

## Advice for prospective Business Landlords & Tenants

This leaflet has been issued by RJR Solicitors as a guide to prospective Landlords or Tenants of business or commercial property. The law on commercial leases can be very complicated and so of necessity the advice is of a general nature.



If you have any specific queries then do get in touch.

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

A lease is an agreement under which the Landlord (a land owner) agrees that a Tenant (a person, partnership or company) occupies all or part of a building and/or land.

### **What is a tenancy agreement?**

Legally there is no difference between a Lease and a Tenancy Agreement. However, in general, a short term lease (say 3 years or less) is often called a Tenancy Agreement.

### **Key issues for New Leases**

**Business leases:** This note is aimed at property that is to be occupied by a business. Different rules apply to residential leases, agricultural leases and other less common types of lease.

**Put it in writing:** If the lease is key to your business it is important that the agreement is properly recorded. If not the Landlord may find the rent is irrecoverable or the Tenant may find it has to relocate its business.

**Length of lease:** this is referred to as “the term”. It can be whatever length the parties agree on, though it is rare to have a lease for less than 6 months and there seems little point having one for more than 999 years!

**Rent:** The initial rent is set at the figure agreed by the parties. It is usually payable monthly or quarterly. Sometimes a Landlord will allow the Tenant a “rent free period” to enable the Tenant to get the business “up and running” before having to pay any rent.

Some Landlords will want a “rent deposit” paid which will be held in a special account until the end of the lease to cover any shortfall on the rent.

**Rent Reviews:** Typically every 3 years the rent will be reviewed, generally, upwards only. The rent may increase by predetermined amounts, be linked with inflation or be an “open market rent”.

An “open market rent” means the parties try and agree what the new rent should be. If they cannot then it will be set by an independent surveyor. This can be a costly process.

**Repair:** All leases should deal with who is responsible for what in terms of repair and set the required standard of repair.

A “full repairing” lease: means the tenant has to **put** the property in good repair and then keep it that way. If the property is in a bad state of repair at the outset this will be a considerable burden on the Tenant.

Sometimes a lease will require the Tenant to keep the property in “as good a repair as it is at the start”. To be safe, there should be a report agreed by both parties as to what the condition of the property is at the start of the lease. This is usually called a “schedule of condition”.

Internal repairing: means Tenant is only directly responsible for the interior of the building. Though, often with shops, responsibility for the exterior of the shop front is also passed to the Tenant.

**Maintenance Charges:** If the Tenant is only directly responsible for the interior and the Landlord maintains the exterior and structure, then the Landlord will usually recover a share of the costs from the Tenant.

**Authorised Use:** A lease will have an “authorised use” or “user” clause. This states the uses the Tenant can make of the property. For instance as a retail shop. Often the “use” can be changed with the Landlord’s permission, but it is best that it covers what the new Tenants is likely to want to do.

Just because the Landlord allows the use does not mean that there is planning permission for that use. That is the Tenant’s problem to sort out.

**Insurance:** Normally the Landlord insures the building and recovers the premium from the Tenant. For a building split into parts or units, the Tenant will pay only a proportion of the premium.

It will be for the Tenant to insure its own contents and, for shops, usually the plate glass.

**Renewal:** If both parties agree any lease can be renewed. However, there are potentially important rights available to a Tenant of a business premises where the Landlord is not offering a new lease.

By default, business leases fall under the Landlord & Tenant Act 1954. This provides for a business Tenant to be entitled to a new lease when the old one ends. It will be on the same basis as the old one except the rent will updated to the open market rent.

There are some specific reasons allowing a Landlord to refuse to grant a new lease, if this arises then detailed specific advice should be sought. In any event the Landlord will have to give at least 6 months notice.

**Contracting out:** The Landlord and Tenant can, **before** the lease starts, agree that at the end of the lease the Tenant will NOT be entitled to a right to renew.

A Landlord may want to “contract out” a lease as he wants to be sure of having a vacant building at a particular time. However, if there are rent reviews during the life of the lease, then the Landlord may find the rent payable is less for a “contracted out” lease.

**Getting out early:** Some lease have a “break clause”. This allows a Tenant (or sometimes a Landlord) to bring a lease to an end early by giving written notice. There are usually conditions attached to the exercise of the break clause which have to be observed to make the notice valid.

A Landlord may require a higher initial rent if the Tenant is to have a break clause.

**Transferring the lease:** If there is no break clause then the only way “out of lease” for the Tenant is to transfer or “assign” the lease to someone else. Normally the Landlord’s consent is required and the Landlord is likely to require the “outgoing” tenant to act as guarantor for the “incoming” tenant.

**Guarantees:** A Landlord may require one or more guarantors, particularly if the Tenant is a company. Also, as mentioned above, if you transfer a lease you are likely to be required to act as guarantor for the tenant that takes the lease on from you.

### **Key issues for Existing Leases**

Most of the comments made above will apply to the situation where you are looking to take over as the Tenant of an existing lease.

The main difference being that you largely have to “take it or leave it”. It is rare for a Landlord to agree to vary an existing lease. Therefore, you are unlikely to be able to renegotiate the rent or the repairing obligations, etc.

However, if you require a longer term lease, then the Landlord may be prepared to agree to that as it gives him better long term security on the rent. If, though, it is a lease that is likely to be renewable, the new Tenant may be better placed taking what is left of the existing lease and negotiating a new lease when the time comes, if the business justifies it.

Beware that either the outgoing or incoming tenant is going to have to bear the Landlord’s costs in “granting consent” to the transfer of the lease. These legal costs can be very considerable.

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