

## Property

### NEGOTIATING OFFICE LEASES: 10 KEY SUGGESTIONS FOR TENANTS

The biggest pitfall of a lease negotiation often happens before a solicitor is instructed. Typically a prospective tenant discusses the main terms with the landlord and agent which is then reflected in the agreed "heads of terms" ("HOTs"). Perhaps unknowingly, at that point, a tenant has in fact agreed the main basis of the lease, which commonly proves difficult to re-negotiate. To be in the best bargaining position, engage us at an early stage so we can guide you through the process and discuss the terms that will be best suited for your business set-up.

We've put together *10 key suggestions* for negotiating a lease and together with our expertise we will help you avoid the common pitfalls faced by tenants.

- 1) **Rent:** your bargaining power to negotiate the rent will depend on current market conditions. With Brexit potentially impacting the property market, many landlords are concerned that properties will be left vacant and tenants are showing a reluctance to pay higher rents. This has been viewed as a good opportunity to negotiate a lower rent at the start of the lease or renewal.
- 2) **Lease term and early termination provisions:** although a landlord is usually looking for a long term tenant, the negotiation on the length of the lease will depend on your business needs. The consideration for you will hinge on whether you are looking for long term security or flexibility over your business' location. Commonly, a lease term is any length over 3 years. If you are uncertain of the length you require, be sure to negotiate a break clause, which will allow you to terminate the lease early. A break clause is typically agreed within the first 2-5 years of the term. The alternative is to ensure that you can transfer or sublet the lease and negotiate the landlord's conditions for these provisions.
- 3) **Works to the property and rent free period:** if you propose to do refurbishment works at the start of the lease, you should insist upon a rent free period. This will allow you a period of time when rent is not payable whilst you set up operations. Given the current market conditions, some landlords have been known to offer up to 20 months' rent free in a 10 year lease.
- 4) **Use of property:** if you have a specific use for the property, checks on the permitted planning use should be done with the local authority. Even if a landlord confirms the use in the HOTs, a lease may contain a disclaimer from the landlord in relation to the permitted planning use.
- 5) **Rent Deposit:** if the landlord is demanding a rent deposit, it is important for a tenant to negotiate the amount of the deposit as well as the conditions for early release.
- 6) **Rent review clause:** a rent review interval is open to negotiation; typically rent reviews take place every 3-5 years. Ideally a tenant would want a spaced out rent review, i.e. every 5 years. A rent review allows a landlord to demand that the reviewed rent be similar to the achievable market rent; therefore if you managed to negotiate a reduced rent at the start of the lease, you could face a fairly inflated rent increase on review. A spaced out rent review will help manage your cashflow.
- 7) **Repairing obligations:** most landlords will want the lease to be on a full "insurance and repairing" basis which makes the tenant fully responsible for repairing the property. The obligation to repair should be negotiated and limited at the start of the lease, as otherwise you could be faced with an expensive dilapidations claim at the end of the lease.
- 8) **Service charge and cap:** where a tenant takes part of a building, landlords will charge certain maintenance and repairing charges for shared areas. If you want certainty on the service charge expenditure, you could negotiate an annual service charge cap. It's also important to verify what the service charge will include.
- 9) **Rights required for the use of the property:** you will need to discuss what essential rights the landlord is prepared to grant in the lease. These are likely to include rights of access, car parking spaces and rights to facilities and services at the property.
- 10) **Landlord and Tenant Act 1954:** a landlord will insist that the provisions which benefit a tenant under this Act are excluded and you will need to understand the implications of the exclusion.

The most important point to remember is that all the terms of the lease are potentially negotiable; it is important to make the lease work for you and your business.

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