

Occupying business premises

On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

Department for Communities and Local Government
Eland House
Bressenden Place
London SW1E 5DU
Telephone: 020 7944 4400
Website: www.communities.gov.uk

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Introduction

The advice set out below is for **general guidance** only. While it has been compiled with care, and is believed to be sound and accurate, The Office cannot take responsibility for its application in individual cases, nor can it undertake to offer individual advice. **You should take professional advice well before entering any legal commitments.**

You may also find it useful to read the Code for Leasing Business Premises in England and Wales 2007. This comprises a Landlord Code, an Occupier Guide and a Model Heads of Terms document. Although these documents do not have legal force, they set out recommended best practice agreed by representatives of owners, occupiers and the professional bodies, and have been endorsed by Communities and Local Government and the Welsh Assembly Government. The documents are available at <http://www.leasingbusinesspremises.co.uk/>

Repairs, insurance and alterations

Who is responsible for repairs?

This will depend on the terms of the lease you sign and so you should check it carefully. Where the tenant occupies the whole of the building it is often his/her responsibility but where the premises form part of a building, the landlord may be responsible for repairs and be able to recover the cost from the tenant.

Can a landlord serve an Interim Schedule of Dilapidations part way through the lease?

Yes, **but** only if the lease allows it. So read your lease very carefully and **seek professional advice** before you sign it or respond to the service of a schedule or notice.

What is my liability for dilapidations when I vacate?

This depends on the terms of your lease. Normally the landlord will serve a Terminal Schedule of Dilapidations setting out his claim. The maximum amount of your liability is the diminution or reduction in the value of the landlord's interest in the property and therefore he/she may only claim for his/her actual loss, e.g. the cost of works, if it is lower than the diminution in value. If the landlord intends to demolish or carry out major works when you vacate he/she may not have a claim at all. This is a very specialised area of professional work and **you should obtain expert advice as soon as possible**.

Who is responsible for insurance?

This will depend on the terms of the lease you sign. Landlords are often responsible but the premiums are often recovered from the occupier.

What are the differences between an FRI lease and an IRI lease?

FRI stands for a Full Repairing and Insuring lease where the tenant has responsibility for all external and internal maintenance, decorations and repairs as well as the liability for insuring the building. Under an FRI lease the landlord has no repairing or insuring liability.

IRI stands for an Internal Repairing Insuring lease where the tenant will have a narrower liability for maintenance, decorations, repairs and insurance confined to the internal parts of the property occupied by him/her. In such cases it is wise to check that the landlord is liable for the repair and maintenance and insurance of the common parts and exterior of the building. In some cases the landlord may insure the whole of the building. The landlord's costs, e.g. for insurance or maintenance may well be recoverable from the occupiers through a service charge and the arrangements will be contained in the lease. IRI leases are normally granted where buildings are in multiple occupation and tenants often have similar repairing liabilities etc for the part of the building occupied by them.

You are strongly advised to seek professional advice before committing yourself to any liability. Some repairing liabilities may result in the tenant having to repair existing defects.

Am I allowed to alter the premises?

Usually only with the landlord's consent. But unless the lease says that you cannot carry out alterations, you can apply for permission to the court if you think he/she is unreasonably withholding consent.

What is the reasonable cost for obtaining the landlord's consent to alterations under the lease?

See if a figure is mentioned in your lease. A landlord can only claim his/her reasonable actual costs and should not seek to make a profit from the request for consent.

Changes in the rent

Is the landlord entitled to put up the rent?

The lease may provide for rent increases or reviews during the course of the tenancy. If it does not, the rent agreed upon at the beginning of the tenancy will apply for the full length of the tenancy.

How often can the landlord review my rent?

This depends on the rent review provisions contained in the lease. The most commonly adopted norm is every 5 years but in some cases it can be every 3 years. So look at the lease to be sure. The review pattern is one item among many which are open to negotiation at the outset. There are also more unusual arrangements, such as annual indexation linked to the retail price index. It's unusual to have a rent review in a very short lease.

How is the new rent determined?

