

Property Terminology for Tenants

Every industry has its own words and phrases: technical language which is used as a shortcut when practitioners communicate. Property transactions are no different. This article is designed to explain some of the more common terms that you may come across when dealing with commercial property.

AGA

Otherwise known as an Authorised Guarantee Agreement and nothing to do with a cooking appliance manufacturer. In modern leases (ie. anything granted after 1995), on an assignment, an outgoing tenant usually has to give an AGA to the Landlord guaranteeing that the incoming tenant will pay the rent and observe the covenants given by the Tenant under the lease. Supposedly optional, most Landlords will insist that these be given even if the outgoing tenant is worthless.

Alienation

The ability of the Tenant to dispose of the lease if they no longer want it. The main methods of disposal are:

Assignment – completely getting rid of a lease to a third party. In practice, easier said than done especially if the Landlord doesn't like your choice of buyer.

Sub or underlease – You continue to be liable under your lease but have let a third party occupy in exchange for picking up your obligations under the lease. You maintain control but at the end of the sublease, the responsibility comes back to you again.

Both of these generally need the landlord's consent assuming that you are permitted to do them at all. If you are not permitted to alienate the lease then, and you don't have a break clause, you are liable for however long the Term is. This is not a good idea if the lease is for 99 years.

Break Clauses

The ability for one or both parties to end the lease early if they want to do so, usually on the service of notice. Lots of break clauses are hedged about with conditions which may be surprisingly difficult to comply with. Landlords seem very keen on littering break clauses with traps for the unwary.

Covenants

The promises that one party to a lease makes to the other. They cover everything from the promise to pay the rent to a promise to clean the windows. You break any of these promises at your peril.

Deposits

Also known as a rent bond. If the landlord doesn't think you have sufficient financial standing to meet your obligations under the lease, it may ask for you to pay a deposit which it holds on to until your liability ends. Then if you're lucky and the landlord can't actually come up with any reason to hold onto it, you might get it back. The landlord will probably try to keep the interest it's earned on it at the bank. The government has recently introduced lots of restrictions on Landlords holding deposits – none of which apply to commercial property.

Dilapidations

A list showing all the ways in which a tenant has failed to comply with its covenant to keep the Property in repair. The landlord's list is almost always much longer than the tenant's.

Exceptions and Reservations

All the bits which the landlord isn't giving to you but keeping back for himself that would otherwise form part of the property. These are often very obscure things such as the right to light or air and are all right as long as you don't want to sunbathe.

Freehold

What the landlord owns - unless the landlord is itself a tenant, in which case, its landlord owns the freehold unless that landlord also is a tenant in which case...

Guarantee

An agreement whereby someone can be made to pay the Tenant's debts or carry out its duties if the Tenant doesn't do so

Guarantor or Surety

A person who gives a guarantee.

Head and Superior Landlord

The person who is landlord to your Landlord (see Freehold).

Landlord

The person who granted you the lease or who now has the right to enforce the terms of the lease. Sometimes called "Lessor".

Land Registry

A government organisation which seeks to have all major interests in land registered centrally. All leases of more than 7 years have to be registered at the Land Registry and therefore have to comply with a set of detailed rules as to what goes in them. The Land Registry system is designed for residential properties and therefore copes poorly with many commercial transactions.

Lease

- a) What the Tenant owns
- b) The document that sets out all your rights and duties in respect of the property you have leased. Under no circumstances should you lose this!

Licence

A right to occupy premises that is somewhat less than a lease. Although it grants less rights than a lease, it can be somewhat difficult to grant one. Do not assume that just because you don't have anything in writing that this means that you have a licence.

Premises

See Property.

Premium

Most Property that is leased is designed to provide income by charging rent. Sometimes, however, the value in the land can be paid upfront as a capital payment or premium. The bigger the premium you pay, the less rent you should pay and vice versa.

Property

What you are renting.

Rent

The amount you pay regularly to use the Property. The more rent you pay, the less premium you should pay. Rent should not be confused with service charge, insurance premiums, outgoings or tax, all of which are charged on top of the rent unless you specifically agree that the rent is "inclusive".

Rent Review

An opportunity after a period of time (often 5 years) to vary the rent. Traditionally, rent moves upwards only at the will of the Landlord. The Government keeps on saying this is unfair and wants rents also to move downwards at the will of the Tenant. Strangely, Landlords think that this is a bad idea – as does anyone with a pension invested in a property-owning landlord (which is most of them).

Repair

Tenants must keep the property they are leasing in repair. There is a lot of legal argument on what is the exact difference between "in repair", "in good repair", "in substantial repair" or "in good and substantial repair" but in practice, they all mean that if something in the property is broken, you must mend it. The obligations to repair can be limited by references to a schedule of dilapidations or fair wear and tear and sometimes the law prevents the Landlord from enforcing the covenant even if the property is not "in repair".

Security of Tenure

Commercial leases generally attract rights to renew the lease when they end. However, it is also easy to agree that the relevant legislation will not apply. Almost all sub-tenants have to agree that they will not be entitled to any security of tenure.

Service charge

Generally, any amounts you pay to the Landlord or his representative for managing the premises or anything you share with other tenants.

Sub-tenant

If your landlord is not the Freeholder, then you have been granted a sub-lease and you are a sub-tenant. This will often mean that you have two landlords to keep happy and not just one.

Tenancy agreement

See Lease

Tenant

The person who rents the Property from the Landlord. Also known as "Lessee" or even "Leaseholder".

Term

Also known as "Lease Period". How long you rent the property for. The industry standard used to be 25 years but the maximum is now in the region of 15 years and even then only if the lease contains break clauses. Leases are often for much shorter periods.