

Dealing With End of Lease Issues

Introduction

As a commercial tenant, it is important for you to be aware of your rights and responsibilities when your commercial lease is nearing the end of its term. If your lease is coming to an end, don't just stick your head in the sand – or worse, try and run away from the problem. Instead, give yourself plenty of time to either negotiate a new lease or sort out an exit from your current agreement.

The crucial issues to consider are:

- Lease Renewal and Notice: Do you have the right to renew your lease?
- What legal notices do you need to serve?
- Do you have the right to "Break" the lease early?
- Are you going to stay or leave?
- Assignment
- Dilapidations
- Alterations
- Vacant Possession.

Let's consider these one by one:

Lease Renewal and Notice:

Do you have the right to renew your lease?

Protected Leases

A "Protected Lease" is a lease that has the advantage of security of tenure under the Landlord and Tenant Act 1954 ("the Act"). The majority of business tenancies are protected by the Act. If a lease is protected by the Act, the lease will automatically continue past its expiry date until it is agreed by either the landlord or tenant to end it, or until a Court decides. To end the lease, a special notice procedure has to be used. For more details see our How To Guide "The Landlord and Tenant Relationship".

Excluded or Contracted Out Leases

Some leases are excluded from protection by the Act. These leases do not have security of tenure. This happens when:

- The lease is contracted out of the Act
- The lease is a fixed term for less than 6 months - this does not apply if there is a renewal or extension provision, or the tenant has been occupying the premises for more than 12 months
- Occupation is permitted but no rent is paid – in this case either tenant or landlord can terminate at any time
- The occupier has a tenancy at will or a licence

In cases where the lease is coming to an end and a tenant's continued occupation has not been discussed, the tenant is in a very vulnerable position. The tenant could potentially lose their property at short notice or even with no notice at all. From the landlord's perspective, they don't know if their rental income will carry on or not.

What legal notices do you need to serve?

If you are a protected tenant, you may want to consider serving a Notice under Section 26 of the Landlord and Tenant Act 1954. This is a minimum of six months and a maximum of twelve months' notice. It cannot expire before the lease expires.

Please again refer to our How To Guide "The Landlord and Tenant Relationship".

If you are not a protected tenant, you may not have any rights to serve any notices on your landlord or to receive any notices from your landlord.

Do you have a right to "Break" the Lease early?

If you have a break clause and want to leave early, you may want to consider using that clause and serving a "Break Notice". Please refer to our How To Guide "Lease length, break clauses and rent reviews".

Are you going to stay or leave?

If you are going to leave, then you need to consider assignment, dilapidations, alterations, and vacant possession.

Assignment

If you want to move out of the property earlier than the contractual end of the lease, you might consider trying to assign the property to a new tenant. This is when a new tenant steps into your shoes and takes over the lease going forward. See our How to Guide "Assignment and Sub-Letting".

Sometimes a landlord can refuse their consent to the assignment of a lease. There may be a clause in the lease where the landlord can refuse their consent (although this usually cannot be withheld unreasonably). For example, if the new tenant was going to carry on a business that was not permitted under the use clause of the lease, the landlord might have the right to refuse permission.

If you have decided to leave, or have no choice and are going to be evicted, then you must consider Dilapidations, Alterations, and Vacant Possession issues.

Dilapidations

If you are going to leave the property at the end of the lease, you need to consider your Dilapidations responsibilities and liabilities. These are your responsibilities under the lease to put the property back into good repair and condition. Please see our How to Guide "Dilapidations".

Alterations

If you or a previous tenant have carried out alterations to the property, you may have to put them back. This is also covered in our How to Guide "Dilapidations".

Vacant Possession

At the end of the lease you will have to hand back "vacant possession" (ie an empty property that the landlord can use or lease to someone else). That means moving out of the property and taking all of your possessions, items, fixtures and fittings with you. You also need to think about handing over codes to any alarm systems. You should also make sure that all final meter readings for utilities have been given to utility companies and that they know you are leaving, and also the local authority to end your business rates liability.

Most importantly you must make sure that if you have any subtenants (or any other occupiers) that they leave the property, too!

If a landlord agrees that you can leave anything behind, or that they will take on your old subtenants, make sure you get that in writing.

If you don't give vacant possession you may find that the landlord can argue that the lease is continuing, and that you still have to pay the rent!

Worse still, your landlord might be able to claim DOUBLE RENT from you, under a law that dates back to the year 1730 (two hundred and ninety years ago) that is still good law. That is definitely something to avoid.

Top Tip:

Give yourself plenty of time to negotiate a new lease agreement and try and avoid any misunderstandings between you and your landlord

The best way to avoid any misunderstandings is for both the landlord and tenant to discuss their future plans a few months before the lease term expires. Ideally this should be at least six months before the lease expires. Best practice is to start thinking about it a year in advance!

However, on some occasions you may not be able to discuss this in advance, for example if you don't know exactly how things are going to pan out for your business

To protect your position, and your business, consider taking professional advice from a lawyer and a surveyor in good time in advance before the end of your lease.

Further support

The London Growth Hub has published this series of 'how-to' guides to help commercial tenants understand their legal responsibilities. [This flowchart](#) will help you identify the most relevant 'how-to' guides for your business



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