee fails to reside in the residence on the block, they will also no longer be eligible for the discount rate, and will be required to transition out of the scheme. Again, should their circumstances change and the applicants can show a return to eligibility, they would be able to remain in the scheme.

- **SUBSEQUENT TRANSFER OF LAND RENT LEASES:**

- New lessees entering the Land Rent Scheme on or after 1 October 2013 will only be able to transfer their Land Rent Crown Lease to another lessee who is also eligible for the discount rate (that is, an eligible transferee).
- The Bill provides that the Commissioner for ACT Revenue may determine that the block can be transferred to a non-eligible transferee, under certain circumstances. These circumstances will be detailed in guidelines determined by the Minister (in the form of a disallowable instrument). This will allow for the proper administration of the retargeted scheme and assist with any anomalous situations that may arise.

- **INCOME ASSESSMENT AND THRESHOLD:**

- The income eligibility criterion for the discount rate is currently determined on a lessee basis. However, this method does not include any domestic partners or householders who may not be a lessee for the block.
- This Bill provides that the Minister can determine how the total income of a lessee is worked out. For entrants to the scheme after 1 October 2013, income will be assessed on a household basis (i.e. the income of a lessee or all lessees and their domestic partners).
 - The household income approach will be more reflective of applicant income and ensures the scheme is targeted to appropriate households.
- The income assessment criteria and threshold amount will be determined by disallowable instrument. From 1 October 2013 the income threshold will be increased to \$160,000 per annum and will thus align with the Home Buyer Concession Scheme.
 - The existing threshold of \$94,500 will remain for those land rent lessees already in the scheme, with this threshold subject to annual indexation in line with annual change in the full time adult total Average Weekly Earnings.

- **TECHNICAL AMENDMENTS:**

- **Definition of Owner** - the Bill amends the definition of owner to clarify that to 'own' includes both a legal and a beneficial interest, and will assist with the targeting the scheme to those genuine applicants looking to enter the housing market.
 - Under the current definition, it is possible for builders to access the Land Rent Scheme at the discount rate in their individual name (even though they may own other properties, including land rent properties, under a trust or in a company name).
- **Rate of Interest Charged** – the Bill presents a new definition of land rent, providing that land rent includes the costs and expenses reasonably incurred by the Territory in attempting to recover land rent, and also includes interest payable in relation to land rent.
 - Currently interest is charged on overdue land rent on a simple monthly basis. This new definition aligns the charging of interest for overdue land rent with general rates and land tax, on a compounding monthly basis.

5. What are the eligibility criteria for the discount rate of land rent?

- The current eligibility criteria for the discounted 2 per cent land rent rate are:

- the total annual income of all lessees must not exceed \$94,500, increasing by \$3,330 per dependent child up to a maximum of \$111,150 for five or more children;
- lessees cannot own any other real property; and
- at least one of the lessees must reside in the property once a Certificate of Occupancy has been issued.

6. Will the eligibility for the discount rate remain the same after the introduction of this Bill?

- While the discount eligibility criteria will still include an income, residency and ownership test, there are amendments being made to the assessment of income (see Question 4). The income threshold amount will be increased to \$160,000 per annum and will be assessed on household income.
- The lessees will still be required to reside in the property once a Certificate of Occupancy has been issued, and must not own any other real property.

