

BREAK CLAUSES IN LEASES

In the current climate many tenants may be looking to exercise a break clause in their lease. However, break clauses are often not as straightforward as they might first appear. Special care must be taken by both landlords and tenants to ensure they obtain the best possible result.



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Break clauses are often subject to the tenant complying with certain conditions. Failure to meet even the most minor of conditions may mean the tenant loses the opportunity to exercise the break. The following are some examples that landlords and tenants should be wary of:

Service of notice

A lease will usually require the tenant to serve written notice a number of months in advance. Failure to serve the notice in the correct fashion, on the correct person and address and in time will invalidate the notice and could prove costly. It is important that the notice complies exactly with the terms of the break clause and it is recommended you seek legal help to ensure the notice is correctly served.

Vacant possession

Frequently a break clause will be subject to the tenant delivering vacant possession. Unless otherwise agreed in writing with the landlord a tenant will need to ensure the property has been cleared of all belongings and all subtenants removed. If leaving the property before the break date the property should be adequately secured and the keys delivered to the landlord. A tenant may also wish to consider additional security measures to avoid squatters and/or damage to the property in its absence.

Payments due under the lease

It is common to see the break being made conditional on the tenant paying rent up to the break date. This not only means the actual rent but also the service charge and insurance premiums which are often unknown amounts. A tenant should ask for confirmation of all sums due well in advance of the break date. However, there is no obligation (unless the break clause says so) on the landlord to provide this information. The tenant may be left unclear how much it needs to pay and therefore unable to comply with the clause.

Compliance with covenants

Great care must be taken if a break clause requires the tenant to comply with the lease covenants. This is wide ranging and the smallest breach could invalidate the break notice. The most common cause of difficulty is the obligation on the tenant to deliver up the premises in repair. Where the landlord is willing to cooperate it is essential you agree a schedule of the works required or a

compensation payment in lieu of those works. Where repair and reinstatement is carried out the landlord should inspect the works prior to the break date. As you can imagine negotiations of this nature can be longwinded and lead to dispute. There is no obligation or duty on a landlord to assist the tenant in relation to compliance with the break conditions and it can easily frustrate the break by delaying or refusing to negotiate.

Please do not hesitate to contact us if you need assistance in the exercise or acceptance of a break notice.

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