Where there is a **rent review under an existing tenancy**, this will operate according to the terms of the lease. Most leases provide for a third party to determine the rent when the landlord and tenant can't agree. This will usually involve arbitration or independent expert determination. **It is advisable to obtain expert professional advice on the determination of the new rent**, as this could make a big difference financially. The RICS operate a special scheme for the quick and inexpensive determination of rents at small business premises. If there is to be a **new tenancy**, and the landlord and tenant cannot agree on the rent, it may be fixed by the court under the Landlord and Tenant Act 1954 Part 2. **Again, it would be advisable to obtain professional advice.**

Do I have to accept the landlord's proposals for the new rent?

No. If you can't agree, either or both of you can invoke the dispute resolution procedures specified in the lease. Most leases provide for a third party to determine the rent when the landlord and tenant can't agree. This will usually involve arbitration or independent expert determination. In the event of a lease renewal, you can ask the court to fix a new rent, reflecting current open market levels.

Is there a Rent Officer service for business tenancies?

No. But the RICS run a special scheme for rent reviews for small business premises.

How much will it cost me to appoint a surveyor to negotiate a rent review?

There are no recommended fee scales so it will depend on the market in the area in question. Fees can be based on an hourly rate, a fixed sum or a percentage of the rent agreed. They can also be based on a percentage of the reduction of the rent proposed by

the landlord. It's wise to discuss your requirements with your surveyor and obtain his/her Terms and Conditions of Engagement in writing before appointing him/her.

Small businesses with no more than two commercial properties in England and Wales with a rateable value of less than £10,000 pa (£15,000 pa in London) can take advantage of the RICS's Small Business Scheme. Both parties must agree to use the scheme where the rental dispute is referred to an expert who will charge a fixed fee to cover the cost of the determination. Normally the landlord and tenant will pay no more than £500 each for this - and possibly less. For more information ring the RICS on (020) 7222 7000 and ask for the Dispute Resolution Service, or go to www.rics.org. If either party wants their own professional advice, they will need to pay for that separately.

What is the difference between taking a rent review to an arbitrator or an expert?

The functions of an arbitrator are similar to those of a judge, though the processes are less formal than those of a court. Arbitrations are governed by The Arbitration Act 1996. The arbitrator reaches a decision - which is called an "award" - after hearing evidence from the different parties. The independent expert, too, may receive evidence and listen to arguments, but also has a duty to make his or her own investigations to determine an appropriate rent.

How much will it cost me to have a rent review determined?

Apart from the RICS Small Business Scheme, it's not possible to be specific. Each arbitrator or expert will have his/her own costs and fees, and there is the cost of any expert witnesses who may be called. There may be an award for costs and the arbitrator or expert may decide that each side should bear their own costs or that one party should pay more than the other and bear the lion's share of the total costs.

Service charges

What items can the landlord include in service charges?

This should be clearly set out in the service charge provisions contained in the lease. If an item is not included in these provisions then the landlord may not be able to recover his/her expenditure. Many leases contain "sweeper" clauses that allow the landlord to claim for items not specifically covered elsewhere. Normally the lease covers items such as the painting, decorating, repair and maintenance of the common parts and the exterior of the property, roof and lift repairs, the repair or replacement of plant and machinery, grounds maintenance, provision of a caretaker service, building insurance and the payment of agents/management fees etc.

What control do I have over service charges?

It's important to get the right terms in the lease in the first place. It would be useful to consult the RICS Code of Practice on Service Charges in Commercial Property which contains useful guidance material. Information about the Code, and details of how to download a copy, are available at <http://www.servicechargecode.co.uk/>,

If you are unhappy about the provision of services for which you are charged, you may be able to refer the issue to the Courts under the Supply of Goods and Services Act 1982 or as a simple matter of breach of contract. **Seek professional advice before doing so.**

Business use

Do I need to get my landlord's permission to change the type of business activity I carry out at my premises?

The lease you sign may restrict the use of the premises to a specified type of business. The lease will say if a change is permitted but the landlord's consent will normally be required. Depending on the precise wording of the lease the landlord may be able to refuse consent without good reason. There may also be planning restrictions affecting change of use of the premises. **It is wise to seek professional advice.**

Disputes

How are disputes over the lease resolved?

Either by negotiation with the landlord, or by both parties agreeing to submit to arbitration, or by going to court. The lease will usually make provision for dispute resolution.

Landlord's access to premises

Can the landlord enter the premises?

