

Understanding a commercial property lease

A commercial property lease is an agreement or contract between a landlord and tenant which governs the tenant's occupation of the premises. Leases can be complicated documents so it's important to have a basic understanding of how a lease works. This guide is aimed at prospective tenants of commercial property and explores some of the common clauses, concepts and phrases found in commercial property leases.

THE LANDLORD AND TENANT

1. Most leases start with the names of the original **landlord** and **tenant**. Some leases also include reference to a **management company**. All these original names remain on the lease even though the whole block or the individual property changes hands. These changes are shown not in the lease but in the separate Land Registry documents of title or, where the lease is unregistered, in a paper trail of assignments.
2. The names "**landlord**" and "**tenant**" are sometimes referred to as "**lessor**" and "**lessee**" respectively. There is no difference between the meaning of these names. The landlord or lessor usually owns the whole building and the tenant or lessee usually 'owns' an individual property.
3. When you buy a lease you take on the obligations of the original tenant. These include the **repairing obligations** and liabilities for any outstanding **rent** and **service charges**.

THE PREMISES

1. The property is usually described in the lease as "**the premises**" or "**the demised premises**". Check the description carefully to see whether it is just the interior of the property or whether it includes any part of the building such as the roof or foundations. This is very important when it comes to your repairing obligations.
2. Does the description of the property include a garage or parking space? If not, then are there any rights to park anywhere?

THE LENGTH OF LEASE AND RENT

1. After stating the original parties, most leases then show the original purchase price and state the length of the lease, the commencement date and the rent. The length of the lease, referred to as "**the term**", is calculated from the commencement date, which is sometimes earlier than the date of the lease. As leases get shorter they can lose value. If this concerns you, then you should discuss the point with a surveyor who should be able to give you guidance on values.
2. The **rent** is normally shown as an annual amount. The payment days are shown in the lease. The rent is often payable **monthly** or **quarterly**. The lease may refer to "**the usual quarter days**". These are 25 March, 24 June, 29 September and 25 December.
3. The **Landlord and Tenant Act 1954** grants rights to apply to the courts for a new lease on similar terms (subject to certain exceptions such as redevelopment). Often those rights are **excluded** from the lease meaning that you have no right to a new lease. If the rights are excluded the lease will say so. Prior to 1 June 2004 a court order had to be obtained authorising the exclusion of the provisions of the Act. Since 1 June 2004 a landlord merely has to serve notice that the Act is to be excluded and a tenant has to serve a declaration confirming that the notice has been served and that the tenant understands the consequences of excluding the provisions of the Act. Again, reference must be made in the lease to the notice and declaration and the dates they were served and made. A lease which

has been excluded from the provisions of the Act would generally fetch a lower rent than one to which the Act applies.

4. Many leases have **rent review clauses** which set out the mechanics for reviewing the rent, usually every five years though it can be any period. Some rents can be linked to profits or fixed percentage increases as opposed to the **“open market rent”**. Usually a Landlord will try to agree the new rent but there are usually mechanisms to allow for the rent to be fixed by an independent surveyor if it cannot be agreed. You will be liable to pay the difference between the new rent and the old rent from the review date not the date it is agreed.
5. Some leases also have **“break clauses”**. These can be in favour of one or both of the parties and usually require the obligations in the lease to have been substantially performed up to the date of the break to enable it to be exercised. There are likely to be strict time limits for when notice must be served and you should pay particular attention to these and diarise them as you may not be able to exercise the break if you miss the deadlines in the lease.

TENANTS COVENANTS

These are the “do's and don'ts” which affect you as the tenant. The most common are:

- (a) **Pay the rent and service charges.** If you do not, then the landlord will be able to take possession or send in bailiffs to take goods to the value of the outstanding rent. You are also obliged to pay the business rates, water rates, gas, electricity and any other relevant outgoings
- (b) **Repair and decorate.** You will usually be responsible for the internal repair and decoration of the property. If you are buying in a block then the landlord or management company will normally repair and decorate the outside and common areas for which you pay a maintenance or service charge. If the lease requires you to **“put and keep the property in good repair”** you will be liable for ensuring that the property is in good repair regardless of its condition when you acquired it. Sometimes the state and condition of the property is recorded in a **“schedule of condition”** which is annexed to the lease and used as evidence of the condition of the property at a given time.
- (c) **Alterations.** You must not make changes to the property without the landlord's written consent. This may be restricted to structural alterations but may extend to decoration depending upon the lease.
- (d) **Alienation.** This means when the property changes hands (or where the property is sub-let). Most leases state that you need the landlord's consent to assign (or sub-let) the lease. This usually needs to be in the form of a **“licence to assign”** which will be prepared by the landlord's solicitors. You may be obliged to act as guarantor for any subsequent buyer under what is known as an **“authorised guarantee agreement”**. This would last for as long as the buyer owns the property after which you would be released and the buyer would then act as guarantor for his buyer.
- (e) **Restrictions and regulations.** Most leases contain restrictions and regulations saying what you can and cannot do and the purpose for which the property can and cannot be used. Change of use may require the landlord's prior written consent.
- (f) **Insurance.** Usually the lease will require the landlord to insure and for you to pay the premium or, in the case of a block, a contribution to the total premium. This is sometimes included in the service charge costs. If you are obliged to insure, you are likely to be required to produce a copy of the policy and the annual schedule. The lease may, however, require you to insure any plate glass.

LANDLORD'S COVENANTS

- (a) The lease will usually contain a covenant for the landlord to give you **“quiet enjoyment”**. This means that the landlord must not interfere with your lawful use of the property.
- (b) If there is a block the landlord may **covenant to enforce repairing and other obligations in the leases** of the other parts in the building. If this covenant does not exist in your lease then this could be a problem which will need to be discussed with your solicitor.
- (c) In leases of blocks it is common for the landlord to **repair** and decorate the outside, main structure and common parts. You must pay a proportion of all these expenses.

(d) The landlord will usually covenant to **insure** the premises though you may be required to insure any plate glass. If the landlord does not insure you will be required to do so and to produce a copy of the policy and up to date schedule

RIGHTS AND RESERVATIONS

1. There may be several pages of rights and reservations, often contained in schedules towards the end of the lease. Most of these relate to **services** such as water, gas and electricity.
2. Make sure the lease contains the necessary rights to use all paths, stairs and any lifts to get to the premises and to get to any parking space.

It is important to remember that every lease is different and that this note is intended for guidance only.