

How do Rent Reviews Work?

Most leases of commercial property longer than three years have a rent review clause.

The idea of a rent review clause is to enable the landlord and tenant to enter into a medium or long term Lease without the landlord being left behind if commercial rents go up.

This article will give you some pointers on how the process works.



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The mechanics

If there is a standard rent review clause in a lease then normally either the landlord or the tenant can start negotiations at anytime including after the rent review date. The basic principal is that the landlord and the tenant negotiate with each other and try to agree what the new rent ought to be. If they can't agree with each other, than either of them can apply to have the rent decided by a third party whose decision is normally binding.

How long do rent reviews take to agree?

In the world of rent reviews three months of negotiations is considered a short time and very often rent reviews take a year or more to agree. This is mainly because the outcome matters so much to the landlord and the tenant and they don't want to be rushed into a disadvantageous outcome.

What's the first thing to do?

The first thing to do is read the lease and decide if you want to negotiate yourself or hire an expert to negotiate for you. Good rent review negotiators can be expensive but rent reviews are legalistic and you are likely to be better off at the end of the process if you get good advice at the beginning.

What happens if the landlord and tenant can't agree the new rent

As I said earlier, three months of negotiations is very normal before either side decides it wants the matter to be decided by a third party arbitrator or other expert. In most commercial leases the actual process is that the landlord or tenant (or their surveyor if one has been appointed) visits the RICS website and makes an application and pays the necessary fee for an arbitrator to be chosen and appointed. The initial fee is only a few hundred pounds but later in the process arbitrators charge upwards of £200 an hour plus VAT for their services and if you lose an arbitration you may have to pay the majority of the arbitrator's bill.

Is going to arbitration expensive?

In a word, yes. And it's slow. From the time that either a landlord or a tenant decides that a compromise on the new rent is not possible it will take a month to get an arbitrator appointed, and three or four months to get to his or her decision. Each side will be asked to put forward its reasoned views in a report and is normally given the opportunity to see and comment on the other side's case. It all takes time. The timetable is in fact set by the arbitrator but he (or she) is obliged to act reasonably and fairly. It's not a rushed process.

Are there other ways of settling a rent review dispute?

There are at least two other ways. Some leases allow for an independent Expert (rather than an Arbitrator) to decide the new rent which makes it a less legalistic process. The Expert is almost always still be a Chartered Surveyor but he or she will certainly be an expert valuer.

Then there is the 're-gear' route. In this version, if one or other party wants something other than the rent to change then it can offer a 'trade' or an 'arbitrage'. A tenant might say – 'I will agree a slightly higher rent than I think is correct in exchange for a cap on the service charge'. A landlord might say 'I will hold back on getting a full rent at review if the tenant agrees to take a longer lease term'. BUT if there is a standard rent review clause then neither has the right UNILATERALLY to have anything other than the rent settled at a review date. Lease re-gears are technical and complex. You need an expert to do those for you.

Rent reviews agreed AFTER the rent review date

It surprises people that most rent reviews are agreed after the rent review date. This is partly so that the two sides can research comparable local transactions around the rent review date where the information takes time to dig out. Getting details of local transactions is a tricky specialist job and requires tact, expertise and time.

What happens after a review is agreed

Assuming that the rent review is agreed after the rent review date, the new rent figure is backdated to the date given in the lease for the new rent to start. From the tenant's perspective, long negotiations possibly based on nothing more than optimism can lead to a large bill for back rent plus interest when the rent review is finally agreed.

Getting help

If you would like to speak to someone in general terms without obligation then my contact details are below. My personal expertise is the offices sector but Oliver Dodd and David Hodges here have wider expertise including on shop rents and would be pleased to advise.

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