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Rent Reviews & Lease Renewals

Most leases that are longer than three to five years have rent review provisions which enable the rent payable to be adjusted to the current market rent. Similarly, when a lease comes to an end the rent will usually be set to the market rent at the renewal date. Peter Wilson, Partner at Kirkby & Diamond Chartered Surveyors, advises occupiers of commercial property what they should be aware of.

1. **Do not ignore correspondence.** A rent review is usually initiated by a notice from the landlord. In some circumstances there are strict time limits to object. In the case of lease renewals there are statutory time limits which have to be observed to preserve the tenant's statutory rights.
2. **Do not ignore the terms of your lease.** If your lease requires you to obtain landlord's consent for alterations ensure that you do so. Failure to get landlord's consent, and to have it properly documented, could result in the alterations being taken into account when assessing the revised rent.
3. **The terms of the lease can affect the rent.** Not all leases are the same and the terms of an individual lease can affect the level of rent payable. E.g. If the lease contains restrictions on how the property can be used the rental value could be reduced. For this reason you should always take professional advice when faced with a rent review & lease renewal.
4. **Can rents go down as well as up?** Most older leases contain upward only rent reviews which state that the rent can only stay the same or go up. The new commercial lease code encourages landlords to offer upward and downward reviews but not all landlords do so.
5. **How are rent review disputes settled?** If, after you or your professional adviser have carried out negotiations for the new rent, you are still unable to agree most leases provide for the dispute to be referred to an arbitrator or an independent expert valuer. They will consider evidence of rents agreed on other similar properties put forward by both parties and reach a decision on the basis of that evidence.
6. **Can the landlord refuse to grant a new lease?** Most business leases are protected under the provisions of the Landlord and Tenant Act 1954 which provides security of tenure. Providing you have followed the correct procedure in answering notices

you have the right to apply to the court for a new tenancy. However, the landlord can oppose renewal in the following cases:

- The landlord wants the property for their own use or to redevelop it.
- The tenant has seriously breached the terms of the lease.
- The lease has been contracted out of the security of tenure provisions of the Landlord and Tenant Act 1954.

7. How are the new lease terms settled?

The terms of the new lease are usually settled by negotiation between the parties or their professional advisers. If the terms of the new lease cannot be agreed the dispute will be determined by the court or, if the parties agree, via the PACT (Professional Arbitration on Court Terms) scheme.

8. Should I agree to give up security of tenure?

In general, unless there is no alternative you should not take a new lease or renewal which does not have security of tenure. If your tenancy is not protected by the Landlord and Tenant Act you will be in a weak position when it comes to negotiating a further new lease.

9. Can I change my mind?

Once the new terms are agreed, or set by the court, the landlord's solicitor will draw up the new lease and submit it to your solicitor for approval. Your solicitor may well seek to amend the detailed terms in some way to make it more acceptable. You are not tied to the new lease until you sign it and if you are unhappy with the terms or if you have a change of heart you do not need to go ahead but you must then vacate the premises after giving the appropriate notice to the landlord.

10. Should I take professional advice?

There are numerous areas where a tenant can fall foul of the procedure in both rent reviews and lease renewals and professional advice from a Chartered Surveyor is vital. In addition, expert advice is essential when interpreting both comparable rental evidence and lease terms (which will have an effect at the level of rent). Presenting a case to an arbitrator or an independent expert without professional advice is also a risk and should not be attempted.

To register to receive updates on all property issues or to take advantage of a free half hour consultation, contact Kirkby & Diamond on advice@kirkbydiamond.co.uk or telephone 01582 738866 (Luton) or 01908 678800 (Milton Keynes)

