

RICS Small Business Retail Lease

A Guide for Tenants (Scotland)

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Introduction

Signing a lease on a business property means that you are probably entering into one of the most significant financial commitments that your business will make. Before you sign a lease you should work with your professional advisors to make sure the lease matches your requirements as closely as possible and that you understand all the lease's terms and conditions.

It is important to remember that a lease is a binding contract in law which sets out the terms and conditions of the tenancy agreement between an owner and an occupier. It defines the rights and obligations of both parties. It is therefore enforceable – you cannot simply walk away from a lease.

This lease has been drafted as suitable for lock up shop/small high street retail property. This document should not be used if the length of the lease is more than five years, nor if the property is not in Scotland.

Note

The purpose of this guide is to help tenants of the RICS Small Business Retail Lease (Scotland) understand some of the terms included. It is not a substitute for the legal advice which will be necessary from your solicitor. No responsibility for loss or damage caused to any person acting or refraining from action as a result of this guidance can be accepted by the authors or the RICS.

Heads of Terms

This is a list of items, agreed by the parties at the start of a transaction, from which solicitors will then prepare the lease and any other related documents. For instance, the Heads of Terms will show the address of the property, the names of the parties, and the length of the lease. The starting rent should also be shown. They should confirm the permitted use of the property, and any other relevant points which the parties have agreed in negotiations. These might include the length of any rent free period at the start of the lease.

Length of lease

This is the period during which you may occupy the property, and are liable for rent. It is important to realise you will be liable to the landlord throughout the length of the lease for rent, and to pay outgoings such as rates. This liability will only end if you pass the Lease onto someone else, with the landlord's agreement.

Rent and Outgoings

You are liable to the landlord for paying rent, on a monthly basis. You are also responsible for payment of all rates, both to the Council and the water authority. Although the landlord insures the building it is your responsibility to insure its own fixtures, contents, and stock. You also pay for electricity and gas.

Rent Suspension

In the RICS lease the tenant ceases to be liable for the rent, or an appropriate proportion of it, where the property is damaged by an insured risk, until the landlord has made good the damage. However, both parties may give notice to bring the lease to an end.

Repairs

You are responsible for keeping the property in repair. The parties must agree a "schedule of condition" (written or photographic). This means you will only have to keep the property in the state of repair, it was in at the time the Schedule was prepared. If that is not done, you will have to put the property into repair, even if it was previously in poor condition.

This is a point which is often not fully understood by tenants, and clearly of vital importance.

The fact the tenant is not liable does not mean the landlord is liable instead. If there are items which need to be repaired, it is vital for the parties to agree what is to be done when, by whom, and at whose cost, before the lease is signed.

Alterations

Whether at the beginning of the lease, or at some other time, if you wish to carry out alterations (for instance the initial shop fitting), then you will need landlord's permission. You will need to produce plans to the landlord. This is a point to check with your solicitor before completing the lease. You should consider carefully how suitable the property is for your business. You should consider any work which may be required by law to make the property suitable for use, both by staff customers and visitors, taking into account equal opportunities laws.

Use

You should check that the intended use of the property is allowed both under planning law, and by the landlord, also that there are no restrictions on the landlords title which restrict or prevent that intended use.

Option to Break

This lease includes a right for the tenant to bring the lease to an end early, by giving written notice to the landlord. The lease must show the period of notice needed. Both the length of the period and the date or dates on which the lease can be ended are matters for negotiation. It is essential for you to give written notice at the right time to the right person. This is a technical area, where legal advice would be important.

Disposal

The lease requires the tenant to get the landlord's written consent in advance before assigning the lease. A subletting to someone else is not allowed.

Rent Deposit

The landlord may seek payment of a deposit as a form of security in case the tenant defaults. Such a deposit might be anything between, say, 1 and 6 months rent, possibly including an amount to cover VAT. The deposit should be returned at the end of the lease. The parties may wish to consider a separate document to cover how and where the deposit is held, in case either landlord or tenant becomes insolvent.

Legal Costs

Both landlord and tenant are to pay their own legal costs.

Stamp Duty Land Tax

This tax, if chargeable, is payable within 30 days of, in effect, the tenant going into occupation, whether to start fit out works, or for trading. The tax calculation is complicated. Your solicitor should advise. It is unlikely this tax will be payable if the total of your rent (including any VAT), for the length of your lease is less than £150,000.00, and probably slightly higher. Difference considerations apply if/when the lease is renewed.

Guarantees

You should take care in deciding whether to take the lease in the name of a company (which your accountant may have advised should be formed for your business) or in the name of you as an individual. If it is your company which takes the lease, it is possible the landlord will expect you to give a guarantee, to make certain the tenant company pays the rent and complies with other obligations. If the company does not then pay, then the landlord will expect you to do so. You should take particular care, on this matter and get advice.

Means of Escape

It is most important to check that the property has proper means of escape in case of fire. Your own inspection should show the routes of any fire escapes. It is important to advise your solicitor of this.

Plans

It is also important to check that any plan attached to your lease is accurate, to show the full extent of the property you are taking including any car parking spaces. If it is not accurate, you should tell your solicitor immediately.

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