Go Dark, Go Dim, or Get Out: Understanding Occupancy Clauses in Retail Leases

Jun 09, 2026

Categories:

Publications
Triple Net

Authors:

Ian M. Eastwick
Andrew J. Camelotto
Emma H. Mulvaney

In today's retail leasing environment, the assumption that tenants will continuously operate a fully staffed, fully stocked store for the entire lease term is increasingly difficult to sustain. Changing consumer behavior toward digital marketplaces, combined with evolving store models and tightening profit margins, have made operational flexibility a central priority for retail tenants. When a location begins to underperform, a practical question quickly emerges: What options does the tenant have?

In modern retail leasing, tenants increasingly seek go-dark rights, go-dim flexibility, and early termination provisions to protect against financial losses when a location becomes unprofitable, enabling them to scale back or cease operations while continuing to satisfy their rent obligations. Landlords, by contrast, rely on continuous operations covenants and co-tenancy structures to maintain a vibrant, income-producing shopping center. This tension sits at the heart of many lease negotiations and often defines how risk is allocated over the life of the lease.

This blog post explores how go-dark and go-dim provisions function, how landlords seek to regulate them, and the principal exit strategies tenants use to reduce exposure when a location no longer performs as anticipated. Although often discussed together, go-dark and go-dim rights address different aspects of operational flexibility.

1. Go-Dark Rights

A "go dark" right allows a tenant to cease operations entirely while continuing to pay rent. For tenants, this can offer a way to cut operating losses at a struggling location while preserving long-term optionality under the lease. Go-dark provisions allow tenants to close underperforming stores to cut losses, avoid default under continuous operation clauses, block competitors, and strategically

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

reallocate resources while retaining lease control.

From the landlord's perspective, however, a dark store can have consequences that extend well beyond a single premises. Reduced foot traffic, diminished customer perception, and the potential to trigger co-tenancy provisions for other tenants all make unrestricted go-dark rights difficult for landlords to accept.

As a result, go-dark flexibility is typically negotiated with meaningful limitations. Landlords may restrict these rights to credit tenants or anchors, require continued payment of full rent without offset, or condition the right on the passage of time or satisfaction of specified performance thresholds. For example, a landlord might propose during negotiations a requirement that the overall shopping center tenant occupancy must fall below 50–75% of leasable space for a defined period (e.g., six to 12 months) before the right can be exercised. Even where permitted, go-dark rights rarely exist in isolation and are usually part of a broader negotiated economic bargain.

2. Go-Dim Rights

Go-dim provisions, by contrast, operate in a more nuanced space. Instead of closing entirely, a tenant continues to operate but at a reduced level, whether through shorter hours, decreased staffing, or a scaled-back in-store presence. These provisions have become more common as retail tenants adopt smaller footprints and hybrid operating models that blend in-store and e-commerce activity. While far less visible than a full closure, a go-dim approach can, over time, have similar effects on a shopping center's vitality, making it a real and increasingly significant concern for landlords.

For landlords, the challenge with go-dim activity lies in its subtlety. A store that technically remains open but operates below expected standards may not clearly breach the lease, yet it can still erode traffic and co-tenancy performance. To address this risk, during lease negotiations, landlords routinely press for continuous operations covenants that require tenants to operate during specified hours and maintain a level of merchandising and staffing consistent with comparable locations. The effectiveness of these

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

provisions ultimately turns on precise drafting and, just as critically, the landlord's willingness to enforce them.

Go-dark rights, go-dim flexibility, and continuous operation covenants do not exist in a vacuum; rather, they are deeply intertwined with the lease's economic structure. In centers that rely on percentage rent, reduced operations can directly affect landlord revenue even where base rent continues to be paid. Co-tenancy provisions further complicate the analysis, as they often link rent levels or tenant rights to the presence and operation of anchors or a specified occupancy threshold. In that context, one tenant going dark (or gradually going dim) can create ripple effects throughout the shopping center. The degree of operational flexibility a tenant is able to secure is therefore closely connected to market conditions, tenant creditworthiness, and the tenant's overall importance to the project.

3. Early Termination Rights

When operational adjustments are no longer sufficient, tenants often turn to negotiated exit rights. Early termination provisions provide a defined path out of the lease when certain conditions are satisfied, allowing tenants to limit long-term exposure. One common approach ties a termination right to sales performance, typically requiring that gross sales fall below an agreed threshold over a sustained period. These provisions are usually paired with requirements that the tenant operate continuously for a minimum time and provide reliable sales reporting.

Co-tenancy failures represent another significant category of exit rights. If anchor tenants close or occupancy levels drop below agreed thresholds, tenants may become entitled to rent relief and, if the condition persists, the right to terminate the lease. More complex arrangements may also incorporate termination rights tied to broader changes in the trade area or the failure of anticipated redevelopment efforts. In each case, the objective is to ensure that the tenant's obligations remain aligned with the economic reality of the location.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

Landlords, in turn, typically condition termination rights to preserve predictability of income. Advance notice and cure periods are standard, and termination is often conditioned on repayment of unamortized tenant improvement allowances or other inducements. In some cases, tenants may also be required to pay a termination fee designed to offset lost income and the risk associated with releasing and reletting the space.

4. Key Takeaways

The increasing prominence of go-dark rights, go-dim flexibility, and early termination provisions reflects a broader shift in retail leasing toward a more flexible, performance-driven model. Tenants seek the ability to respond to changing conditions without remaining locked into uneconomic operations, while landlords continue to prioritize stability, traffic, and income across the shopping center. The result is a more highly negotiated approach to operating covenants and exit strategies, where careful drafting plays a critical role in balancing these competing interests.

Please contact the authors or any attorney with FBT Gibbons' Retail & Shopping Center Finance team if you have questions or need experienced guidance on any current or future leasing matters.

Triple Net Blog

Whether you're a developer, landlord, tenant, or investor, Triple Net is your go-to resource for keeping pace with issues impacting triple net properties, while getting insight into the latest strategies to help you manage legal risks and optimize deal flow and outcomes.

Visit blog

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.

2026 FBT Gibbons LLP. All rights reserved. ADVERTISING MATERIAL.

FBT Gibbons