

Commercial Property Guide for Landlords

The intention of this property guide is to highlight some important areas which need to be considered by landlords when dealing with tenants of business premises

How can we save you time and money?

We appreciate that landlords want to see tenants in occupation and paying rent, as soon as possible after terms have been agreed. There are considerable advantages in consulting us well before looking for suitable tenants. We can advise on proposed terms and put in place all relevant documentation so that as soon as your commercial agent has agreed terms, we can send out a draft lease immediately. We can collect together all the items which are likely to be required by a tenant's solicitor (consent of mortgagees, insurance details, title documents etc.) as well as taking instructions on the usual enquiries that will be raised. All this saves considerable time and gets your tenant in earlier!

We have put much effort into preparing our lease precedents for all types of circumstances. Although parts of the lease are "standard", every lease is tailored to the needs of the landlord and the property itself. Our leases are constantly reviewed and updated as necessary as a result of any case law or other changes.

The following sections highlight the contentious areas and opportunities relevant to landlords in their lease negotiations.

Initial Negotiations

Although these may often be carried out by your commercial agent, we can also help. It is useful to consult us at this stage, if not before, so that we can identify any issues that might prove a problem.

Often either the landlord or the tenant may need to carry out works to the property prior to completion of the lease. We usually advise an agreement for lease setting out the obligations of the parties in detail as this gives both landlord and tenant greater certainty.

Plans

It is always important to have an accurate plan attached to a lease. Landlords letting the whole of a building may be able to use the freehold title plan, but if the lease is of only part of the building, it is important to have a detailed floor plan together with appropriately coloured plans showing the area to be let, any common parts and any rights of way. Preparation of plans at an early stage enables us to prepare a comprehensive draft lease and minimises the time before the lease can be completed.

Privity of Contract

The Landlord and Tenant (Covenants) Act 1995 abolished a long-standing principle that the original tenant remained liable throughout the term of the lease despite assignment to a

new tenant. We can advise on appropriate provisions to control assignment or sub-letting. We recommend that outgoing tenants must enter into an authorised guarantee agreement when the lease is assigned. This means that the outgoing tenant guarantees the new tenant for so long as the new tenant remains tenant.

Guarantors

Landlords will undoubtedly want to consider whether a tenant should provide guarantors of the lease covenants and payment of rent. That depends upon the financial strength of the tenant. An alternative worth considering is a rent deposit of either 6 or 12 months' rent. Such a deposit is held by the landlord as security for performance of the tenant's obligations. We can prepare an appropriate rent deposit deed.

VAT

Landlords increasingly need to consider VAT implications when granting leases. In some cases, landlords will have opted to tax the building, and therefore need to charge VAT on the rent. This can have an effect on the tenant, particularly if it is not registered for VAT or cannot reclaim it.

It is important, especially in a longer lease, to allow the landlord to opt to tax at any time during the lease. Equally, if a landlord wishes to sell his

CP-002-0109-1

freehold investment, a lease without an appropriate clause may well put off a prospective buyer.

Rent Review Clauses

The frequency of rent reviews will depend on negotiation and the length of the lease. We can draft the rent review clauses which are usually fairly complex.

Increasingly, tenants try to move away from "upwards only" rent reviews. Rent reviews can also be linked to the retail price index or property values indices, depending on your requirements.

Repairs

Repairing obligations are always important. It is necessary to establish at the outset whether the tenant is to have a "full repairing" lease or an "internal repairing" lease. That will depend upon negotiations and the length of the lease. Landlords may also wish to include appropriate clauses requiring the tenant to decorate the premises either during or at the end of the lease. As ever, the exact wording of the repair clause is vital. Landlords need to remember, especially in long leases, that the relationship with the tenant will carry on whilst the building deteriorates, and it is important to ensure that the obligations as to who is to maintain the building are correctly set out in the lease.

Service Charges

Where landlords grant a lease of part of the building, typically part of an office block, the lease should include appropriate clauses requiring the tenant to contribute towards common expenses. In a long lease, landlords will want to be able to recover the cost of all repairs to the building, major or minor. Landlords may also

provide services and maintain common parts such as stairwells, lifts, car parks etc. Service charge provisions should set out fully what is to be included in the service charge and what percentage of those costs are payable by the tenant. Service charge provisions should also cover payment of the landlord's managing agents fees.

Security of Tenure

Landlords must decide at the outset whether tenants are to have security of tenure under the Landlord and Tenant Act 1954. That will depend on the landlord's future intentions for the building and the length of the lease. We can advise on the implications for landlords and, if the lease is to be excluded, prepare the relevant notices to be served to the tenant prior to the commencement of the lease.

If the lease is not excluded, tenants will normally have security of tenure which means they are entitled to a new lease when the old one expires. Landlords have certain safeguards; there are seven limited grounds whereby landlords can refuse to grant a new lease. These normally relate to either breach of the tenant's covenants, or a wish by a landlord to redevelop, refurbish, or occupy the premises itself. This can require payment of compensation to the tenant.

Break Clauses

Tenants frequently attempt to negotiate the right to terminate or break the lease during the lease term. We will advise on suitable wording including, if required, payment of a penalty rent should the tenant wish to extend the break. Landlords should bear in mind that a lease is effectively only as long as the date to which the tenant can break the lease.

Renewals of Lease

If a tenant has security of tenure, landlords need to consider their options at an early stage before the lease ends. This will depend upon market forces at the time. It is worth consulting us at least one year ahead of the lease end date. This is because notice must be served between twelve and six months before the end of the lease if landlords want the lease to end at the end of the term. It may be to the landlord's advantage to serve the notice earlier rather than later.

There are time limits laid down by the Landlord and Tenant Act 1954 which tenants must observe following receipt of such notices. Tenants can also serve notice and it is important to consult us immediately so that we can advise on the appropriate course of action. If no notice is served either by landlord or tenant the lease will continue. If notice has been served and a new lease is to be granted the tenant will have certain "hold over" rights following the expiry of the lease until the new lease is completed.

Where a tenant has security of tenure, and is still in occupation at the expiry date of the old lease, he is said to be "holding over" under the terms of the old lease. Holding over includes an obligation to continue to pay the rent and to observe all the other provisions of the lease. The major change in the new lease will be in the amount of the rent.

On a lease renewal, the maximum term the court can award is 14 years but otherwise the tenant is usually entitled to the grant of a new lease on the same terms as the old. The exception is that the court usually allows modern updating of the terms.