



## LEASE COMING TO AN END? WANT TO LEAVE, OR STAY ON? NOT SURE WHAT TO DO

In these uncertain times, more tenants are looking closely at their property requirements. Unsurprisingly, many business are finding it difficult to predict how much space they will need in the coming months or years, so getting the right balance is more important than ever. Tenants need to successfully operate their business, but so do landlords, who are in the 'business' of owning property. The points below outline certain issues that you should be aware of when approaching lease expiry. However, at the moment we are finding more tenants approaching landlords much earlier, which can work well for both parties. Tim Richardson, Director and Chartered Surveyor at FHP Property Consultants, addresses some of the most commonly asked questions surrounding lease expiry:

### 1. My lease is coming to an end. What shall I do?

First of all, dig out a copy of the lease. Find out when the lease is due to expire and whether it was contracted out of the Landlord & Tenant Act. Then, contact a chartered surveyor.

### 2. What does 'contracted out of the Landlord & Tenant Act' mean?

This means that when the lease comes to an end, you have no right to stay. If you want to remain at the property, it is critical that you approach the landlord in good time to establish: (a) whether he/she wants to renew the lease; (b) agree appropriate terms; and (c) have the new lease documented by solicitors. If you do have security of tenure (i.e. the lease is 'inside the Act') then you have some protection.

### 3. I'm 'inside the Act' and would like to renew the lease. What should I do?

If your landlord has not already served a notice, then you can serve a Section 26 Notice on the landlord, requesting a new lease. However, if the current market rent is higher than the rent you are paying, or you are undecided whether to stay in the property, then you will need to weigh up whether this is prudent. Alternatively, you may decide to wait for the landlord to make the first move.

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#### **4. Even with security of tenure, I understand that the Landlord can still refuse a new lease. Is this right?**

There are some grounds on which the landlord can refuse to grant a new lease. The more common circumstances include: (a) instances where the tenant is in default of the lease terms (e.g. not paying rent or persistent breaches); (b) the property is needed for redevelopment; or (c) the landlord wants it for their own occupation. The landlord would need to meet certain criteria and this is a complex area, where professional advice should be sought.

#### **5. Can the landlord charge whatever rent he wants?**

Under the provisions of the Act, if you are unable to reach agreement with the landlord amicably, the matter can be referred to court who will set both the rent and the terms of the lease. This will be at a market rent, which in itself will vary slightly depending on the lease terms. Surveyors will provide evidence as to what that figure should be. In reality, it rarely reaches this stage as the vast majority of lease renewals are mutually agreed by negotiation.

#### **6. I have received a Section 25 Notice. What is this?**

This is a notice from the landlord bringing your lease to an end, on or after the fixed expiry date. It will state whether or not the landlord is willing to grant a new lease and if so, upon what terms (including a proposed rent). Note that these terms are negotiable, so the best course of action is to employ a chartered surveyor with local market knowledge to handle these negotiations for you.

#### **7. My lease expiry date is some way off, but I would like to agree an extension now. Is that possible?**

On occasion, for example if the tenant wants to invest in new machinery or sell their business as a going concern, they might want the certainty of a longer term. We frequently approach landlords to agree extensions or variations to leases and this can be a win-win situation for both parties. The landlord is under no obligation to agree, but usually as they are holding the property as an investment then they will be open to a discussion.

At lease renewal both the landlord and the tenant have the opportunity to review lease terms, which includes the rent, length of lease, breaks and reviews. Whilst the vast majority of cases are agreed by negotiation, if an agreement cannot be reached, your case could ultimately end up in court.

You will have many things on your mind when your lease is coming to an end, so it's important to seek the best professional advice. FHP is one of the region's largest and most active property consultancies. We have the technical skills and an in-depth knowledge of both the market conditions and the process you will need to go through. We are ideally placed to negotiate the best terms for you.

We typically begin working at least 12 months before a lease is up for renewal. Even if you don't have an expiry coming up, but would like to move, extend or alter your lease to give you some security, there are options we can help you with.

**Contact Tim Richardson for more information. T: 01332 224 857 E: [timr@fhp.co.uk](mailto:timr@fhp.co.uk)**

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## Notes to Editors

- FHP is a Midlands based commercial property consultancy with offices in Birmingham, Nottingham and Derby. Its 80 strong team offers a full range of professional and commercial property solutions for clients in the retail, leisure, office, industrial, residential land and investment markets.
- The Company also provides businesses with a full property consultancy service including valuations, rates appeals, compulsory purchase advice with the Company having a strong Property Management Department which manages properties for individuals, corporate and institutions.
- FHP has been involved in some of the largest commercial property deals and developments within the region and works with national operators including Intu Properties Plc and Clowes Developments (UK) Limited.
- FHP is also able to call upon the expertise of its sister residential property Company FHP Living Limited which handles the sales of select properties across Nottinghamshire and the surrounding areas.

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