



## WHAT TO LOOK FOR IN LEASES FOR BUSINESS PREMISES

Taking on a lease for business premises for the first time can be a daunting experience. This article points out just some of the things that you need to consider.

Leases for business premises are governed by the Landlord and Tenant Acts including The Code for Leasing Business Premises in England and Wales 2007, which generally afford the tenant much less protection than a lease for residential purposes but may provide the tenant with certain statutory rights, such as the right to have a tenancy renewed (Landlord and Tenant Act 1954) unless such provision is specifically excluded.

### **Use and Premises**

Firstly, check that the premises are properly described in the lease and that the premises can actually be used for the type of business you have in mind.

### **Term**

This is the length of the lease which you must consider against your plans for your business (see 'assignment' below). This is an area in which many miss an opportunity for negotiation, since a longer term lease (providing the landlord with some certainty of income) should carry a reduced monthly rent. However, business plans should always include plans for expansion and a higher rent for a shorter term may be more attractive.

### **Assignment**

There may come a time when, during the term of the lease, the tenant wishes to assign the lease (transfer to another tenant), for example, if the business has expanded and the tenant needs larger premises. Usually the lease allows a tenant to assign the lease, but only with the landlord's consent and with the tenant paying the legal costs involved in preparing for that assignment. The tenant needs to clarify this position and again, check the lease. If there is a dispute then this may involve a Court application.

### **Rent**

Check the lease carefully to ensure that the rent that you think you have agreed to pay is actually reflected in the lease agreement. Very often on a lease where the term is 2 years or more, the rent will be fixed for a specified period (e.g. 1 year) and then there will be a rent increase. Check the criteria that the review will be based on (usually the lease will provide that the rent can't be lowered), how often the review will happen and the procedure for disputes, including who will pay the costs.

## **Insurance**

Usually the landlord will actually pay the insurance for the whole building but the tenant can expect to pay a proportion of that amount, equivalent to the space that the tenant occupies. However, there is no uniform calculation so make sure you know how the insurance is calculated. Remember also that the landlord is not obligated to look for the cheapest deals available and the costs may also include the cost of a survey to ensure that the reinstatement value for insurance purposes is covered should a problem arise.

## **Rates, water and other payments**

Similar to insurance, the landlord will often pay the business rates and water and other similar payments for the whole building but the tenant will usually pay a proportion of that amount. Usually, the calculation will be contained in the lease but make sure that you understand that calculation before you sign it. For example, if the landlord owns a building with 12 units in, don't assume that each unit will pay one twelfth of the total costs. Usually these additional obligations are charged according to the floor space that each unit holds and the landlord may even be able to charge for the administration involved in making the payment to the relevant organisation, such as the local authority.

One particular charge which can surprise tenants is a service charge. This can cover many issues such as tending the surrounding grounds and cleaning of communal parts of a building and tenants must make sure that they fully understand not only what the costs are but how they will be calculated.

## **Repairing Obligations**

Very often premises that are part of older buildings may appear to be at a more attractive lower rent. However, if there is a repairing obligation then the tenant may be responsible for full repairs, including structural repair, which can be very onerous. No matter how short the term of the lease, if there is a repairing obligation (other than simply an obligation to repaint once every 2 years and not cause damage etc) then the tenant must obtain a survey.

## **Tenant's obligations**

It may seem obvious but tenants must ensure that they understand and are fully aware of all their obligations. Breach of certain obligations may be so serious that they provide the landlord with the right of forfeiture (i.e. the landlord can enter the property and take it back).

## **Guarantees**

Even if you are a Director/shareholder in a limited company, you may be asked to give personal guarantees to ensure, for example that the rent is paid. Make sure that you understand the true nature of the guarantee before you agree to it. No one goes into business expecting to fail, but many struggle in the early stages and the spectre of a guarantee looming overhead isn't comfortable.

**Before entering into a lease**

This is the time to negotiate with the landlord and put forward any counter proposals that the tenant may have. For example, in a longer lease for a new business or in starting in a new area the tenant may want to negotiate a break clause which would allow the tenant to bring the lease to an end at an earlier date provided that certain procedures (such as giving notice) have been followed and other requirements (such as rent being paid up to date etc) are met.

Email us at [advice@limeone.co.uk](mailto:advice@limeone.co.uk) or phone on 01244 852550 for more information and help for your specific requirements.

