

# REDBROOK

COMMERCIAL

## TENANT GUIDE

Produced June 2023



# Contents:

- ① What is a rent review?
- ① What is included in a rent review clause?
- ① How is the rent calculated?
- ① What happens if the rent can't be agreed?
- ① What happens if my landlord misses the rent review?
- ① When should a tenant start thinking about their rent review?

# Tenant Guide

Rent reviews are a common clause within commercial property leases and are negotiated between the landlord and tenant at the commencement of the lease.

## What is a rent review?

Commercial property leases are traditionally entered into for a reasonably long period of time and although this has changed slightly in recent years with an emergence of shorter leases, they still tend to be substantially in excess of a one-year term.

A rent review clause is intended to provide a mechanism to ensure the rent being paid by the tenant is in line with current market conditions and therefore reflects market rent.

For example, if a tenants takes a 20-year lease on a property it would not be reasonable for the rent not to be reviewed and adjusted during the 20-year period which is why the rent review clause is in place.

The purpose of the rent review clause within a commercial lease is to direct:

- When the rent is to be reviewed
- How the rent is to be calculated
- When the new rent is to be paid
- The mechanism for resolving any dispute over the rent

# What is included in a rent review clause?

Rent review clauses are a point of negotiation when agreeing the terms of a lease prior to the tenancy commencing and as a result will vary from lease to lease.

Even though rent review clauses will be drafted to reflect the terms agreed by the landlord and tenant at the time the lease was taken, there are a number of points that would generally be covered in most cases:

- The date on which the rent is to be reviewed
- On what intervals the rent is to be reviewed
- Who can trigger the rent review
- The requirements for triggering the rent review
- Any time constraints attached to the rent review
- The conditions (basis) on which the property is to be valued and therefore the rent calculated
- The date on which the new event will be payable from
- The mechanism for dispute resolution should the parties is not be able to agree

The above is not an exhaustive list however it outlines the most common and important elements of a rent review clause.

It is of paramount importance that both parties fully understand the rent review clause and how it is to be implemented.

# How is the rent calculated?

The purpose of a rent review is to determine whether the rent being paid is in line with market conditions at the time of review and therefore reflects market rent.

When calculating the rent at rent review the rent review clause will set out the basis on which the rent is to be calculated. In most cases the review clause will dictate that the rent is to be calculated on a basis that takes into account the terms of the lease.

The rent review clause will often go on to set out a number of assumptions / hypothetical conditions that must be followed when valuing the property.

These assumptions are to ensure that the method of calculating an appropriate market rent also takes into account other factors that could have an impact on the rental value of the property as a direct result of the terms of the lease that is in place, any work or improvements carried out by the tenant, and other factors that may affect rental value.

This is a very important elements of any rent review clause as it effectively sets out the terms on which both sides must value the property.

The method of valuation for determining an appropriate rent at rent review will depend based on the type of property being valued. Regardless of the method of valuation that is adopted all valuations will be underpinned with the use of comparable evidence.

Comparable evidence is used to substantiate an opinion of rental by way of analysing lettings that have taken place around the time of the rent review date that have similar characteristics to the property in question.

# What happens if the rent can't be agreed?

In some cases the landlord and tenant are not able to agree on a rent despite their best efforts. When this happens an impartial third party will be called upon to resolve the dispute.

The lease will set out the process should the matter go to third party and the two most common types of third party that the matter would be referred to are an Arbitrator or an Independent Expert.

There is a slight difference between the matter being resolved by an arbitrator and an independent expert.

**Arbitration** – both parties will present their case to an arbitrator by way of a formal submission and the arbitrator will make their decision solely on the facts that have been presented.

**Independent Expert** – both parties will present their case to an independent expert by way of a formal submission.

The independent expert will make their decision based on the submission, however they are also permitted to conduct their own investigations to assist in reaching their decision.

# What happens if my landlord misses the rent review?

A landlord may be entitled to implement a rent review at a later stage even if they did not do so on or around the rent review date. The only instance that this would not be the case would be if the lease states that “time is of the essence” in relation to the review of of the lease specifically states that they are unable to do so.

It is important for a tenant to understand that if a landlord implements a rent review after the review date and the review results in a rental increase, the tenant will in most cases will be required to pay any back rent at the revised rent for the period between the rent review date to the present day.

# When should a tenant start thinking about their rent review?

One of the most important times for a tenant to consider their rent review is when they are negotiating the terms of the lease.

Rent review clauses often do not receive the attention they need during the negotiation of a lease and become somewhat of an afterthought.

They are however a very important element of any commercial lease and need careful consideration.

# REDBROOK

COMMERCIAL



Hamilton House, 87-89 Bell Street, Reigate, Surrey, RH2 7AN  
W: [www.redbrookproperty.com](http://www.redbrookproperty.com) | T: 01737 237 552

