

Commercial Leases: The Facts

Commercial leases can become complicated, but this factsheet aims to dispel a few myths and provide clarity. Here are a few facts and tips.

Variations

Never agree a variation of the Lease without checking the implications for the original Tenant, intermediate assignees and guarantors. The Landlord & Tenant (Covenants) Act 1995 may have allowed some parties "off the hook". Ensure your records show the full history of occupation. Make sure that notice of any arrears is sent to everyone who might be liable. Do not let former Tenants and guarantors "off the hook"

Insurance

There is no obligation on the Landlord to "shop around" for insurance premiums

Service Charges

A variable service charge tends to imply a term that the costs of providing those services will be fair and reasonable. Avoid service charges by reference to rateable proportions. Cater for the possibility of back-dated appeals. Do your Properties have entry systems, air conditioning, lifts, fire alarms or security systems? How are they maintained? Double check your service charge calculations. If you demand too little, you might not be able to correct your mistake.

Sub-letting

There is no test for a sub-letting that the Sub-Tenant must have post tax profits of least three times the Rent. If you do not like a Tenant's proposed Assignee or Under lessee, give comprehensive reasons in writing as soon as possible. Conversations and "afterthoughts" will not help you. You might not be able to resist an application by your Tenant to sub-let at a rent less than the passing rent, if the Tenant has structured his sub-lease and a side-letter correctly.

Distress

Do not levy distress for unpaid service charge, unless you are sure that it is totally recoverable under the terms of the Lease. Illegal or irregular distress will entitle the Tenant to damages and also a penalty of double the goods sold.

Disrepair

If the Property is in disrepair, consider whether to enter, inspect, carry out works and recover costs rather than suing them for disrepair.

Notices

Service by recorded delivery happens at the date of posting. Service by ordinary post does not take place until it is received. Arguments can ensue as to receipt.

Rent review

Add a "last day" rent review clause into your Leases.

"Keep open" clause

You cannot force a Tenant to keep his shop open, but try to maximise the damages payable and protect your other tenants from the inevitable effects of vacant premises nearby.

Tax

If you have reserved the payments into the sinking fund as rent, this and the interest is your money for tax purposes.

For more information regarding any aspect of this factsheet, please contact a member of the Kaslers team on 0845 270 2511.