

Commercial Property Guide for Business Tenants

Choosing your business premises and getting the arrangements right can be crucial to your business success. The intention of this property guide is to alert potential or existing business tenants to the possible options and considerations and in particular to signpost the key aspects of licences, leases and property regulations.

Introduction

As a business tenant, there are two kinds of contract you could sign with a landlord; a licence or a lease. They may be created orally if for a short term, but are usually granted by deed, in the form of a licence or lease.

It is vitally important to have such a document because in its absence there can be no certainty regarding the rights and obligations of either party, such as the payments to be made by one to the other, or security of tenure for the tenant.

As a temporary arrangement, you might also consider a tenancy at will, which is a short document setting out the main terms, pending the negotiation of the lease or licence. Its advantage is to enable the business tenant to have quick access to the premises.

The best advice we can give you is to consult us at an early stage. When you are agreeing heads of terms with the landlord's agent, we may well be able to influence the negotiations from our legal experience and knowledge of local conditions. Once those terms have been agreed in principle, they are communicated to both parties' solicitors and it may be difficult to change them at a later stage.

Licences

Using premises under a short-term licence is easier and cheaper than taking a longer lease or a freehold and may be ideal for small and growing businesses, particularly under the flexible arrangements offered by local authorities and enterprise agencies. A characteristic of a licence is maximum flexibility but minimum security.

Advantages

■ Flexibility

Usually granted for a period of less than two years, you or your landlord can often terminate a licence at short notice.

■ Simplicity

A licence is usually a simple contract which can be agreed quickly and less expensively than a lease.

■ All-inclusive

The landlord is usually responsible for repairs, rates and most insurances. Secretarial facilities may be available and heat and light may be included.

Disadvantages

■ Lack of choice

The supply of premises available under licence, other than offices and small workshops, is limited.

■ Lack of security

Subject to market conditions the landlord is free to increase the rent at the end of the licence period and a tenant will usually have no automatic right to renew the licence once asked to leave by the landlord.

Restrictions

There may be restricted access to the premises and limitations on how you use them. There is usually little ability to alter the premises to suit one's own requirements.

Although a licence provides less onerous obligations than a lease, it remains a legal agreement and, like other forms of property contract, contains elements that are negotiable; we will negotiate on your behalf, if you wish, as well as deal with the legalities.

Leases

Rights and obligations

A written lease will deal with a wide range of matters agreed between landlord and tenant. These include payment of rent, rent review dates and the basis of review, responsibility for repairs and maintenance and the purpose for which the premises can be used. The main obligations of the parties are normally set out in a variety of obligations and declarations.

The advantage of having this set out in

writing is that it avoids arguments in the future as to what obligations exist on either side. The longer the lease, the more important this is. Some obligations are implied by law or imposed by statute, regardless of what is written in the lease.

Breach of covenant

If a landlord fails to comply with its obligations under a lease the tenant's remedies are to:

- Sue for damages,
- At the court's discretion apply for an injunction to prevent the landlord doing something,
- Apply for an order to compel the landlord to do something (eg to comply with repairing obligations).
- Building repairs and alterations

Tenants need to be advised carefully on the extent of any repair covenants. Landlords can serve a "schedule of dilapidations" at any time in order to enforce these obligations. Landlords can often refuse to permit the tenant to assign the lease to a new tenant if there are outstanding repair obligations.

Tenants will want to ensure that they can carry out internal non-structural alterations. Another area to examine is what repairs must be paid for at the end of the lease. The tenant may be responsible for reinstating the premises to their "original condition".

Service charges

Often, there is a service charge for things such as repairs to a shared building, security, car parking, estate maintenance and so on. Tenants should establish what benefits they will receive, when and for what charge. The lease should state that tenants only have to pay a specific or reasonable proportion of the cost of shared services.

Option to assign or sub-let

Even if tenants are allowed to assign (pass on) the lease, they usually remain liable for all payments owed to the landlord by the new tenants so long as the new tenants

remain in occupation under the lease. This is because outgoing tenants are likely to be required to sign an authorised guarantee agreement, as a result of the Landlord and Tenant (Covenants) Act 1995. The landlord may want to impose other restrictions on assignment or sub-letting and we can help negotiate these.

