

Our
10 Top Tips
for
**Commercial Property
Dispute Resolution**



eric
robinson
solicitors



Commercial Property Dispute Resolution

All commercial premises – offices, shops, factories, warehouses – have the potential to cause problems for those that own them, and those occupying them.

The stakes can get high when disputes begin to affect business. That is why it is important to know how to recognise and manage issues, nipping them in the bud where possible and taking the best legal course where disagreements escalate.

Here are our top tips on avoiding disputes and dealing with them if they arise.



01



What are the implications of entering into a lease?

Business owners have two choices when it comes to taking on a commercial property: buy it or rent it from a landlord. While renting is in many ways a more flexible option, you should not enter into it lightly. A lease is a legally binding contract. Once you sign it, you may find it very difficult to get out of without having to pay the landlord something for the costs he has wasted in the process. It is something we are often asked to advise clients on.

Be as sure as you can possibly be that the premises for which you are signing your lease, are right for you.

“A lease is a legally binding contract.”

02

Are tenants liable to pay business rates?

A lease usually provides that the tenant is liable to pay the business rates due in respect of the property. These will vary from area to area and so, if you are taking on premises, give very careful consideration to your liability before committing. If you later find yourself struggling to pay the rates, your landlord is unlikely to help you out; you are bound by the terms of the lease.

You should also think about payments that are due to the local authority by virtue of you occupying the premises. If you fail to make these payments, your landlord may be entitled to terminate your lease.



03

Do I need a surveyors report when acquiring commercial premises?

Whether you are looking to lease or buy commercial premises you should instruct a professionally qualified building surveyor to inspect and produce a report on the building. They will certify its condition – and this certification is important and valuable. If the surveyor fails to identify issues then they may be liable for losses you sustain as a consequence (the cost of repair work, for example).

We deal with a range of cases involving the condition of properties. A word of advice: make sure to ask the surveyor to investigate all potentially relevant issues. It will help draw out problems and will stand you in good stead if you are forced to take action against your surveyor later on.



“You could be setting yourself up for a fall.”

04

What rights does a tenant have to change the rent?

In their eagerness to take a lease of premises, tenants sometimes agree to rental terms which do not make longer-term commercial sense. Part of the problem with this is that a review of that rent can only take place at certain intervals, as set out in the lease. If you agree to an over-inflated rent at the outset, you could be setting yourself up for a fall. This is because rent review clauses often say that the rent can only be reviewed upwards, and so you will be unable to reduce your rent for the remainder of the term of the lease.

05



Who's name should go on the lease?

It is important that the lease you take out enables you to trade as a business from the premises. A landlord who grants a lease to an individual and later discovers that the building will be used on a commercial basis will be entitled to serve a Section 146 Notice. This could lead to the lease being terminated and the tenant being liable for the landlord's costs.

There will be opportunities to remedy the problem before things come to that, and it is important to get some sound legal advice from dispute resolution specialists to reduce the disruption caused to your business.

06

Can a tenant terminate a lease before the end of the term?

Break clauses allow either party (landlord or tenant) to bring the tenancy to an end during the term of the lease. It is important that they are a properly negotiated term and set out very clearly in the agreement. As a tenant, you should make sure to understand when and how you can exercise your right to end the tenancy – and doing this properly is vital. If you do not comply precisely with the terms of a break clause, the landlord is entitled to treat the lease as continuing and you will be liable for all sums due up until the end of the lease, or until the next available break date.



“Break clauses allow either party to bring a tenancy to an end.”

07

Who is responsible for repairing the premises?

If you take a lease of premises, your landlord will probably be responsible for repairing the main structures and fabric of the building. It is different if you have bought the property - then you will be responsible for all repair work. You should ascertain what statutory obligations apply to your premises so that you can budget for any works that you will be legally obliged to carry out.

Be aware that you may be responsible for ensuring that the premises comply with all statutory notices, regardless of whether you are a tenant or the owner of the building.





“The property is never truly yours to do with as you please.”

08

Is it wise to insist upon a schedule of condition?

It is usual – and advisable – for the landlord and tenant to agree a schedule of condition at the outset of the lease. This is evidence of the state which the property is in, and it acts as a benchmark. As a tenant you will not be required to maintain the premises in any better condition than is documented in the schedule.

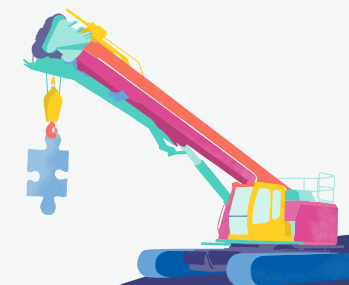
If you choose not to include a schedule you may find yourself liable to put dilapidated premises into a full state of repair.

09

What is the minimum standard of repair imposed on a tenant?

Think of your tenancy as an exercise in borrowing; the property is never truly yours to do with as you please. You will be allowed to alter it, but only as agreed beforehand by the landlord. At the end of the term you will need to make sure that it is returned in the condition specified in the lease. Repairing and maintaining the property as you go along is the best policy. It means you can avoid the last-minute panic and expense of touching up paintwork, fixing floors and mending broken taps.

A landlord who is dissatisfied with the condition of their premises can serve a schedule of dilapidations setting out the repairs that need to be undertaken. Keeping the property well-maintained throughout the term of the lease could well prevent this from happening.



Is it wise to obtain legal advice when issues arise?

The landlord/tenant relationship is an interesting one. It relies on co-operation and reasonableness, and from time to time, issues arise which chip away at this. The same applies to relationships between commercial property owners and their neighbours and the authorities. If disagreements between parties become entrenched, there is rarely a good chance of getting things back on track - and a legal battle becomes a real possibility.

Tackling the tricky situations early on is always the best policy. This does not necessarily mean a tough solicitor's letter or an ultimatum. In many cases it simply means getting advice on your position; knowing where you stand so that you are well placed to handle the situation in the best way - legally and practically.

Whether your business leases property to tenants, or occupies premises owned by a landlord, complex legal issues can arise at any time.

Getting early advice from specialist property lawyers can help resolve problems without unnecessary expense and disruption to your business. The team at Eric Robinson Solicitors advises and assists landlords and tenants in all property-related disputes including dilapidations and disrepair, breach of covenants, forfeiture, and lease renewals. We always offer competitive rates for our services.

For many landlords the lease will provide that they can recover their legal costs from the tenant, and we can assist you in doing this.



Talk to one of our advisors to find out more:

02380 218000

dispute@ericrobinson.co.uk

ericrobinson.co.uk



Contact Us

Southampton (Bitterne)

359 Bitterne Road
Southampton
SO18 1DN
02380 425000

Changers Ford

6-8 Brownhill Road
Changers Ford
Eastleigh SO53 2EA
02380 254676

Lymington

Heathcote House
37 St Thomas Street
Lymington SO41 9NE
01590 647670

Southampton (Hedge End)

Vanbrugh House
Grange Drive, Hedge End
Southampton SO30 2AF
02380 226891

Winchester

Regency House
2/4 Southgate Street
Winchester SO23 9EF
01962 790553

Richmond (London)

4 The Square
Richmond
Surrey TW9 1DZ
02031 467300