Not unless the lease permits him/her to do so. Most leases will allow the landlord to enter and inspect the property, usually after giving notice. If you fail to observe obligations under the lease, the landlord may be able to exercise peaceable re-entry.

Payment of rent

What are the usual Quarter Days?

These are often the dates specified in leases when the rent and any service charges are payable and they are:

Lady Day: 25th March.

Midsummer Day: 24th June.

Michaelmas Day: 29th September.

Christmas Day: 25th December.

Rent and service charges are often paid on the usual Quarter Days in advance, that is for example the rent due on 24th June is for the period from 24th June to 28th September inclusive. In some old leases payment can be in arrears, that is for example the rent due on 24th June is for the period from 26th March to 24th June inclusive.

What happens if I don't pay the rent?

This would be a breach of your obligations under the terms of your lease, and might enable the landlord to end the tenancy. Landlords have a common law right, as soon as rent is overdue, to enter tenanted property and to seize and hold goods found there until the rent is paid. Persistent delay in paying rent would give your landlord a ground of opposition if you were to apply for a new tenancy.

Transferring the lease/subletting

Can I assign (transfer) the lease to someone else?

Yes, unless your power to do so is restricted by the terms of the lease you sign. Landlords can require tenants to guarantee the performance of their immediate successor, but subject to this, cannot unreasonably withhold consent, **unless** the lease explicitly prohibits assignment.

Can I sublet the premises?

Generally, yes, unless your power to do so is restricted by the terms of the lease you sign. There are often controls about the rent. Seek advice.

Quitting

Can I leave the premises?

You may leave at the end of the term. If you want to go before the end of the term, the landlord may agree a surrender or assignment, but otherwise may hold you liable for rent and other outgoings for the remainder of the tenancy. If the lease has extended beyond the date specified in the lease, you will need to give the landlord at least three months' notice; your solicitor will be able to advise you on precisely how much notice you need to give. Section 27(1) of the Landlord and Tenant Act 1954 gives an option to the tenant to serve notice three months before the end of the term that he/she does not wish it to be renewed.

Termination by the landlord

Can the landlord get me out before my lease is due to expire?

The lease is likely to contain a "forfeiture" clause giving the landlord the right to repossess the property if you fail to pay the rent within a certain period after the due date, break any of your lease obligations or become insolvent. Under certain circumstances, the landlord may repossess the premises by exercising "peaceable re-entry". In other cases, the landlord may apply to the court for repossession. You may be entitled to challenge the landlord's repossession by claiming "relief" from forfeiture. The law on forfeiture is extremely complex; if the landlord seeks to operate the forfeiture clause and you wish to remain in possession, **you should seek professional advice**. In other circumstances, where you are not in breach of your obligations, the landlord may ask you to surrender your lease if he/she wants the property back, but this is entirely up to you; you do not have to agree.

Can the landlord require me to leave the premises at the end of the lease?

Only in certain circumstances. Examples are cases in which the tenant has failed to comply with his/her obligations, or been persistently late in paying rent, or where the landlord wishes to use the premises for his own business or residence. For details, see *Renewing and ending business leases: a guide for tenants and landlords*. (Paper copies are available from the Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, Tel: 0870 1226236, Fax: 0870 1226237.) A landlord can also require you to leave the premises at the end of the lease if you have entered into a valid agreement to exclude security of tenure.

Renewing a lease

My lease is ending. Can I renew it?

Yes - if your tenancy is for a fixed term of more than a year, or your tenancy is for a fixed initial term and then from year to year. If the landlord gives you notice of termination, you can apply to the court for a new tenancy. The landlord can oppose renewal on one of a number of specific grounds. There is no right to renew where you entered into a valid agreement with your landlord to exclude security of tenure, before taking out the lease. An agreement entered into before 1 June 2004 must have been authorised by the court.

What rights do I have to renew my tenancy?

Most commercial lettings are governed by the Landlord and Tenant Act 1954 Part 2. This Act gives tenants an automatic right to renew their lease upon expiry, except in the circumstances set out below. provided the provisions of the Act have been followed and the tenant is not in breach of the covenants contained in the lease.

Can the landlord prevent me renewing my tenancy?

