Commercial lease – 10 common terms covered by a lease agreement

Renting a business property involves taking a lease or perhaps a licence if you are looking for something shorter term. You will not own the property but will just have the exclusive possession of the premises for a fixed term as a tenant.

The terms of your lease will determine whether you are able to assign your lease or move out of the property before the end of the fixed term. You can either buy an existing lease or enter in to a brand new lease.

Commercial tenants aren't as well protected by legislation as residential tenants, and there are a number of areas to review carefully when taking on a lease.

The lease agreement should set out both the rights and obligations of both you the tenant, and also the landlord.

Critically, it should also stipulate the **use** of the property. You should check whether there are any restrictions on use and that the correct planning consents are in place before you sign any agreement.

To help you start to understand what's what, here is an overview of **10 terms** typically covered by a lease agreement

1. **Rent Reviews.** This sets out when and how your rent will be reviewed. Usually, they take place every three to five years. Local comparable properties are used as the basis. Then the best rate is taken as the guide. There can be a lot of room for disagreement. Both the form and frequency of rent reviews are in theory negotiable. In practice the state of the property market and your credit standing will matter most. In practice, upwards only open market rent reviews are the most common.

2. **Repair Obligation.** The majority of new commercial leases are fully repairing and insuring (or FRI Leases.) This means it is your responsibility as the tenant to repair and pay for the insurance of the premises. Exactly what 'repair' is will depend on the wording of your lease. Repair clauses are one of the most

commonly litigated aspects of commercial leases. You need to be aware of the degree of your responsibility before signing.

3. **Lease Term**. Look carefully at any restrictions on your ability to break, assign or underlet the lease. Make sure these fit in with your short term and long term commercial objectives. Typically, this may be between three and five years but can be longer and even up to 25 years.

4. **Sub-letting and Assigning the lease**. It will not be easy to assign (transfer/sell) your lease if you have to move before the end of the term. Leases can and often do prohibit assignment. Even if you can transfer the lease, you may still be responsible for the rent and other commitments if the incoming tenant doesn't honour them. Sub-letting involves the tenant leasing all or part of the premises to another tenant. This is a complicated area and you should seek legal advice before embarking down this road.

5. **Notice Period and Break Clause**. Leases can include rights to break them before the term has ended under certain conditions. However, both the landlord and tenant must give notice of their intention to trigger any break clause.

   But that can cut both ways. If the landlord has a right to break early this creates uncertainty for your business and your staff. Not every commercial lease has a break clause so you or you advisors should check this.

6. **Common Area Maintenance (CAM).** Most leases are "triple net" (meaning you pay rent, plus your proportionate share of CAM and property taxes for the property). The percentage of the CAM you are responsible for should be based on the percentage of the building you are renting. Landlords may try to vary this to your disadvantage basing it on how much of the building is rented.

7. **Capital Expenditure**. In a commercial lease this typically refers to major structural expenditures, i.e. roof, foundation, HVAC (heating, ventilation, air conditioning) and other major repairs/replacements. You should try to strike out the term "replacement." Then limit your repair obligation to a maintenance contract and for general repairs up to a certain annual maximum amount.

8. **Personal Guarantee**. Many landlords these days insist that you personally guarantee the lease alongside your company. Guarantees are negotiable. Resist, but if you have to offer to guaranty for only a portion of the lease term, say half.

9. **Dilapidations and reinstatement and fittings and fixtures**. You will have to return the premises back into the standard of repair set out in the lease. That usually means the condition in which you took the premises on. This could mean a substantial cost if work you have carried out to meet your needs limit the market for finding a new tenant. You could find ownership of any equipment installed on the property at the end of the lease stays with the landlord.

10. **Right of renewal**. This will let you stay on the property if you wish. That will save cost and disruption. Many leases offer such a right. But the lease term may merely say the parties will negotiate the future rental "in good faith". If they can't agree on the future rental, the lease ends. The term "good faith" can prove difficult to enforce in law.

Some other areas to look out for

Beyond the standard commercial lease terms here are some other things to look out for:

Service charges: Will you be liable for additional charges such as the maintenance of any shared spaces or grounds around the premises?

Decorations and signs: If you want to install any signs, check if you need any permissions or what planning restrictions are in place.

Security measures: Check who is responsible for any security of the premises and whether extra CCTV or other measures can be installed if needed and who is responsible for those costs.

Finally, however straightforward a lease or rental agreement looks, always have it checked over by a lawyer. There will be a cost for this but getting it wrong can be disastrous.

More Information

Check out our Guide to Renting Business Premises

See also our Choosing Commercial Premises factsheet