

## BUSINESS PROPERTY LEASES

### FACTSHEET 3 (2018)

#### What is a lease?

A lease is a legal agreement, drawn up in writing, which allows you to occupy and use a property for a certain length of time. The terms and conditions of the lease will describe the rights and duties that you and the owner of the property have. For example, the lease should state how much rent you have to pay. It should also state what services the owner should provide to you. We will use the term 'landlord' to refer to the owner of the property that you have a lease agreement for.

This fact sheet gives information about leases for business premises. We describe:

- what options you may have if you want to end the lease;
- what you can do if you cannot afford to pay your rent; and
- the action that your landlord can take if you have fallen behind with your rent payments.

If the lease is drawn up using the rules set out in the **Business Tenancies Act (Northern Ireland) 1964**, then the legal rights you and your landlord have are set out in that act. If you chose to sign a lease that does not follow the rules set out in the **Business Tenancies Act (Northern Ireland) 1964**, then the rights set out in that act will not apply to you. We can give you guidance on how to check whether your landlord has followed the correct rules. **Contact us for advice.**

#### What should I do before signing a lease?

Before signing a lease, check the agreement carefully to see:

- what your rights and duties are;
- what your landlord's rights and duties are;
- These rights and duties are sometimes known as 'covenants';
- Your agreement will tell you how much rent you have to pay. Check what is meant by the term 'rent' as this may include insurance costs and service charges (money you have to pay for the services the landlord provides).

As a lease is a legally binding agreement, seek legal advice before entering into it. Make sure that you understand the terms and conditions of the agreement.

**Contact us for advice** if you need assistance on finding legal advice that may be suitable for you.

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**A lease is  
a legal agreement.**

**If you break its terms and  
conditions, your landlord  
will usually have the right  
to end the lease and take  
court action against you.**

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## What tenants have the right to renew their business lease?

Business tenants normally have the right to remain in their premises and renew their leases when the tenancy ends. Examples of premises where these rights may apply include:

- Shops, warehouses and factories;
- Offices containing businesses, professional people and volunteer societies;
- Doctors' and dentists' surgeries;
- Premises for clubs, trade unions, institutions and other bodies; and
- Premises used partly for business, but where the tenant lives in the remaining areas.

If you are the director of your own limited company and the lease is in the name of that company, check to see if you have personally guaranteed the rent payments. A personal guarantee means that you are personally liable for the rent if your company does not pay it.

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**Contact us for further advice.**

However, some types of business occupiers do not have the right to renew including:

- Farm business tenants;
- Mining tenants; and
- 'Service tenants' employed by the landlord.

Renewal rights do not generally apply in the following cases:

- Fixed-term tenancies of six months or less;
- Tenants who waive their right to renew at the start of their lease;
- Tenants using the premises for business use without the landlord's agreement;
- Where there is a license rather than a lease;
- Where tenants have already extended long leases and, in certain cases, their sub-tenants; and
- Tenants who have sub-let the premises and who are not occupying them personally.

The landlord may also oppose renewal in certain defined cases. If you need assistance on whether you can renew your lease, **contact us for advice.**

## How can I negotiate with my landlord?

If you are struggling to pay the rent on your business premises, contact your landlord as soon as possible. Try to make an arrangement to pay your ongoing rent and any missed payments that you can afford to maintain whilst also that your landlord will agree to. If you have fallen behind with your rent payments, this will usually involve paying your ongoing rent plus an amount towards the arrears. Usually, you will have to treat business rent arrears as a priority debt. This is because your landlord could take steps to end your lease agreement if you do not make an arrangement that they agree to. To ensure the offer you make towards the arrears is affordable and your best offer you should complete a business and household budget sheet. If you require guidance on completing a budget sheet, **contact us for advice.**

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You may wish to try to negotiate the rent payments with your landlord. If the property is likely to be difficult to rent out to someone else, your landlord may agree to reduce the rent for a certain period of time.

If you cannot renegotiate better terms, then you may have to consider whether you can:

- End the lease (see the next section on 'Break clauses' for more information; **or**
- Pass the lease on to someone else by 'assignment' or 'sub-letting' (see the later section on 'Assignment and sub-letting' for more information.

## Break Clauses

Your lease may contain a 'break clause' which gives you the right to end the lease at specific dates called 'breakpoints'. A break clause will allow you to end the lease agreement so that you do not have to pay rent after the breakpoint. However, you would still have to pay any arrears that you built up before the breakpoint.

## Assignment and subletting

The lease may allow you to 'assign' the lease. This would mean that you allow someone else to use the property and they would pay rent to the landlord.

The lease may also allow you to 'sublet' the property. This would mean that you rent all or part of the premises to someone else. You would need to create a new agreement between you and the person who sublets the property. This is often known as a 'sublease'.

