

Tenant and Landlord rights and obligations

When renting or buying new premises, the lease is the key legal document that outlines the details of the space that you are taking on and the arrangements for tenancy. There is room for negotiations when taking on a lease and by understanding what the Landlord and Tenant rights and obligations are, you can be confident in making sure that you can get the best from your lease.



Tenant Obligations

Make sure you get advice before signing up to a new lease on matters such as:

Your repairing obligation - It is important that you are fully aware of the condition of the property you are about to lease. The repairing obligation in a lease can result in enormous expense for a tenant. A specialist building surveyor will provide you with a condition survey advising of any areas of disrepair. Armed with this information, you or your surveyor will then be able to negotiate the terms of your repairing obligations in the lease to ensure that the responsibility for repairs is balanced fairly between landlord and tenant.

Your Service Charge contribution - If you are leasing part of a building or a property which forms part of a larger development, there may be an obligation on you to contribute to certain costs by way of a service charge. You should always try to agree a capped service charge or otherwise fix the level of your contribution.

Also ensure that you fully explore **your user requirements** and **your obligation to pay rent and other outgoings**

Tenant's Rights

Getting out of your lease early

You should spend some time considering the financial and legal commitment entailed in signing up to a lease of commercial premises. A ten year lease is not simply a commitment to pay rent for the next ten years; it is also a commitment to pay insurance, service charge, business rates and to keep the premises in good repair. If you find yourself needing an exit strategy, you would be well advised to have a discussion with a surveyor or solicitor and let them review your lease to establish whether there are any clauses that can be used to your advantage to enable you to be released from your otherwise ongoing obligations such as:

Right to Break

If your lease contains a break clause, and you have fully complied with any conditions attached, you may be able to end the lease early. The break clause needs to be looked at very carefully to ensure that you do not lose your right to break. Notice provisions will need to be understood and adhered to. Getting the notice wrong could be an expensive mistake. So make sure you take appropriate advice at an early opportunity, as soon as you are considering exercising a break clause. Make sure you diarise your break and other relevant lease dates to include notice periods. Operating a break clause is not simply a case of issuing a notice to your landlord. Break clauses within leases will often contain specific requirements, and failure to

understand what this means in practice may have severe consequences and lead to a tenant losing their ability to end their lease early.

Right to Assign

The alienation provisions contained within your lease might permit you to assign your lease, in other words sell it on to someone else, who will then become the new tenant. You will need your Landlord's consent to assign and he may ask for an Authorised Guarantee Agreement or attach other conditions.

Right to Sublet

Your lease may allow you to grant a lease to someone else or sublet the whole or part of your property. You should be familiar with the alienation provisions in your lease. You need to understand what you have the right to do before you incur time and cost in finding someone to sublet or assign to.

Tenant's rights at lease expiry

Don't leave it too late to think about what your intentions are at lease expiry. You should have a strategy at least two years before lease expiry.

To renew or not to renew

Business tenancies, which have not been excluded from the security provisions of the Landlord and Tenant Act 1954, have an automatic right to renewal at the end of the contractual term. A tenant can instigate the renewal process by service of a notice referred to as a section 26 notice, to be served in a prescribed form and stating the terms you require for your new lease, for example term and rent.

There are specified grounds upon which the landlord can refuse to grant you a new lease. Some of these grounds, if relied upon, will give rise to a tenant's right to compensation.

Alternatively, if you do nothing the landlord can instigate the renewal process by serving what is known as a section 25 notice, stating whether the landlord agrees or opposes the grant of a new lease and, if the latter, the proposed terms of the new lease.

If neither the landlord nor the tenant serves a notice, assuming the lease is not excluded from the security provisions of the Landlord and Tenant Act 1954, your lease will continue. It will not come to an end even if the contractual term has expired. Instead, the lease will carry on along the same terms including rent, until either you or the landlord serves one of the notices referred to above. Tactically, in a falling market where rents are continuing to fall, a tenant might want to serve notice in order to bring the current lease to an end so that a new lease can be agreed at a lower, market rent.

Make sure you do not lose your rights by ensuring that you discuss lease expiry matters with your surveyor or solicitor at least one year but preferably more before the end of your lease.

Landlords right to a claim for dilapidations

The landlord has a right to make a claim for dilapidations at the end of the lease. Dilapidations are essentially a landlord's claim for damages for breach of repairing obligations based on the cost to the landlord of putting the property into repair having regard to the repairing obligations imposed on the tenant in the lease. The level of a claim might be limited or the landlord may suffer no loss at all as a result of the disrepair (for example if the landlord plans to demolish and/or redevelop the property then the value of the landlord's interest will have been damaged by less than the cost of the repairs needed – what is known as a section 18 valuation will need to be carried out) in which case no compensation will be payable. Therefore it is important to get advice from your surveyor at an early stage.

Resources

Ethical Property Foundation - <http://www.ethicalproperty.org.uk/>

The Ethical Property foundation exists to provide independent property advice to charities, community groups and other non-profits.

Locality - <http://locality.org.uk/>

Locality have information about neighbourhood planning and bidding for community assets

Community Matters - www.communitymatters.org.uk/

Community Matters champions voluntary and community action at a neighbourhood level. They have advice sheets and also services through which charities and community groups can save money on utility bills and insurance.

Support

If you would like any support with premises or any other issues facing your organisation, please contact the Development Team at Community Southwark:

development@communitysouthwark.org or 020 7358 7020.

This factsheet was developed by Goodlands Commercial Property Management (<http://www.glsurveyors.co.uk/>) for Community Southwark in July 2013.

This Fact Sheet contains general information and not advice. It has been compiled to provide you with a brief overview of some tenant rights and obligations. It is not intended to constitute advice on which reliance should be placed and Goodlands Commercial Property Management and Consultancy Services Limited therefore disclaims all liability and responsibility arising from any reliance placed on any information contained within this Fact Sheet.

You must not rely on the information contained within this Fact Sheet as an alternative to legal or surveyor's advice. If you have any specific questions about a specific property matter you should consult your surveyor or solicitor for advice

