



Orme Associates

Property Advisers

COMMERCIAL PROPERTY RENT REVIEW AND LEASE RENEWAL

• The most common types of rent review are (i) a review to open market value and are agreed between the parties and (ii) a review which rises in line with the Retail Price Index, which is a fixed increase.

• A rent review in a lease will usually be every three or five years.

• In the large majority of cases the rent cannot go down, and the rent review will be "upward only" which also means the rent can stay the same (a nil increase).

• A rent review that has not been triggered on or before the rent review date by the Landlord can nevertheless be backdated unless the lease either states that "time is of the essence" or this can be implied from the wording of the lease.

• Where the lease has less than 12 months still to run a s.26 tenants request for a new lease can be served on the Landlord where the Tenant seeks a new lease, and if appropriate at a reduced rental (save where the lease is contracted out to the Landlord and Tenant Act 1954).

• We are able to provide free initial advice on rent reviews and lease renewal. Our contact details are provided below:-

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What We Do

Orme Associates Property Advisors can act for you in respect of a forthcoming or outstanding rent review. We can also effect a renewal of a lease on new terms using the Landlord and Tenant Act 1954.

Rent Review

Types of Rent Review

There are several types of rent review that are encountered:-

(i) A Review to Open Market Value (OMV)

This is the most common review clause and asks the parties to agree a new rent based on prevailing rents for similar properties in the locality. Often the parties respective surveyors will agree a new rent, however in default of agreement a third party surveyor will be asked to determine a new rent.

(ii) A review based on increases in the Retail Price Index (RPI).

The Retail Price Index is published by the UK Government and reflects rises in prices of goods generally also known as "inflation". A rent review linked to RPI will rise by a set amount on a fixed Rent Review Date following notice from the Landlord. These types of review are non-negotiable, however mistakes are not uncommon and overpayments are then made.

(iii) Other Types of Rent Review

There are other types of rent review, to include those linked to increases in the capital value of the property, and those linked to turnover of the business.

Upward Only?

It is rare for a rent review clause not to be "upward

only" and therefore most rent reviews will result in either a nil increase or an increased rent. A rent reduction will not be possible within the terms of the lease, unless your lease is close to expiry, where upon a rent reduction can be achieved by service of a s.26 Notice (see below).

Backdating a Rent Review

It was decided by the House of Lords in a case called *United Scientific Holdings v Burnley Borough Council* [1978], that a Landlords request for an increase in rent where the rent review date has since passed, can still be implemented despite the scheduled date having been missed, unless the lease specifies that "time is to be of the essence" or the need to trigger the rent review within a reasonable time can be implied. Therefore several *missed* rent reviews can sometimes be dealt with at once, and rent increases can be backdated several years. It is therefore sometimes a good tactic for the tenant to initiate a rent review to avoid a larger bill at a later date. In addition interest will usually be payable on backdated rent.

Time of the Essence

Where the lease states that "time is to be of the essence" or this can be implied into the lease by the wording of the review clause or by coincidence with a break clause, a failure by the Landlord to trigger the rent review by stating the new proposed rent on or before the review date will render a late trigger notice ineffective, and the rent will remain fixed at the current rent.

Lease Renewal

Where a lease is within or approaching 12 months from

expiry, and the tenant wishes to remain as occupier of the property, so long as the lease has not been contracted out of the Landlord and Tenant Act 1954 Act, the tenant can serve a s.26 request seeking a new lease. A s.26 request cannot be served where the lease has more than 12 months still to run. Where rental values have fallen since the grant of the lease or since the last review, currently common with retail properties, the s.26 request can seek a reduced rent for the tenant.

Similarly a Landlord can serve a s.25 notice toward the end of a lease asking the tenant to either vacate or take a new lease on its proposed terms.

In either case if the new lease cannot be agreed the County Court has jurisdiction to set the terms.

Further Information

For further information and advice on Rent Review or Lease Renewal contact:-

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