

COMMERCIAL TENANCIES

WHAT IS A COMMERCIAL LEASE?

A commercial lease is the legal agreement between a Landlord and Tenant where there is a letting of a property which is not residential property. It can be a shop, to an office, to a factory, a unit in a shopping centre, however the exact terms and conditions will vary according to the circumstances.

One of the major differences between a commercial lease and a lease of a house or apartment is that they are governed by a different set of rules.

Example:

In the case of residential tenancies once the tenant has been in possession for six months the tenant is entitled to a lease for a further three and a half years.

In the case of a business letting the tenant's entitlement to a further lease does not arise until s/he has been in possession for five years. For this reason leases on business premises are often for four years and nine months.

If a business tenant is in possession for five years or more s/he will have an entitlement to a long term lease in the property, usually for a period of 25 years or more.

IS THE RENT USUALLY FIXED FOR LONG TERM LEASES?

The general practice is for a rent review clause to be included in the Lease, so the Landlord can review the rent paid by the Tenant every five years.

If the Landlord and Tenant cannot agree on the rent at the review date an Arbitrator is appointed to settle the matter. Since February 2010 upward only rent review clauses have been banned – this is not a retrospective law and therefore only applies to leases entered into since that date.

CAN THE LANDLORD REQUIRE A RENT REVIEW ON A SHORT TERM BUSINESS TENANCY?

It depends on the length of the short term lease and the negotiating strength of the parties when agreeing the terms for the lease.

Commonly, the rent is fixed for the first two or three years and then the Landlord and Tenant agree an increase for the remainder of the term

WHO CARRIES OUT THE REPAIRS AND MAINTENANCE OF THE PROPERTY?

This depends on whether you have a short term or long term lease. Generally, if you are a short term business Tenant you are not responsible for the maintenance and repair of the structure of the building.

If you have a long term lease you will have to reimburse the Landlord for repairs and maintenance to the structure. These leases are called "FRI" leases; Full Repairing and Insuring leases.

As the name suggests the Tenant will also pay for the insurance of the building.

IF I DECIDE I NEED A BIGGER PREMISES OR RETIRE FROM BUSINESS HOW DO I EXIT A LONG – TERM LEASE?

In some cases the Landlord and Tenant will include a break clause which would allow the Tenant to break the lease at a certain point. If you are in a "start up" business or close to retirement it would be wise to seek the inclusion of a break clause.

If there is no break clause, the Tenant could "sell" or transfer his leasehold interest in the property for the remainder of the term. The Landlord's consent will be required for the sale or transfer.

WHAT MIGHT THE LANDLORD LOOK FOR IN ACCEPTING A NEW TENANT?

The Landlord will, more than likely, check references from banks and, possibly, business colleagues. If a Tenant is selling or transferring the leasehold interest the Landlord will also require references for the new Tenant.

The new Tenant takes on all of the terms and conditions of the lease.

WHO IS RESPONSIBLE FOR ENSURING THE BUILDING MEETS ALL REGULATIONS, SUCH AS HEALTH AND SAFETY?

The Tenant will have to ensure that the premises is suitable for his/her requirements. This may

involve carrying out certain alterations to the building, with the consent of the Landlord.

DO TENANTS PAY A DEPOSIT ON COMMERCIAL LEASES SIMILAR TO A DEPOSIT PAID ON RESIDENTIAL TENANCIES?

It is not common for a security deposit to be paid on the letting of a business premises, but it can happen from time to time on short term business tenancies.

DOWNWARD RENT REVIEW

Until February 2010 leases featured upwards only rent review clauses. The Land and Conveyancing Law Reform Act 2009 rectifies this situation in relation to leases entered into after 28 February 2010.

Leases cannot now be confined to upwards only rent review clauses.

Pragmatism is important – a landlord needs to consider if tenants are closing their doors due to high rents will their property remain vacant? Tenants should talk to their landlords and there should be room for negotiation if people are struggling with their rent payments.

RESOLVING DISPUTES WITH YOUR LANDLORD OR TENANT

A Working Group on rent review recommended a different approach to Court for resolving disputes. The first option is Mediation; where a Mediator tries to help people help themselves i.e. assist parties in a dispute to find their resolution.

If mediation is not suitable or does not work then Arbitration is the next option, where the Arbitrator decides on the outcome of the dispute.

Our Managing Partner, John M. Lynch is an accredited Mediator and a Fellow of the Chartered Institute of Arbitrators and he regularly acts as Mediator and Arbitrator in a variety of property related disputes.

FOR MORE INFORMATION

Tel: 052- 612 43 44

Address: Jervis House,
Parnell Street,
Clonmel,
Co Tipperary

Email: info@lynchsolicitors.ie

Website: www.lynchsolicitors.ie



www.twitter.com/LynchSolicitors



www.facebook.com/LynchSolicitors



www.linkedin.com/company

ATTENTION

The material contained in this article is provided for general information purposes only. We advise you to seek specific advice from us about any legal decision or course of action.