
JDB

3

Break **Clauses**

Not necessarily an easy way out of a **lease!**

What are Break clauses?

In theory a break clause, if correctly worded by your solicitor will allow you to come out of your lease before the end of the term.

It is often thought that landlords do not give break clauses lightly as it means they no longer have a guaranteed income stream from the property. When a break clause is implemented the landlord has to try and re-let, which can be a costly, difficult or impossible process, depending upon the climate. On the other hand however, in a good market the landlord could be wishing that you implement the break clause so they can re-let at a higher rate.

Many business owners take a lease with a break clause, thinking that if things don't go to plan, or go better than planned, then they will be able to leave the existing premises using the break clause, thereby removing the liability to have to pay rent, rates and any service charge for the property after they no longer have a use for it.

Some business owners may even include a break clause as part of their business plan, where they project that they will expand in three, five or ten year's time and therefore have break clauses at these points in time. If things are going to plan they move onto a larger property.

The break clause allows you to exit the lease as long as you comply exactly with the terms of the break clause, which is easier said than done. In reality break clauses are not as simple as you may think and can be very expensive if you get them wrong. Failure to correctly serve a break clause can result in unwelcome and unexpected charges for rent, rates and service charge etc.

Break clauses make tenants happy!

Many a tenant will feel happier with a break clause inserted into their lease as they think it will allow them to leave the premises after a set time if things aren't going to plan, or alternatively if things are going better than planned. What the tenant may not realise is that they could be paying a higher rent because, as mentioned, the landlord will have to take into consideration that he may have to face reletting the premises sooner than he would like.

If you need help and advice with regard to leases, dilapidations, schedules of condition, dilaps claims, scott schedules, building surveys, structural reports, engineers reports, specific defects report, structural surveys, home buyers reports or any other property matter please call 0151 486 3437 for a friendly chat.

Break clauses, **the hidden dangers**

It is absolutely essential that items within the lease (known as the compliance items) are complied with if you want to execute the break clause. If the break clause is served correctly you will remove any future liability you may have with regard to rent and rate payments and avoid the threat of the landlord counter charging you for repairs he has carried out to the premises.

If the break clause contains any mistakes or even if it is served late it will be deemed invalid and you will have to continue paying for a property that you no longer need or want until the term of the lease expires.

What the landlord thinks about break clauses

The landlord's view of a break clause (a cynic would say) could be an opportunity to bring the maintenance of the property up to standard. The landlord may have decided to offer a break clause because the property was below standard or he could achieve a higher rent at negotiation stage by including a break clause. If he thinks the break clause is going to be invoked he may fear losing the income stream or that he will have problems re-letting the property. As such he may be looking for ways to argue that the break clause conditions are not met. Therefore he could be difficult and awkward about the break clause.

Your break clause strategies

Whether you are the landlord or the tenant you need to think about the strategies you want to put in place in respect of the break clause. For example, if you are the tenant and you want to serve the break clause you have to be absolutely 100% certain that you have complied with all of your covenants (legal obligations) contained within the lease, which are pertinent to the break clause. This is where a Chartered Surveyor can help you.

Some examples of break clauses that went wrong

Let us consider two basic but very much relevant examples:

A lease with a five year break clause had a covenant stating that carpets must be replaced in order for the break clause to be instigated. The tenant decided to clean the carpet so it just looked new, but nevertheless wasn't new. This meant that one of the compliance covenants for the break clauses was not complied with and therefore the break clause was not plausible. The tenant therefore had to stay and continue to pay rent, rates and service charge.... as well as the cleaning of the carpet.

Another covenant in a lease is where all the building work/redecoration clauses are complied with but the keys are not returned on the required date as expressly stated in the lease. Therefore the break clause isn't enforceable.

The break clause and business decisions

The above are two extreme examples of the break clause not being complied with. Normally as long as the landlord doesn't see future deterioration in the property asset and its leasing potential at a good market rate he will take a business decision and consider accepting the break clause (but don't hold us to this, there are many landlords that will say a lease is a lease and if it isn't complied with then the break clause isn't plausible).

The contents of this article are for general information only and is not intended to be relied upon for specific or general decisions. Appropriate independent professional advice should be sought before making such a decision.

Tel: 0151 486 3437

Email: admin@jdbsurveys.com

www.jdbsurveys.com