

TERMINATING A COMMERCIAL LEASE BY MUTUAL AGREEMENT? MIND THE FORMALITIES

written by Nathalie Schlenker | May 12, 2026



Terminating a commercial lease by mutual agreement may seem straightforward. In practice, this is often done through a simple written agreement. However, a judgment of the Justice of the peace court of Antwerp (2nd District), dated 27 January 2025, confirms that an informal approach entails significant risks.

A commercial lease may be terminated by mutual consent, but not simply in any manner. Article 3 paragraph 4 of the Commercial Lease Act stipulates that such termination must be recorded either by a deed of authentic instrument or by a declaration before the Justice of the Peace.

These formal requirements are mandatory and are intended to protect the tenant.

[A simple, private agreement is therefore, in principle, insufficient](#)

In the above-mentioned case, the landlord and tenant had entered into a commercial lease for nine years. A few months later, the tenant's business was not performing as well as expected. The parties therefore concluded an agreement of amicable termination on 9 February 2024, whereby the keys were returned immediately.

However, the termination was not recorded in a notarial deed nor formalised before the justice of the peace.

[Why is this a risk?](#)

If the legal formalities are not complied with, the tenant may invoke the relative nullity of the termination. In other words, they may argue that the commercial lease is still in force.

This means that an agreement which appears clear at first glance may nevertheless be called into question retrospectively. The risk therefore lies not so much in the agreement itself, but in the uncertainty that arises when the formal requirements are not met.

Why did things turn out well for the landlord in this case?

In this specific case, the justice of the peace ruled that the commercial lease had indeed been validly terminated. The decisive factor was that the tenant had actually implemented the agreement. He had ceased operations, returned the keys and vacated the premises.

According to the court, this meant that the tenant had waived the right to continue to rely on the invalidity of the termination. Therefore, in this specific case, the commercial lease was deemed to have been validly terminated.

However, this is not an automatic outcome and certainly not a safe strategy.

Key lesson: avoid uncertainty

This ruling is by no means a licence to disregard the legal formalities. On the contrary. Anyone who terminates a commercial lease by means of a purely private agreement creates scope for dispute and uncertainty, even if both parties initially agreed to the terms.

The message is therefore clear for both landlords and tenants: if you wish to terminate a commercial lease by mutual agreement, ensure that all legal formalities are fully complied with.

An incorrect notice of termination by the landlord can also be costly

Risks do not arise only in the context of amicable termination. An incorrect notice of termination by the landlord can also prove costly. After all, a commercial lease cannot be terminated at will.

The Commercial Lease Act imposes strict conditions regarding the notice period, form and grounds for termination. If these are not correctly observed, the notice may be invalid or give rise to substantial compensation, such as an eviction payment that can amount to several years' rent.

An apparently minor error, such as an incorrect notice period, inadequate grounds or an incorrect notification, can have a significant financial impact.

Commercial leases are therefore also highly formalised for landlords, and a correct approach is essential.

What should you look out for in practice?

The correct termination of a commercial lease goes beyond the agreement itself. You should also ensure clear arrangements regarding:

- the correct method of termination;
- the date on which the lease actually ends;
- the handover of keys;
- the settlement of any outstanding rent, charges and interest;
- the handling of the security deposit;
- any final agreements regarding damage or outstanding debts.

Questions about your commercial lease?

Are you, as a landlord or tenant, considering terminating a commercial lease? In such cases, a quick and thorough review often makes the difference between a clear conclusion and an uncertain outcome later on.

STUDIO | LEGALE can assist you with:

- drafting and reviewing termination agreements;
- discussions regarding commercial leases and notice of termination;
- recovery of arrears and damages;
- negotiations between landlord and tenant;
- proceedings before the magistrates' court.

Taking the right approach from the outset often prevents disputes down the line.

Author:

- Laurie PEER