

SECTION 2

Business Tenancy Legislation

In this section we will look at typical lease terms in commercial leases, including the provision for rent review, assignment and repair, and the way in which statute intervenes in the common law contract between the landlord and the tenant.

The statutory intervention, mainly in the form of the Landlord and Tenant Act 1954, gives the tenant rights and privileges that they would not otherwise have under the common law of contract. The statutory provision changes from time to time and you should make sure that you keep up-to-date with any future changes.



LEARNING OBJECTIVES

When you have completed this section you will know and understand

- the typical lease terms in commercial leases
- the repairing obligations on landlords and tenants
- rent review clauses in leases
- rights to assign by tenants
- the rights given to tenants by business tenancy legislation, such as security of tenure and compensation provisions

2.1 TYPICAL LEASES

There is no standard format for a commercial lease, but commonly leases are known by their repairing and/or insuring terms. The common leases are

- non-repairing leases
- internal repairing leases (IR leases)
- internal repairing and insuring leases (IRI leases)
- full repairing and insuring leases (FRI leases)

Non-repairing Leases

Non-repairing leases are unusual, but the tenant would have no responsibility for any repair, either internal or external. This type of lease can be found with serviced office accommodation.

Internal Repairing Leases

IR leases are those where the tenant only has responsibility for repairing the internal parts of the unit occupied. Usually the external repairs are the responsibility of the landlord.

Internal Repairing and Insuring Leases

IRI leases are those where, again, the tenant has responsibility for only repairing the internal sections of the area occupied, but also has responsibility for either arranging and paying for, or just paying for, the insurance premium to cover the building and landlord's fixtures and fittings. Again, the landlord will usually have responsibility for external repairs.

Full Repairing and Insuring Leases

FRI leases are those preferred by landlords because all the repairing responsibility falls on the tenant, ie they are responsible for all repairs, both internal and external, as well as being responsible for the insurance premium. In multi-let buildings, the landlord may retain responsibility for organising the insurance and all repairs, but will claim back all the costs through a service charge.

2.2 LEASE TERMS

A lease is a contract between a landlord and a tenant. The landlord allows the tenant to occupy premises with exclusive possession for a stated period of time. In commercial/business tenancies, the form of lease tends to follow a similar pattern, with the tenant making many promises under the lease (these promises are called covenants), and the landlord having few promises or covenants to keep.

Typically the landlord will give covenants to the tenant to

- insure the premises
- repair, etc (although this is very often paid by the tenant through a service charge)
- allow 'quiet enjoyment' of the premises (see later)

Typically the tenant will give covenants to the landlord to

- pay rent
- pay all rates and taxes
- pay insurance (or reimburse the landlord)
- not invalidate the insurance
- only use the premises for the stated purpose (known as the user clause)
- repair the premises (or contribute to a service charge)
- not assign (sub-let) without consent
- comply with all legal requirements for occupation

and many others.

Landlord's Covenants

Quiet Enjoyment



SELF CHECK QUESTION 1

Think back to section 1. What are the three key elements of a tenancy?

Compare your answer with the following text.

You will remember from section 1 that a tenant will have exclusive possession at a rent for a term. This means that for the duration of the tenancy, the occupying tenant can exclude all others, including the landlord.

The covenant from the landlord to allow quiet enjoyment reinforces this common law requirement. Quiet enjoyment is an implied obligation on the landlord to allow a tenant to occupy peacefully a property without interruption or interference from the landlord or anyone else.

This means that the landlord cannot unnecessarily disturb the tenant. However, it does allow the landlord access for stated purposes on giving reasonable notice. For example, if the landlord remained responsible for repair, it would be unreasonable if the tenant denied the landlord access to check the condition of the premises. Apart from such occasions, the landlord (or the landlord's agent) should not be entering the premises.

If the landlord breaches this covenant, the tenant could take court action, either seeking an injunction (an equitable remedy) preventing the landlord from entering the premises, or seeking damages.

Insurance

The landlord usually remains responsible for insuring the premises and usually the tenant is responsible for paying the insurance premium. The insurance will relate to the premises and any of the landlord's fixtures and fittings only. The insurance will usually cover the replacement cost of rebuilding the premises should a disaster happen, along with loss of rent during the rebuilding period, or for a set period of time (often two to three years).

Repair

In some leases, the landlord retains some or all the responsibility for repair. Where this is the case, the landlord must liaise with the tenant to carry out repair works with the least disturbance to the tenant.

In other leases, the landlord retains responsibility for carrying out the repairs, but through service charge provisions is able to recover the cost of the repairs from the tenant.

Service Charges

Service charge provisions are common in leases that cover multi-let property, ie where there are a number of tenants occupying different parts of the same building. In such cases, the landlord usually retains responsibility for running the building and ensuring it is kept in repair, etc. The landlord then recovers the cost of this from the tenants via a service charge.

Service charges in residential property are now covered by various pieces of legislation, but there is no corresponding legislation covering service charges in commercial buildings. Instead there is a body of case law and contract law (a lease is a contract) that can be applied should a dispute break out.

Typically the landlord will be responsible for the repair and upkeep of the external and common parts of the premises. This can include repair, cleaning, heating, lighting, etc. Individual tenants will normally remain responsible for the internal parts of the units they occupy.

Service charges are often a contentious area, with tenants unhappy that landlords have control of the work being done, even though tenants have to pay for such work. There is now a code of practice covering service charges. One of the main requirements of the code is that landlords should be able to recover their expenses but should not be making profits out of service charges. The new code of practice, produced by the Royal Institution of Chartered Surveyors (RICS), is designed to ensure transparency between landlord and tenant and gives guidance on all aspects of setting up, delivering and apportioning the service charge. It also suggests that alternative dispute resolution should be built into service charge agreements.