

Can I bring my lease to an end?

There are a number of reasons why a tenant may want to end their commercial lease before the end of the contractual term. The most common reason is that their business may not be performing as well as they would have hoped and they want to end the lease in order to stop trading their business. On the other hand, there may be personal reasons why a tenant does not want to continue their lease and they may have received an offer from a third party to take over their obligations under the lease.

The starting point to determine whether the lease can be brought to an end is to find out what you, as the tenant, are permitted to do under the lease provisions.

This article explains the three main ways a lease can be brought to an end;

Exercising a break clause within the lease

A break clause allows the tenant to end the lease before the contractual end date of the lease. Depending on the wording of the break clause, the option to break may be used at any point throughout the lease (this is called a 'rolling break') or it may only be used on a specific date (known as a 'fixed break'). In either case, the tenant will need to serve a break notice on the landlord, in accordance with the terms of the break clause, informing them that they intend to exercise the break option.

The Courts interpret break clause provisions strictly and you should seek legal advice in plenty of time if you intend to exercise an option to break to ensure that the break notice is served correctly and is not deemed invalid.

Assigning the lease to a new tenant

If there is no break clause then you may be able to assign (transfer) the lease to a new tenant (otherwise known as the assignee). The assignee will take over the tenant obligations within the lease as if they had been the original tenant.

If the lease does permit assignments then consent from the landlord will almost always be required. The provisions of the lease should be carefully checked to see if there are any requirements to be complied with before the lease can be assigned and also whether there any conditions in which the landlord can reject your request to assign the lease.

Even if the lease assigned, the landlord may require that the outgoing tenant 'guarantees' the performance of the tenant obligations under the lease. If this is the case, the outgoing tenant might have to step in and re-take the lease if the assignee breaches the terms of the lease. This is known as an 'authorised guarantee agreement'.

Subletting the property to a subtenant.

This method does not actually end the tenant's leasehold interest but instead it allows the tenant to grant a sublease to a new tenant to occupy and use the property. The sublease is often on similar or identical terms to the existing lease (which is known as the 'headlease') and the subtenant will pay rent to the tenant of the headlease, who is the landlord of the sublease. The tenant will continue to be bound by the terms of the headlease.

The headlease will likely only permit a sublease in certain situations and consent from the landlord will usually be required. A landlord will want to make sure that by allowing a sublease of the property they will not be negatively affected and conditions may be placed on the sublease ensuring the landlord retains control of the property if there are any problems.

If you intend to sublet a property then you should seek legal advice to ensure that the drafting of the sublease does not breach the provisions of the head lease.

The majority of commercial leases will allow assignment or subletting, although as discussed above they are often subject to certain conditions. On the other hand, break clauses are less common within leases and will usually be specifically negotiated in the heads of terms at the outset of the lease.

In addition to the above a tenant and landlord could mutually agree that the lease should come to an end. This is called 'surrendering' the lease and it is likely that a landlord would demand a 'surrender premium' in order to agree to this. This is effectively a payment in place of the rent that the landlord would likely lose if the property remains vacant for a significant period of time.

It is also worth noting that for some tenants, waiting until the end of the contractual term and not ending the lease early may be the best course of action. This will depend on the individual circumstances of each tenant, however if the lease only has a short period of time left to run then it may be simpler and more cost effective to wait until the lease expires.

Conclusion

Whilst this article focuses on what to do once you have already entered the lease, it is extremely important to ensure that the above matters are carefully considered before you agree to enter the lease. These clauses can often be overlooked as tenants are understandably preoccupied with provisions such as the rent and the lease term.

If you are considering exercising a break option, assigning or subletting a lease then please contact us. We will be able to advise you on how to serve the break notice or we can deal with the assignment or subletting for you by reviewing and agreeing the necessary documents so that you are properly protected and informed. We can also provide you with advice and help in negotiating a lease before you enter into it.

We also act on behalf of landlords and if you are about to grant a lease or have a tenant that wishes to exercise a break option, assign or sublet a lease then we would be happy to advise you on how best to proceed.

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