

Checklist: break clauses in leases

What is a break clause?

A break clause can be included in a fixed-term lease allowing either you or your landlord to terminate the lease early. Exercising a break clause brings the lease to an end, however, where the landlord breaks the lease, there is legislation in place which may allow you to remain in the property after the lease has ended. Depending on how your lease has been drafted, the right to break the lease may arise on one or more specified dates, or it may be exercisable at any time during the term of the lease on a rolling basis.

Practical issues for a tenant to consider when exercising a break clause

- Once a break clause has been served it cannot be withdrawn unilaterally, so make sure that you are certain that you intend to break the lease. Any mutual waiver of the notice will be deemed to constitute the grant of a new lease, which takes effect from the date of expiration of the break notice.
- Make sure you comply with all the relevant requirements in the break clause and keep evidence of your compliance to help protect your position.
- Ensure that you serve the break notice in good time and strictly in accordance with the terms of the lease.
- Keep evidence of the method of posting or delivery of the notice. If there are no service provisions in the lease, you could request that your landlord acknowledges receipt.
- If the notice is being served by an agent, make sure your landlord is aware of the existence of the agency and its authority.
- Consider carrying out a compliance audit with your surveyor's advice before serving the break notice. You can then take steps to remedy any breaches to ensure compliance with its covenants.
- Pay any outstanding sums due, even if these are in dispute. Payment can be made on a "without prejudice" basis and the matter disputed later.
- Ask your landlord for confirmation of the steps you need to take in order to comply with any conditions. You could ask your landlord to prepare a schedule of dilapidations in relation to any repair works. A schedule of dilapidations is a list of items that are in need of repair and which you have responsibility for, due to the repairing obligations under a lease.
- Consider asking your landlord to accept the break notice on payment of an agreed amount as liquidated damages in relation to any outstanding breaches of covenant. Liquidated damages are a fixed or determined sum agreed by the parties to a contract to be payable on breach by one of the parties.
- Ensure that any waiver of a condition by your landlord is not made "without prejudice" and that it is clear to which condition(s) the waiver applies.

More information

If you have any queries about the content of this checklist, please contact Graham King or Deborah Maunder