TAKE NOTICE – LEASE ADVISORY 2024

Lambert Smith Hampton

In conjunction with our clients we have reviewed their property portfolios to highlight key lease dates in 2024 in order to agree a strategic approach on how and when lease expiries, rent review or break options are instigated, negotiated and completed.

The initial advice provided by Lambert Smith Hampton allows our clients, both owners and occupiers of commercial property, to understand the options available and to budget appropriately. For some client's key lease dates can be a daunting prospect with much to consider, particularly at the expiry of an existing lease.

The *Business Tenancies (Northern Ireland) Order 1996* governs business tenancies in Northern Ireland and set outs specific requirements for a landlord or tenant to instigate a lease renewal. As a minimum this requires the provision of 6 months' prior Notice to the other party (maximum 12 months), set out in a specific statutory form.

Landlord:
Form 3 Landlord's Notice to Determine
Under Article 6 of the Order

Tenant:
Form 4 Tenant's Request for a New Tenancy
Under Article 7 of the Order

The process of reviewing key dates and obtaining initial advice on rental value should start early, ideally in the first half of the preceding year, to avoid statutory Notice dates being missed.

For Example:

A lease is contractually due to expire on 31st January.

Lease Expires On:
31st January

A statutory Notice should be served **prior** to 31st July of preceding year (providing the minimum Notice period of 6 months and allowing some extra days for postage).

Serve Notice Prior To:
31st July of preceding year

This ensures a new lease will commence on 1st February, the day after the contractual expiry of the previous lease.

To Begin New Lease On:
1st February

As an owner or occupier of commercial property, if your lease is due for renewal in the first half of 2024 and this is not something that you have considered to date, it is imperative to take advice.

If you have missed the minimum 6 month Notice period, a statutory Notice can still be served but allowing a minimum of 6 months' notice will 'push out' the commencement date of the new lease. In the context of rent, this may or may not be beneficial. It is therefore important to discuss this with an industry expert to understand the process, options available, current market trends and rental evidence, the implications of serving notice, cost, timings and risk. Armed with these facts, you can then agree an approach that best aligns with your desired business outcomes.

Certain property markets currently pose challenges and from a landlord perspective there is a balance to be achieved at lease renewal between securing a new lease from a tenant -v- instigating a renewal and potentially crystallising a reduction in rent. Challenges experienced by a landlord in a particular market may represent opportunities for a tenant or vice versa. A strategic approach ought to be considered by both a landlord or tenant before formally instigating a lease renewal and seeking early advice is key.

For a variety of reasons, it may benefit some landlords not to instigate a lease renewal and instead a tenant will 'overhold' on its existing lease terms i.e. remain in occupation beyond a contractual lease expiry date at the passing rent. This happens when no *Business Tenancies Notice* bringing the lease to an end, and proposing renewal terms, is served by either party.

What are the potential reasons/benefits of not formally instigating a renewal?

Landlord

One of the main reasons for not formally instigating a lease renewal is if the passing rent is in excess of the current market rental value of the premises.

Tenant

It may suit a tenant to overhold if they require flexibility to vacate as they could do so by providing a minimum of 3 months' written notice to the landlord.

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Serving a Business Tenancies Notice at renewal can sometimes be viewed as an aggressive approach. While this is not the case, it can lead to temptation for a landlord or tenant to commence renewal negotiations with the opposing side without serving a formal notice under the legislation. This can result in a variety of issues arising that would not be the case when a Business Tenancies Notice is served.

Without the existence of a Business Tenancies Notice:

There is no recourse for a dispute in relation to rent or lease terms to be referred to the Lands Tribunal for determination. 1

The implications of this can be quite far reaching.

Example A:

Landlord's Notice to Determine

A lease is contractually due for renewal on 1st December 2023 and on the basis that the market supports an increase in rent, a landlord informally commences negotiations with the tenant in October 2023. By May 2024 renewal terms have not been agreed and the parties reach an impasse in relation to the revised rent. In order to refer the matter to the **Lands Tribunal**, the landlord has no option at this stage but to serve a **Landlord's Notice to Determine under Article 6 of the Business Tenancies (NI) Order 1996** determining the lease and proposing renewal terms. Crucially, from the date of service, a minimum of 6 months' notice must be provided for the new lease commencement date which will then be November 2024. This is nearly a year later than the original lease expiry and during this time, the landlord will continue to receive the passing rent.

Example B:

Tenant's Request for a New Tenancy

A lease is contractually due for renewal on 1st December 2023 and on the basis that the market supports an increase in rent, a landlord informally commences negotiations with the tenant in October 2023. By May 2024 renewal terms have not been agreed and the parties reach an impasse in relation to the revised rent. In the absence of a formal Notice from the landlord, the tenant serves a **Tenant's Request for a New Tenancy under Article 7 of the Business Tenancies (NI) Order 1996.** Instead of providing the minimum Notice period of 6 months for a new lease to commence in November 2024, the maximum Notice period of 12 months is provided for a new lease and rent commencement date in May 2025. The tenant therefore secures a rental saving, paying the passing rent and not the higher market rent until May 2025.

There will be negotiation between the parties as to the lease commencement date. 2

The relevance of this depends on whether your interest is as landlord or tenant and if the agreed rent is increasing or decreasing. **By not serving Notice you could be allowing the other party to benefit from an increased or decreased rent for a longer period than is necessary.**

In summary, as an owner or occupier of commercial property, it is important to seek early advice in respect of a lease renewal in order to achieve the best possible outcome. Should you receive a statutory Notice as either landlord or tenant or wish to discuss instigating a lease renewal, please get in touch with the Professional Services Team at Lambert Smith Hampton, Belfast.

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