7. How will lessees be informed of the new entrance and ongoing eligibility criteria?

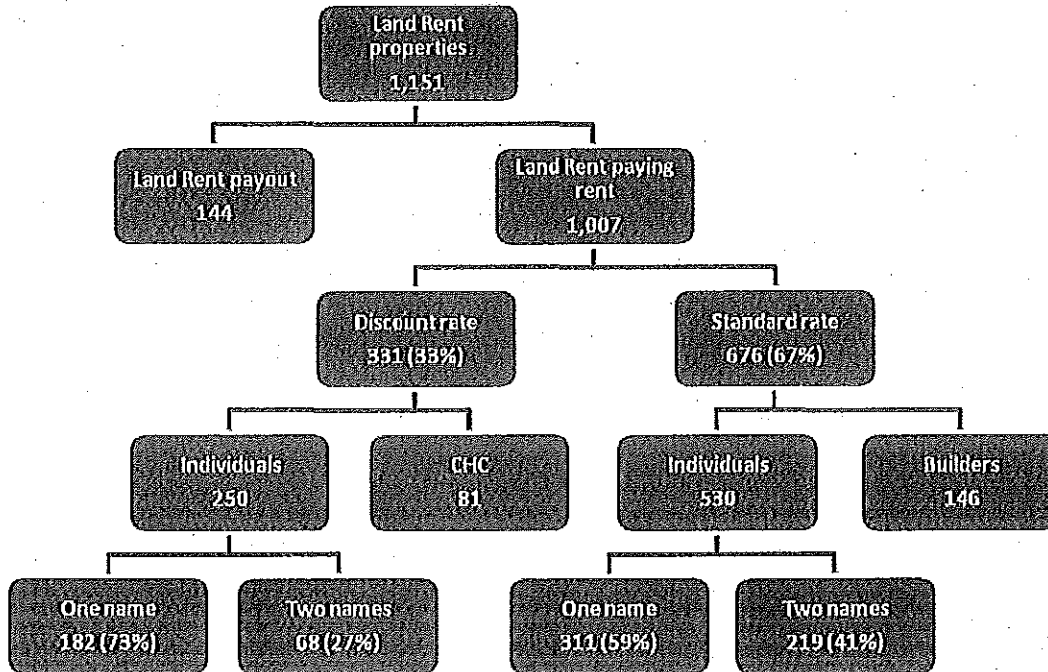
- New potential land rent participants will be made aware of the changed eligibility criteria prior to entering the scheme. Measures will be taken (e.g. an advertising campaign) to inform lessees of the changes to the scheme and how they may be affected.
- Lessees entering the scheme on or after 1 October 2013 will be aware of all the eligibility criteria concerning the retargeted scheme.
 - For example, lessees will need to sign a statutory declaration stating that they are aware that they will be transitioned out of the scheme should they no longer remain eligible for the discount rate.
- Currently, lessees are also required to attend an information session at the Canberra Institute of Technology regarding the Land Rent Scheme. It is envisaged that this information session will be expanded to include details of the retargeted eligibility criteria.

8. How will the amendments to the Land Rent Scheme be administered?

- The development of this retargeted scheme involved consultation with the Economic Development Directorate, the Environment and Sustainable Development Directorate, the Chief Minister and Treasury Directorate and the Commerce and Works Directorate.
- The administration of the Land Rent Scheme involves all the above Directorates. In order to properly administer the retargeted scheme, it is envisaged that a working group will be established involving all concerned Directorates.

9. How many land rent lessees are currently paying land rent to the Territory?

- There are currently 1,007 lessees paying land rent to the Territory. The diagram below details how these lessees are distributed:



10. Does the Bill reflect the original announcement of the Treasurer? If not, why not?

- As part of the 2013-14 Budget, the Treasurer announced changes to implement retargeting of the Land Rent Scheme. Since the announcement of this initiative in the Budget, and throughout the drafting process, a number of complex policy issues arose that required discussion and subsequent approval by the Treasurer.
- The main policy issues which required further development included:
 - transitional arrangements;
 - timing of assessment of eligibility for the discount rate;
 - treatment of the subsequent transfer of land rent leases;
 - eligibility for the discount rate for new lessees;
 - treatment of lessees no longer eligible for the discount rate; and
 - other minor amendments (definition of owner, charging of interest).
- **Attachment A** and **Attachment B** of this paper present the signed Briefs provided by the Chief Minister and Treasury Directorate (in consultation with the Commerce and Works Directorate). These provide comprehensive detail on the additional policy development that was required throughout this process.

11. Should clause 28 of the Bill be amended in response to the Scrutiny Committee's comments on the possible impact of the High Court case *Kable v Director of Public Prosecutions* (1996) 189 CLR 51 (*Kable*).

Clause 28 inserts new section 26A into the *Land Rent Act 2008*. This provides the Commissioner for ACT Revenue with the power to apply to a relevant court for an order forcing the sale of a land rent lease held by a non-eligible lessee. This clause should not be amended because:

- I have been advised that a challenge under the *Kable* doctrine is unlikely to be successful.
- A change to this clause would make this provision inconsistent with other similar provisions in the current *Land Rent Act 2008*, *Land Tax Act 2004* and *Rates Act 2004*.
- There is a comprehensive review path prior to matters being considered under this provision. This is because the notice to a non-eligible lessee, requiring them to convert or transfer the lease, is subject to internal review, following which an appeal can be made to the ACAT and then the courts.
- This clause requires that before an order for sale can be issued by the court, it must be satisfied that the new section applies. In other words the court already has a high degree of discretion on this matter.

12. What is the rationale for section 26A(4) stating that the "court must" make the orders listed?

- It provides administrative certainty to the Commissioner for ACT Revenue.
- It also acts as an incentive to non-eligible lessees to leave the scheme as they can see what will happen if the court path is taken.
- Discretionary court orders could potentially encourage non-eligible lessees to retain the lease and take the opportunity to re-litigate the matter in court.