

QUEEN · CITY · LAW

BARRISTERS & SOLICITORS

CHECK LIST FOR TENANT'S SOLICITOR

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It is unlikely that anyone, however well versed in a subject, would be able to recall at any given moment, and without any prompting, every point that should be considered when reviewing a complex and lengthy legal document. It is equally unlikely that anyone could list all the items that would be relevant to every lease, and certainly no such claim is made here. The aim of this checklist is to ensure that no significant point is overlooked by the tenant's solicitor, when instructed in a "normal" commercial letting. You may find it helpful to produce your own list based on this format, so that you will be able to work through a list in relation to a specific matter, perhaps marking each point with a tick as you deal with it, or a cross as you decide that it is not relevant to that particular case.

1. PRELIMINARY

- 1.1 Is the Agreement to Lease complete?
- 1.2 Do the essential terms comply with instruction? eg: Rent, Term, etc
- 1.3 Acknowledge receipt.
- 1.4 Copy to Client.
- 1.5 Will a site inspection be necessary?
- 1.6 Particulars/photographs premises
- 1.7 Parties authorised to sign
- 1.8 Has survey been undertaken? If so obtain copy
- 1.9 Did survey extend to plant and equipment? If not advise client that it should where these will be significant
- 1.10 Landlord's consent needed, applied for
- 1.11 Preliminary comments to client on Lease

2. SEARCHES ENQUIRIES ETC.

- 2.1 Local search
- 2.2 Mining search, if needed
- 2.3 Preliminary enquiries
- 2.4 Additional Enquiries:
 - (a) Is tenant's proposed use permitted under
 - (i) Planning
 - (ii) Head lease
 - (iii) Will consent of mortgagees be required?
 - (iv) Copies of relevant documents (head lease, insurance policy)
 - (v) Title searched
 - (vi) Inventory of landlord's fixtures
- 2.5 Planning enquiries re surrounding area?
- 2.6 Has client received tax advice?
- 2.7 Are Overseas Investment Regulations relevant?

3. THE PARTIES

- 3.1 Is landlord as expected? If unknown, search
- 3.2 Will landlord give significant covenants in Lease
 - (ie: services, maintenance of structure etc)?
 - If so, and if landlord unknown, search
- 3.3 Is tenant correctly described?
- 3.4 Does the client wish the lease to be taken by company named in the draft?

4. GUARANTOR/ORIGINAL TENANT

- 4.1 Had a guarantor for tenant been previously agreed?
 - 4.2 Amend to apply only when lease vested in tenant
 - 4.3 If not:
 - (a) served with copies of notices etc
 - (b) informed if late in paying rent
 - (c) rent review
 - (d) assign on default
 - 4.4 Deed between guarantor and tenant
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4.5 Protect original tenant after assignment

5. THE DEMISED PREMISES

5.1 Do the words and plan define with absolute certainty

5.2 Where lease is of part of a building, are the boundaries precisely defined

5.3 Is ownership of boundary walls fences etc dealt with

5.4 If plan inadequate:

is better plan essential

could premises be defined in words

should boundary be pegged out

5.5 Is plan correctly referred to (for identification only etc)

5.6 Fixtures - is drafting appropriate

6. RIGHTS

6.1 Does tenant have all that he requires to use premises

6.2 Parking - will extra rights be required

6.3 Are rights required for services through conducting media etc on adjoining property

6.4 Will access to neighbouring land/air space to repair be needed

6.5 Are rights needed to toilets

6.6 Is the upkeep of those items, though of over which the rights will be enjoyed, properly dealt with by means of

landlord's covenants

service charge

7. DATES AND PERIODS

7.1 Any doubt when term commences - use "from and including" or "commencing on"

7.2 Clear when rent begins to be payable

7.3 Are all other dates and periods certain

7.4 Rent payable in advance or arrears

8. RENT REVIEW

8.1 Has other than open market rent been agreed (Index, turnover etc). If so, is client aware of dangers

8.2 Informal type of clause? If not, do clients really want formalistic clause

8.3 If notices etc, is time of the essence

8.4 Could landlord delay indefinitely then activate

8.5 Could landlord's rent prevail on tenant's default? If so, object

8.6 Could tenant activate

8.7 Upwards only? Accepted?

8.8 Tenant to terminate after review

8.9 Review Dates clear and as previously agreed

9. USE

9.1 Ensure permitted use covenant is either absolute but general ("offices") or, if more specific, qualified

9.2 Rent review implications? Ensure hypothetical letting use not more attractive

9.3 Resist positive onerous obligations re use eg: obliged to trade etc

9.4 Ensure that no provisions relate specifically to the original tenant

9.5 Any uses that could be required absolutely prohibited

10. ALTERATIONS

10.1 Could covenant represent an unreasonable restriction on tenant's business: (If so, is there a realistic compromise)

10.2 Are terms ("Structure, structural repairs" etc) clear

10.3 If certain alterations are permitted/or permitted with consent while all others prohibited, can permitted class clearly be identified

