The Leasing Lawyer
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Make good, in plain terms

What a landlord can claim, what a tenant has to do, and how these end

The lease decides, not general practice

Make good is the obligation to return premises to a defined condition when the lease ends. There is no standard version. Property law does not supply one. Whatever your lease says is the whole of the obligation, which is why two tenants in the same building can owe completely different things.

Three formulations turn up constantly and they are not interchangeable.

Wording	What it usually means
Return to original condition	The demanding one. Strip the fit-out, restore the premises to how they were on day one
Good repair and condition	A lower standard. Generally does not require the fit-out to come out
Fair wear and tear excepted	Limits liability for ordinary deterioration from normal use. Almost always present

If a condition report or fit-out schedule was attached at the start, both sides have a reference point. Without one, "original condition" is reconstructed years later from memory and a few photographs on someone's phone.

What a landlord can claim

- **The cost of the works the lease requires.** Removing fit-out, repainting, replacing floor coverings, repairing damage beyond fair wear and tear.
- **A cash settlement instead.** Very common, and often better for both sides. The landlord takes a payment rather than requiring the works.
- **Rent for the make good period, but only if the lease says so.** This is not implied. If the lease is silent, the claim is not there.

What a landlord cannot claim

Make good restores. It does not upgrade. A landlord cannot use the clause to have the tenant pay for improvements beyond the required condition, and cannot recover for fair wear and tear.

There is a commercial limit too, and it is the one worth raising early. If the landlord is about to strip the floor for a redevelopment or a new tenant's fit-out, works the tenant performs are about to be demolished. That does not automatically extinguish the claim, but it changes what the negotiation is really about, and it changes the number.

What a tenant has to do

Read the clause and do what it says. If it requires removal, removal is required unless the landlord agrees otherwise in writing. If it says good repair and condition, you are probably not obliged to restore anything to original specification, whatever the schedule you have been sent suggests.

Then take advice early. Six months before the lease ends there is time to get quotes, plan the work around trading, and negotiate. Six days before, or after handing back the keys, you are in a dispute and your options have narrowed to paying or arguing.

Practical steps that change the outcome

- Find the condition report and the plans approved at fit-out. If they exist, they are worth more than any argument.
- Photograph the premises before you move out, dated.
- Get your own scope and quote. Landlord schedules are opening positions and are frequently priced at retail.
- Ask what is happening to the premises next. If a new fit-out is coming, say so in the negotiation.
- Do not hand back the keys while the question is open, unless you have agreed in writing what happens next.

How these actually end

Most make good disputes settle. They settle because both sides work out that the cost of arguing is a real fraction of the amount in dispute.

The usual path is direct negotiation: the landlord sends a schedule of works or a cash demand, the tenant responds with its own scope and quotes, and the parties land somewhere in the middle.

If that fails and it is a retail lease in NSW, mediation is not optional. Proceedings cannot start until the Registrar certifies that mediation has failed, or a court is satisfied it is unlikely to resolve the matter. Retail claims are heard in the Tribunal. Commercial lease disputes with no retail legislation over them go to the court whose jurisdiction fits the amount, and there is no mediation gate, although courts push the parties there anyway.

If you take one thing from this

The make good outcome is mostly decided at two moments, and neither of them is at the end of the lease. It is decided when the clause is drafted, and again when the condition is recorded at the start.

If you are signing a lease now, that is the moment. If you are already in one, the next best moment is early, well before the term runs out.

Book a free 30 minute call

We will read your lease and tell you where you stand. No charge for the call.

https://calendar.app.google/ZhB6srn7B9dYTavP7

General information only, current at the date below. It is not legal advice and no one should act on it without advice about their own lease.