The Act enables the landlord to oppose renewal where the tenant is in breach of the covenants (obligations) in the lease. It also gives the landlord very limited grounds to oppose renewal where the tenant is not "at fault": for example where the landlord requires the premises for his/her own use. Furthermore, you will not have any rights to renew your tenancy if you have entered into a valid agreement with your landlord to exclude security of tenure. For such an agreement to be valid, the following steps must normally have been followed:

- **leases before 1 June 2004:** the agreement must have been authorised by the court on the joint application of the landlord and tenant, before the lease was agreed;
- **leases on or after 1 June 2004:** the tenant must receive a warning notice about the implications of agreeing to give up renewal rights, normally at least 14 days before agreeing to the lease (or entering into an earlier legally binding agreement to take on a lease). The tenant must also sign a declaration that he or she has read the notice and has accepted its consequences. In cases where 14 days' notice has not been given, this must be a "statutory declaration" made before an independent solicitor.

Giving up renewal rights gives the landlord a right to possession when the lease expires. You will have no statutory rights to compensation when you leave the tenancy.

How do I go about renewing the lease?

It would be advisable to obtain professional advice. You must give notice to the landlord using a special form. The form of these notices is laid down by the law in

Regulations called "The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004" (Statutory Instrument 2004 No. 1005). The Regulations may be found at www.legislation.hmso.gov.uk/si/si2004/20041005.htm The forms may be bought from law stationers. Strict timetables are specified in the Act for serving these notices.

For further details about renewing business tenancies, see *Renewing and ending business leases: a guide for tenants and landlords*. (Paper copies are available from the Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, Tel: 0870 1226236, Fax: 0870 1226237.)

What is an interim rent?

Where a lease is being renewed under the provisions of the Landlord and Tenant Act 1954 Part 2, the landlord or tenant can apply to the court for an interim rent to be set that will apply until the beginning of the new tenancy. Normally, this will be based on the rent for the new tenancy, but in some cases it may be set differently. The rules on interim rent are designed to be fair to both parties, but they are complex so it is best to seek professional advice.

The landlord requires me to pay his legal costs upon the grant of a new lease. Can he do this?

This is very much a matter for negotiation. As far as the **renewal of an existing lease** is concerned, the Costs of Leases Act 1958 states that if you do not agree to pay your Landlord's legal costs then that is the end of the matter. But if you have lost your statutory rights under the Landlord and Tenant Act 1954 Part 2 - e.g. by not responding to notices within the time limits, or by contracting out - your position may have been weakened.

How much will it cost me to negotiate a new lease for me?

There are no recommended fee scales so it will depend on the market in the area in question. Fees can be based on an hourly rate, a fixed sum or a percentage of the rent agreed. It can also be based on a percentage of the reduction of the rent proposed by the landlord. It's wise to discuss your requirements with your surveyor and obtain his/her Terms and Conditions of Engagement in writing before appointing him/her.

On what grounds can the landlord oppose the grant of a new tenancy?

Only on one or more of a limited number of grounds. Examples are cases in which the tenant has failed to comply with his obligations, or been persistently late in paying rent, or where the landlord wishes to use the premises for his/her own business or residence. The grounds are set out in full in section 30(1) of the Landlord and Tenant Act 1954 Part 2 (as amended by the Regulatory Reform (Business Tenancies)(England and Wales) Order 2003, Statutory Instrument 2003 No. 3096)), and in Appendix 3 to *Renewing and ending business leases: a guide for tenants and landlords*. (Paper copies of the latter are available from the Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, Tel: 0870 1226236, Fax: 0870 1226237.) A landlord does not need to prove any of these grounds where the court has authorised the exclusion of security of tenure.

My lease is not being renewed. Am I entitled to compensation?

In certain circumstances compensation is payable under the Act to the tenant quitting the premises, but only if the landlord has opposed renewal or the court has refused to grant a new tenancy solely on the specific grounds which are set out in section 30(1) of the Landlord and Tenant Act 1954 Part 2. Compensation is not payable if the court has authorised the exclusion of security of tenure. Details of the circumstances in which compensation is payable are contained in *Renewing and ending business leases: a guide for tenants and landlords*. (Paper copies are available from the Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, Tel: 0870 1226236, Fax: 0870 1226237.)