

### **Commercial Premises – manage your exit**

If you are a tenant of commercial premises and you are looking to relocate or exit, a well-planned exit strategy is likely to save you money and stress. In particular, it is important that you deal correctly with the legalities of terminating your lease and consider at an early stage your potential dilapidations liabilities.

#### **Termination of your lease and timing**

If you are thinking of moving elsewhere, the first thing to consider is whether you can do a deal with your landlord which would make it worthwhile to stay put. This is best addressed around 12 to 18 months before lease expiry. Often, engaging an experienced property agent to negotiate on your behalf is more than worth the cost.

If you do decide to vacate, check whether your lease is one which has the ‘security of tenure’ enjoyed by business tenants under the Landlord & Tenant Act 1954. If it does, it may not automatically come to an end on the contractual termination date in the lease if you remain in occupation past that date. This often allows greater flexibility for tenants, who may be able to pick their own departure date, subject to giving sufficient notice (usually three months).

However, if your lease is contracted out of the security of tenure provisions of the 1954 Act, your lease will usually come to an end on the date specified in it and you will not have any right to remain in occupation beyond that date, unless you can reach agreement with your landlord. If you believe you may need more time, your landlord may be willing to agree an extension to the lease, or allow you to remain in occupation under licence, but you should raise this with your landlord ideally several months before lease expiry.

If your lease has a break clause and you are intending to terminate your lease by serving notice under that clause, be very wary. Such a notice must be served strictly in accordance with the terms of the lease, and if the lease specifies any conditions which must be complied with for the break to be successful, it is critical that you comply with those conditions to the letter. Remember that if you get it wrong, the lease will carry on past the break date, and you will remain liable for rent and other outgoings to the end of the lease term. These are difficult economic times for landlords, and we have seen numerous instances of landlords taking advantage of tenants’ mistakes when exercising a break right. Given the importance of getting the notice right, ask a solicitor to serve the notice on your behalf.

If you are moving to another property, and having to move staff and equipment, make sure you have a legally binding agreement for your new property which enables you to take possession early enough to have time to fit out the new premises and undertake the move

itself, before the lease on your old property comes to an end. Managing a move needs a lot of care and any business interruption, if it goes wrong, is costly.

## **Dilapidations**

Most commercial leases contain the following obligations:

- To keep the property in repair.
- To redecorate the property (usually from time to time, and in the last year of the lease).
- Not to make alterations or additions to the property (although these may be allowed with the landlord's consent).
- To keep the property clean.
- To comply with all statutes which apply to the property.
- At the end of the term to hand the property back having removed all "fixtures" (i.e. items which you have fixed to the property during your period of occupation).

At lease termination, if you do not leave the property in the state anticipated by the lease your landlord will usually be able to claim damages (compensation) from you. The starting point for the calculation of damages is the cost of carrying out the necessary works. A landlord can also sometimes claim a sum to compensate it for any loss of rent it will suffer through having to take time to carry out repair works which the tenant has failed to do, during which time it cannot let the property.

Usually, the landlord will serve a schedule of dilapidations before or shortly after lease termination, detailing any alleged breaches of the lease obligations, and the works which the landlord contends are necessary to remedy those breaches.

It is important to appreciate that you have no right to undertake works at the property after your lease has ended. You therefore need to consider whether to:

- do nothing, and then wait to face a financial claim from the landlord; or
- carry out a programme of works designed to ensure that the property is handed back to the landlord in the state anticipated by the lease; or
- do a combination of the above.

Which option you take will inevitably be influenced by the practicability of carrying out a programme of works towards the end of your lease. If the business needs to operate from the property until close to the end of the lease, you may, for example, be able to carry out works to the exterior of the property, but not the interior. Alternatively, the property may be empty, and you might therefore be able to carry out your own programme of works using your own contractors, rather than waiting to face an (often inflated) dilapidations claim from the landlord.

Your approach should also be influenced by the age of the property, the extent of the disrepair, and what the landlord is likely to do with the property after you leave. If the

property is likely to be redeveloped or refurbished to an extent that would make any repair work pointless, you may be best advised to do no work, as the landlord's compensation claim may be limited or extinguished for those reasons. However, if the market for the property is good, and you know or suspect that the landlord would carry out the repair work and let it to a new tenant, you may be best advised to carry out a programme of works in order to avoid a loss of rent claim and to have more control of the costs.

You should take advice from a solicitor and a surveyor ideally around 12 to 18 months before the termination of the lease as to how best to reduce your overall financial exposure.

Stevens & Bolton LLP regularly advise on lease exit strategies, and have excellent relationships with property agents and surveyors. Please call any member of the Property Litigation team if you would like to discuss your property.

*This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.*

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