10.4 Onerous procedural requirements

10.5 Resist obligation to reinstate at end of term

10.6 Relationship with other clauses etc especially planning

11. OTHER COVENANTS

11.1 Does landlord covenant to maintain shared items

11.2 Normal hours: avoid excessive limitation

11.3 Interest: payable at once

11.4 Landlords legal fees (on negotiation as well?)

12. LREPAIRING COVENANT

12.1 Ensure relevant terms (where used) adequately defined:

"the demised premises"

"interior"

"structure", "structural repair"

"inherent defect"

12.2 Resist covenant that goes beyond repair

12.3 Exclude liability where repair prevented

12.4 Exclude liability for damage etc by an insured risk

12.5 Is full repairing lease of part of a building practical

12.6 In a short letting, is the covenant appropriate

12.7 Do the landlord's and tenant's covenants together deal with everything

12.8 Will rights of access to adjoining property etc be required to comply with covenant

12.9 Old Buildings - Generally:

schedule of condition

proviso of fair wear and tear

12.10 New Buildings - Generally:

relieve tenant of liability for inherent defects and impose upon landlord

if unsuccessful, propose that this operates for a limited term

if dealing with agreement for lease, propose "prevention is better than cure" provision

duty of Care Agreement

landlord to pursue remedies

exclude service charge

13. LANDLORD'S COVENANTS

13.1 Quiet enjoyment

13.2 Restriction on letting adjoining premises for competing trade

13.3 Maintain items that tenants agree to contribute towards,

eg: insurance, land tax, rates etc

14. INSURANCE

14.1 Copy of policy provided

14.2 Landlord's covenant to insure adequate

14.3 Practical to insure in joint names

14.4 Tenant's interest noted

14.5 Landlord obliged to insure against cost of reinstatement

14.6 Landlord obliged to produce to tenant evidence of insurance, change of terms etc

14.7 Deal with subrogation

14.8 If landlord insures with other premises, is method apportioning premium fair

14.9 Are insured risks adequate

14.10 Landlord obliged to reinstate

14.11 Landlord to make-up shortfall

14.12 Suspension of rent included

14.13 Suspension of rent limitations (others payments suspended, only insured risk, limited time, tenant default excluded proportion and time determination): worth trying to amend

14.14 Termination if reinstatement prevented

14.15 Ownership of insurance moneys if rebuilding prevented

15. SERVICE CHARGE

15.1 Is the basis upon which tenant's share determined reasonable

- 15.2 Are the arrangements for payment on account reasonable
- 15.3 Landlord to pay service charge for unlet parts
- 15.4 Cesser of rent proviso to extend to service charge
- 15.5 Are exclusions from landlord's covenant to perform services reasonable
- 15.6 The Services - lifts, air conditioning etc

16. PROVISOS

- 16.1 Limitations on forfeiture for bankruptcy/liquidation

17. SUBLEASES

- 17.1 Acquire copy of superior lease(s)
- 17.2 Consider alienation provisions of superior lease(s): is underletting the subject of absolute or qualified covenant? Advise client
- 17.3 Consent applied for? (Change of use needed too? Absolute/qualified/advise client)
- 17.4 Relationship of key covenants in superior lease(s): repair, alterations etc
- 17.5 Tenant's covenant to "perform" under superior lease(s) appropriate
- 17.6 Covenant by landlord to "perform" under superior lease
- 17.7 Covenant by landlord to seek consent from superior landlord when requested by tenant
- 17.8 Service charge properly dealt with in underlease
- 17.9 Is insurance by superior landlord properly dealt with in underlease
- 17.10 Are any break options in superior lease(s) properly dealt with in underlease

18. PRE-COMPLETION

- 18.1 Final report to client
- 18.2 Searches
- 18.3 Corporate landlord: Companies Registry
Individual: bankruptcy
Freehold Title (Land Charges/Land Registry)
- 18.4 Are demised premises mortgaged etc

19. AFTER COMPLETION

- 19.1 Stamp Duty
 - 19.2 Provide client with summary of major terms
 - 19.3 Deeds
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