If you choose this option, you are still liable to pay your rent to the landlord. However, the tenant that you sublet to would pay you for being able to use the premises. This can then be used towards payment of your own rent. If you do sublet your premises, it is a good idea to make sure that the sublease ends before the date your own lease ends, or before a breakpoint.

Check your lease agreement to see if you need to give your landlord advance notice that you want to end the lease at a breakpoint. If there is a notice period, make sure that you give this to your landlord in writing and in good time.

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If the person that you assign a lease to does not pay the rent, you would usually still be liable to pay any arrears and future payments. Check the terms and conditions of your lease agreement to see what it says about assigning the lease.

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Check your lease to see whether you have the right to assign or sublet the lease. Also, check whether any other conditions apply. For example, your lease may state that your landlord's agreement is required before you can go ahead. You may need help from a solicitor to draw up the paperwork. You will usually be charged for the services they provide.

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If you need guidance on searching for a solicitor that may be able to help you **contact us for advice**.

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## Early surrender of lease

Your landlord may agree to your lease ending early. However, they may want you to pay them a lump sum of money before agreeing to this. You may wish to get advice from a solicitor to make sure your rights are protected when your lease ends early. **Contact us for advice** if you need guidance on how to search for a solicitor that may be able to help you.

## What can my landlord do if I don't pay my rent?

If you do not pay your rent then your landlord can take further action against you. Your landlord could:

- Take steps to end your lease agreement and repossess your premises (this is known as forfeiture);
- Make a claim through the court against you (see the later section 'Court action to recover the arrears'); **or**
- Petition for your bankruptcy.

## Forfeiture

If you are in arrears with your rent, your landlord could take steps to repossess the property. This allows them to end the lease early. Your landlord may be able to take forfeiture action in other circumstances dependent on the original terms of the lease agreement, including if you:

- become bankrupt, enter into a formal insolvency procedure or your company goes into liquidation;
- fail to insure part of your premises; **or**
- fail to maintain part of the premises properly.

Breaking a term or condition of the lease is known as a 'breach' of the lease. Some breaches are 'remediable'. This means that you can take steps to put the situation right.

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Check the terms and conditions of your lease to see whether your landlord can take forfeiture action, under what circumstances they can do this and whether there are steps you can take to put things right.

For most breaches of your lease, forfeiture action can only be taken if your landlord serves you with a written notice. This area of law is complicated and you would usually need legal advice from a solicitor. If you need guidance on how to search for a solicitor that may be able to help you **contact us for advice**.

The landlord may forfeit the lease by:

- taking physical possession of the premises by peaceful re-entry, for example by changing the locks when no-one is at the premises; **or**
- taking court action to repossess the premises.

If your landlord will not bring the lease to an early end, and if you are unable to do this, then you may be liable to pay the rent on the premises until the full length of the lease runs out. This would be the case even if you stop trading and close your business down. In this situation, your landlord can still take further action to recover what you owe. You may also be liable for business rates on the premises. After you have stopped trading, you can treat any rent you still owe as a 'non priority' debt. However, business rates will still be a 'priority' debt.

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## Can my landlord use distress for rent and forfeiture?

Some landlords change the locks on business premises, which ends the lease, and then refuse you access to the property to remove your goods. This means that the landlord has seized your goods after taking forfeiture action. This is illegal because once the lease is forfeited, the lease ends. This applies even for rent arrears from before forfeiture action was taken.

The landlord must therefore allow you access to the premises to remove goods and equipment. Some landlords take a detailed list of all items on the premises that do not belong to them. They may then write to you to tell you that the goods will be held for a certain period of time so that you can make arrangements with the landlord to collect them.

The landlord may also tell you what will happen if you do not take the goods away.

If your landlord refuses you access to the property, you may have to take court action against them.

You may wish to get legal advice to help you and to make sure your rights are protected. If you need guidance on how to search for a solicitor that may be able to help you **contact us for advice**.

## Court action to recover the arrears

The landlord could make a claim through the court to recover your rent arrears, without repossessing the property. They can also do this if your business premises have previously been repossessed but you still owe rent arrears. This will be recorded on your credit reference file for six years and can affect your ability to get further credit.

When court action is taken against you, you will get a 'claim form'. This gives details about the debt and tells you how much is being claimed. The court should consider your circumstances before making a decision about how the debt should be paid back. The final decision about how much you should pay back each month is taken by the court, even if the landlord wants a higher amount.

If you keep to the payments ordered by the court, your landlord cannot usually take any further action against you.

## Bankruptcy

If you are an individual and you owe **£5,000** or more to your landlord, they could petition for your bankruptcy. Bankruptcy is a court order which means that any assets or property that you own could be sold to raise money to pay your debts. Your landlord would first have to send you a 'statutory demand'. This is a demand for money drawn up in a set format.

Please see our **factsheets** on **Bankruptcy and Statutory Demands** for further information which may be of assistance to you.

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**Contact us for advice.**