Rent reviews

It is extremely important to ensure that the wording of rent review clauses is not to the tenant's disadvantage. At rent review time, we can recommend a specialist surveyor who can negotiate with the landlord's surveyor to the tenant's best advantage.

Option to terminate a lease

Tenants should check whether there is an option to terminate the lease early (a break clause) which will offer flexibility and a safety net.

Legal costs

The landlord and the tenant normally pay their own legal costs. If the landlord insists that the tenant pays his legal costs, try to agree an upper limit.

Security of tenure

Tenants are entitled to security of tenure following the end of the lease unless the relevant provisions of the Landlord and Tenant Act 1954 are excluded from the lease. In this event notices are served to the tenant prior to the commencement of the lease and must be signed by the tenant acknowledging that it does have the benefit of security of tenure and will not be entitled to a new lease as of right when the lease term ends.

Tenants who are protected business tenants under the Act are entitled to continue to occupy the premises when the lease ends, unless a formal notice is given by the tenant or by the landlord. The landlord must give between six and 12 months' notice in a prescribed form:

- It is essential then that tenants act within strict time limits or the right to a new lease will be lost and tenants will have to vacate the premises at the expiry of the notice.
- There are seven grounds on which the landlord can refuse to grant a new lease and in some of those cases he has to pay compensation.

We strongly advise tenants to consult us as soon as they receive any type of notice from their landlord. It is also worth making a diary

note to seek advice approximately one year before the lease is due to end.

Tenant's notice

There are some situations in which it is desirable, or even essential, for tenants to give notice to terminate their lease:

- If tenants remain in occupation after the end of the lease tenants must give not less than three months' written notice of the date when they want to leave.
- If the market rent for the premises at the end of the term of the lease is less than is being paid, tenants can give notice and claim a new lease at the market rent.

Property Regulations/Planning permission

When do tenants need planning permission?

- Change of use, for example to convert a shop into a cafe
- Extensions to business premises
- Outside building work except for repairs
- Signs and advertisements
- Walls and fences over one metre high

When is planning permission unnecessary?

Except for listed buildings, planning permission is not needed for:

- Repairs
- Internal alterations

Tenants can apply for different types of planning permission from "outline" to "full". Fees vary according to type, the number of buildings and the total amount of space. It should be noted that increasingly planning decisions are determined in accordance with policies and guidance set out in the relevant county and local plans which cover the property in question. We have planning specialists available to assist clients in this respect.

Building regulations

Any new building, or structural alteration or conversion to an existing property, must conform to building regulations.

The standards set for new buildings are comprehensive. By contrast any change to an old building should be acceptable provided it does not 'make matters worse'. Any replacement windows now installed must comply with building regulations and appropriate certificates obtained.

Fire regulations

Any business employing over 5 people, or anyone with control of business premises must from 1st October 2006 carry out a fire risk assessment and ensure that a copy of the assessment is kept with the health and safety file.

The following are key aspects to observe:

- Escape
- Fire resistant doors and walls
- Fire fighting equipment
- Fire alarms
- Emergency lighting
- Inflammable materials
- Staff training

Asbestos

The Asbestos at Work Regulations 2004 requires anyone in control of business premises to carry out an asbestos survey and, if asbestos is identified as being present, to carry out the recommendations of the survey to ensure it is safe. Copies of the survey should be given to anyone who may need to work in the building and who may come into contact with the asbestos (builders, plumbers etc). Tenants should enquire whether the survey has been carried out before moving in to avoid incurring further costs later.

Health and Safety

Different types of businesses have to observe different regulations on health and safety. The government's Health & Safety executive produces over 2,000 publications to give guidance. Businesses have to protect employees and others working on the premises against health and safety hazards, for example:

- The wearing of hard hats
- The posting of warnings
- Safety screens around moving parts of machinery
- Access to a proper first aid kit
- Training and equipment for heavy lifting
- Handling hazardous substances
- Suitable seating and lighting for employees using computer and VDU screens

Environmental health

Environmental health regulations are designed to protect customers buying food and drink products. Businesses that process, sell, transport or serve food or drink will have to meet various food hygiene standards. New businesses must register with the local Environmental Health Officer (EHO) at least 28 days before the commencement of trading.