

## Property

## Exiting a Commercial Lease

Exiting a commercial lease is not as easy as handing back the keys to the landlord. A tenant is usually contractually bound to stay in a premises until the lease comes to an end - unless the lease can be terminated in one of the permitted ways. Here is a look at some of the options for exiting a lease before the fixed term expires.

### 1. Break clause

This option is only available if the lease includes a break clause. A break option gives either a tenant or a landlord a pre-agreed right to end the lease before the fixed term. The break option may be fixed to a specific date or linked to a defined period of time. Unlike the options listed below, the break option would not need the consent of the landlord. If worded correctly and the requirements for serving notice are followed, the landlord cannot object to the termination of the lease. However, the tenant should take legal advice in good time prior to the break date to ensure that the pre-conditions are met and the break notice is correct. If there are any errors, it could invalidate the break notice, giving the landlord the right to make the tenant stay until the end of the term. Unless the break clause is negotiated properly, the tenant may not be able to get back any monies they have paid past the break date.



### 2. Assignment

Most leases (other than short leases) will allow the transfer of the lease by the tenant to a third party. The landlord will have certain conditions regarding the new tenant, in particular regarding their financial status and will require references confirming that the new tenant can meet the obligations of the lease. If the criteria are met, it is difficult for the landlord to withhold consent without reasonable grounds. The tenant should be aware that on an assignment of a lease, the landlord is likely to ask the outgoing tenant to provide an 'authorised guarantee agreement': a guarantee in relation to the new tenant's payments. The outgoing tenant will remain liable until the lease comes to an end or the new tenant transfers the lease to another party.

### 3. Underletting

If the lease permits the sub-letting of the premises (also referred to as 'underletting'), the tenant can grant a new sub-lease (with the consent of the landlord) which has to be largely similar to the terms of the tenant's lease. The new incoming tenant becomes the undertenant and has to comply with the existing lease; but the tenant still remains liable for their obligations to the landlord and effectively has to manage the undertenant's use of the premises. The undertenant has to first be approved by the landlord who must give their written consent before the underletting is permitted.

### 4. Surrender

Without a break clause, the lease can be terminated early if the landlord agrees; known as a 'surrender'. The landlord is not obliged to accept the surrender of the lease and some landlords may ask for a payment in return for handing back the premises. The surrender should be recorded in the form of a deed as evidence that the tenant is no longer liable for anything under the lease.

### 5. Forfeiture

If circumstances deteriorate for the tenant and they are not able to meet the rent or do not comply with their obligations, a landlord will not normally allow the tenant to continue staying in the premises. A landlord can take steps to 'forfeit' the lease and stop the tenant from getting back into the premises by changing the locks. This type of action will bring the lease to an end. The landlord can also obtain a court order which will order the tenant to vacate the premises.

It is important to obtain legal advice before any action is taken. A tenant can be held liable for repairs on termination of its occupation in the premises and landlords can legally claim damages for a tenant's failure to keep the premises in good repair. This is commonly referred to as a claim for 'dilapidations'. Dealing with dilapidations can be very costly for the tenant and expert advice is highly recommended to avoid being hit with an extensive repair bill.

If you require advice on your lease, please contact 3HR's property team.

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