

## **CLIENT GUIDE 5 : BUSINESS LEASE CHECK FOR TENANTS**

It is important for a tenant to be aware of the key provisions of its business lease so that it can check what the respective rights and obligations of the business and the landlord are and remind the business of the procedures to follow in case there is a problem.

### **What is a business lease?**

The Landlord and Tenant Act 1954 defines a business lease as a lease where the tenant occupies the premises for the purposes of its business.

### **Term**

Generally, a business lease is granted for a fixed term, which is a period that starts and ends on specified dates.

The tenant should know when the term will end and whether it can be terminated earlier by either party. The right to terminate early is usually referred to as a *break clause*. Tenant break clauses are commonly linked to rent reviews so that, if the rent is likely to be unacceptable to the tenant, it can terminate the lease and limit its financial responsibilities.

Under the 1954 Act, a tenant has certain rights to renew the lease at the end of the contractual term. A lease can be contracted out of the 1954 Act, in which case there will be no right of renewal at the end of the term and the property must be vacated.

### **Rent and rent review**

Leases range from those which are granted for a substantial premium and with a small or nominal annual rent or those without any initial premium but for a more substantial rent.

The rent is usually expressed as an annual sum, which has to be paid in advance in four equal instalments. The instalments are normally either payable on the traditional quarter days – 25 March, 24 June, 29 September and 25 December or the modern quarter days – 1 January, 1 April, 1 July and 1 October.

The rent may be increased during the term of the lease in a number of ways:

- By reference to movements in market rents on fixed rent review dates.
- By set increases each year.
- By amounts linked to the tenant's turnover.

In addition to the rent, a tenant may have to pay some or all of:

- VAT on the rent.

- Outgoings such as rates, insurance premiums and utility bills.
- Service charges.

### **Service charges**

If the lease is of part of a building, it is usual for the landlord to pay the outgoings and then bill the tenant for the tenant's share (*the service charge*). If, however, the lease is of the whole of a building, the tenant is likely to be responsible for all of the outgoings relating to the building.

The lease should specify what the landlord can include in the service charge. The landlord will want to pass the total cost of running the property to its tenants. The service charge therefore usually includes all costs including the cost of repairs, maintenance, sometimes improvements and alterations, some utility bills, some insurance premiums and the cost of employing staff (such as caretakers, receptionists and cleaners).

The landlord may also want to collect a sum to put towards any major expenses in the future, such as replacing lifts (*a sinking fund contribution*).

### **Area demised**

It is important that the extent of the property to be let is fully and accurately specified in the lease and identifies the boundaries of the property so that, for instance, the tenant is clear about its repairing obligations. The tenant cannot therefore make alterations or additions to its property which fall outside the demise and the tenant has no rights over the landlord's property which is not within the tenant's demise unless those rights are given in the lease.

### **Rights, exceptions and reservations**

The lease will usually grant the tenant rights over the property which is outside the tenant's demise but which still forms part of the landlord's property. For instance, if the tenant has a lease over a floor in an office block, it will require rights to use the stairs, lifts and entrance hall so that it can gain access to and from its office. It may also need rights to park vehicles and walk or drive over the landlord's land if there is no direct access from the building to the public highway.

The lease will usually also exclude certain rights from the tenant referred to as *exceptions*. For example, a right to light is often excluded so that the tenant cannot raise an objection if the landlord develops land in a way that obstructs light getting through the tenant's windows.

There will generally also be rights given to the landlord over the property let to the tenant usually referred to as *reservations*. For example, the lease may give the landlord the right to go onto the tenant's property to carry out repairs.

Rights, exceptions and reservations are important. They can have implications for a

landlord's freedom to deal with or develop neighbouring land and with the tenant's ability to use the property and carry out its business.

### **Insurance**

It is important that one party only is obliged to insure the property so that problems of double insurance and no insurance are avoided.

An insurance clause always needs to be read in conjunction with the definition of the property and the repairing obligations of the parties (in particular of the tenant).

Where the lease provides for the tenant to insure the property, it needs to check if the lease makes reference to the level of cover, the risks covered and the names of the insured parties.

Where the landlord is to insure the property, the tenant might be required to pay a proportion of the premium covering the area demised by the lease in which case the tenant needs to be careful about whether the level of cover is appropriate for the property, what the excluded risks are, whether the tenant will be liable to pay any excess on a claim, what the terms of the insurance policy are, what happens if the property is damaged and what other insurance cover the tenant might need.

### **Repairs**

There will usually be repairing obligations on the tenant and there may, in certain circumstances, be repairing obligations on the landlord.

If the tenant is required to *keep* the property in repair, it must put the property into a good state of repair even if it was not in a good state of repair at the beginning of the lease.

The tenant may be required to repair the property in accordance with a schedule of condition attached to the lease.

### **Alterations and improvements**

The tenant should check what restrictions there are in the lease in connection with any alterations and improvements it might wish to make.

The restrictions should be appropriate to the type of property and the length of the term of the lease.

### **Assignment and sub-letting**

The lease is likely to contain a number of restrictions in connection with assignment and sub-letting. These provisions should be carefully considered.

The tenant will in most cases require landlord's consent to a proposed assignment or sub-letting of the lease. If the tenant does not obtain consent, it will be in breach of its lease and

# **JUDITH M LONG**

*solicitors*

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the landlord may invoke forfeiture proceedings or claim for damages. The tenant will also be at risk of continuing to be liable under the terms of the lease as from the date of the assignment or sub-letting.

## **Use**

The lease will generally set out how the property may be used.

In particular the tenant should be aware:

- Whatever the permitted use under the lease, there must be planning permission for the actual use. Planning permission is required for a change of use as well as for the construction of new buildings and alterations to existing buildings.
- If the tenant needs to change the use, it might require the landlord's consent under the terms of the lease and planning permission. The lease may require the tenant to obtain landlord's consent before applying for a change of use. This is because the authorised use of the property may affect the landlord's investment in the property and its rental value and so affect rent review.

## **Contracting out of the 1954 Act**

If the lease is a business lease under the 1954 Act, the tenant has the right to renew the lease at the end of the contractual term (although there are exceptions to this).

The tenant may agree to forego these rights.

If the lease contains a clause confirming that sections 24-28 of the 1954 Act have been excluded, the tenant will have no statutory right to renew the lease or to remain at the property.

***This Guide is not intended to be exhaustive. Landlord and tenant law is a complex area of law and we recommend that specialist legal advice should always be taken.***

If you require further information or advice, please contact **Judith Long**.

## **JUDITH M LONG**

*solicitors*

76 Empire Square East

Long Lane

London

SE1 4NB

Tel: 020 7403 3337

Fax: 020 7407 1982

E-mail: [judithmlong@msn.com](mailto:judithmlong@msn.com)

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