



## Terms a Tenant should negotiate with a Landlord for a new Commercial Lease

If you are considering entering into a lease of commercial premises it is important to be well prepared. There are many things to consider when you begin negotiating the main terms of the lease and failure to consider these items at the outset can make it very difficult to negotiate at a later stage in the transaction.

Often, when you begin negotiating terms you may not have taken legal advice. The following brief guide from our commercial property expert Khalid Mughal will help you to ensure you are best placed to negotiate terms with the landlord.

### Should the Lease be inside or outside the Landlord and Tenant Act 1954?

This is very important. If a lease is inside the provisions for the Landlord and Tenant Act 1954, the tenant will have the right to renew the Lease on basically the same terms (excluding rent and modernisation) provided that the landlord does not wish to take over the property itself or redevelop the property.

Otherwise, the lease will be outside Sections 24-28 of the Landlord and Tenant Act 1954 which will mean the tenant will not have an automatic right to renew the Lease and the landlord is not obliged to offer you a new Lease. The tenant will have to sign a Statutory Declaration at the start of the Lease confirming they were aware it was not a protected Lease. In these circumstances you will have to vacate the premises at the end of the lease if the landlord does not wish to grant a new lease to you.

### Rent

A tenant should check if the rent is paid quarterly or monthly as this will impact their cash flow. Also, it is important to check if VAT is added onto the rent and any other costs.

It is worth trying to find out what the rent is on other similar properties in the locality as this may assist you when negotiating a fair rent for the property.

### Rent Reviews

A long Lease will ordinarily be subject to rent reviews and it is usual for a landlord to demand rent reviews every three to five years. It is in the tenant's interest to make these rent reviews as few as possible as these will always be upward only and the tenant will end up paying more after each rent review. The best case scenario for a tenant in these circumstances is for the rent to remain the same.

You should also try to prevent a rent review taking place in the last year of the Lease.

If the lease is for five years or less you should try to ensure the lease does not contain any rent reviews.

### Rent Free Period

At the start of the lease, a tenant will in most cases be fitting out the property or repairing it so that it is to the standard that they require, this will mean that they will not be open for business immediately. It is important that you should ask for a rent free period of a few months so that the tenant can prepare the premises for the business.

The old adage applies: "If you do not ask you do not get," so it is worth asking for.

### Break Clause

If the tenant is starting a new business, and they are wary of entering into a long lease and being liable to the landlord, the tenant should consider asking for a break clause in the first few years. If their business is unsuccessful, they will be able to break the lease (bring it to an end early) subject to usually six months' prior written notice. It is important to note these break clauses are very time sensitive and if the tenant fails to issue the Break Notice in good time and comply with any other conditions, you will lose the right to break the Lease.

### Lease of Whole and Lease of Part

Lease of Whole of building - If the Lease is for a long period, say over 5 years, the tenant is usually expected to be responsible for the whole of the repair of the building including structural repairs.

If the Lease is for a short term, say 2 to 5 years, the tenant should try and argue with the landlord that they should only be responsible for the inside of the Lease as it is a short lease. The landlord may require a contribution (through a service charge) to any structural/external repairs but it is advisable to try to negotiate an annual financial cap on any service charges.

### Repair

Under the terms of a standard lease of the whole of a building, the tenant will be responsible for all repairs to the property (including structural) even if the disrepair was not caused by the tenant during their term of leasing the property. Therefore, the tenant should try to negotiate for their repairing obligations to be linked to a Schedule of Condition of photographs and statements so the standard of repair the tenant will have to keep the property in will be according to a Schedule of Condition which will be attached to the lease. This way, a landlord cannot ask the tenant to improve the property beyond the state and condition of the property evidenced by the Schedule of Condition attached to the lease.

If the lease is for part of a building, the tenant should only be responsible for the interior of the building and not any structural aspects or common parts. However, the tenant will usually be responsible for a payment towards the repair of any

common parts and structural parts. This will usually be based on square footage or a fair proportion of the total cost of such repairs but it is important for the tenant to check this with the landlord.

### Insurance

Usually the landlord insures the premises and the building. Depending if the lease is for whole or part, the tenant will either be responsible for the whole of the insurance premium or for a proportion of the total insurance premium (it is important for the tenant to check with the landlord whether this will be based on a square footage basis, a percentage or a fair proportion).

### Internal Alterations

The tenant should ask the landlord for the right to have internal alterations carried out by the tenant (including all shop fittings) without the landlord's consent provided that such alterations are not structural.

If you are planning on fitting out the premises at the beginning of the lease it is worthwhile explaining this to the landlord as they may be willing to accommodate this at the outset rather than requiring a separate licence to alter.

### Rent Deposit

A landlord may request this from the tenant to cover say 3 or 6 months' rent in the event that the tenant is unable to pay the rent or are in breach of any other obligations under the Lease. This is usually required if it is a new business or you are unable to show a strong trading history.

The landlord may also seek additional security in the way of a personal guarantee which potentially leads to a director being individually liable if a company tenant fails to pay.

### Stamp Duty Land Tax

Many tenants are unaware that stamp duty land tax (SDLT) is payable on rent and if the rent is more than a certain amount, then SDLT is payable to HM Revenue and Customs.

A stamp duty form has to be submitted for most leases but there may be SDLT payable and this is dependent on the rent and VAT that is charged. It is important for the tenant to check with the landlord as to whether they charge VAT as the SDLT calculation is on the basis of the VAT being added to the rent.

A calculation of the 'net present value' needs to be made which will then determine whether SDLT is payable.

### EPC

The tenant should check with the landlord as to whether they have a current Energy Performance Certificate for the property and a Recommendation Report. If the property is required to have an EPC, then the Landlord must provide this. This will inform the tenant as to the energy efficiency rating for the property which should be between "A" and "E". If it is below "E", then the landlord cannot legally

rent the property to a tenant. They have to bring this up to at least an “E” energy efficiency rating before they can do so.

#### Assignment/Subletting

Most leases will have these clauses but a tenant should check their lease will have the right to assign or sublet as it makes the lease more attractive. They will then have the right to assign the lease to a third party if they decide they no longer want to use the premises or wish to sublet. This would usually be subject to first obtaining the consent of the landlord.

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Please note that the above is not comprehensive in nature does not constitute legal advice and is for general information only and no reliance should be made upon it. You can call Khalid Mughal of our Commercial Property Team who can advise you further in this regard.