

Exercising a break clause: Landlord's step-by-step guide

Are you thinking about ending your tenant's lease? You will need to follow the break clause provision in the lease and notify your tenant in the correct, legal manner in order for termination to be effective.

Before serving the break notice

- **Break clause** – you must consider the provisions of the break clause in the lease carefully. If you are not the original landlord (for example, you have purchased the previous landlord's interest in the premises), you may not be able to exercise the break right where the break right is expressed to be personal to the original landlord under the lease.
- **Break date** – this will need to be checked in the lease. For example, can the lease be terminated at any time (this is known as a rolling break), or can the lease only be terminated after a specified date? If there is a specified date, the tenant will have a minimum period in occupation before the break becomes exercisable.
- **Legal owner** – Only the legal owner of the landlord's interest can exercise a landlord's break right. This can be checked at the Land Registry by obtaining an official copy of the register.
- **Joint landlords** – if there is more than one landlord, then all landlords must serve the notice. That is unless one of them has the authority of all to exercise on their behalf.
- **Tenant's identity** – Because the break notice must be served on the registered proprietor, you must confirm the identity of the current tenant. If the tenant's interest is registered at the Land Registry, obtain official copies. It may also be necessary to examine recent rent demands in case the recipient of the rent demand or the person who makes rent payments is different from the registered proprietor. Where a tenant's interest is not registered, a landlord should check its records and establish to whom the lease was last assigned (if applicable), to whom rent demands are sent and who makes rent payments.
- **Break conditions** – are there any conditions that will need to be satisfied by you, as a landlord, to operate the break? If so, at what point in time do these conditions need to be met? The most common condition on a landlord's right to break is that the landlord must be intending to redevelop the property. It will be a matter of construction of the break clause (essentially, what is in your lease) whether the relevant time for compliance is the date of serving the break notice, or the break date, or both. If there are any conditions attached to the right to break, they must be strictly adhered to. If you are unsure in respect of this, obtain legal advice! A solicitor will be able to decipher your lease and ensure you comply with any conditions attached therein.

- **Subleases** – If a headlease is terminated by the exercise of a break clause, then any underlease also ends (where, for example, your tenant has sublet the premises to someone else). You will have to establish whether the sublease is protected under the Landlord and Tenant Act 1954. If it is, the subtenants will be entitled to request a new lease.

Serving the break notice

- Prepare a break notice which complies with the requirements provided by the lease and reflects the language of the break clause. Using a solicitor to draft this is the best course of action in this respect.
- The lease will specify how the notice should be served and when it will be deemed to have been received. Check the service provisions carefully as these requirements will be strictly construed and must be strictly complied with.
- If a minimum period of notice must be given to exercise the break right, allow sufficient time for the notice to be served.
- Obtain proof of service of the break notice and, if possible, acknowledgement of receipt from the tenant.

What happens after the break notice is served?

- Diarise the break date. If there are any conditions attaching to the exercise of the break clause which must be fulfilled at the break date, consider what steps the landlord must take to satisfy the conditions. Any conditions attached to the right must be strictly performed.
- If the tenant challenges the validity of the notice, or if you realise that the notice served is defective, consider serving a further notice without prejudice to the validity of the first one.
- If there are any subleases, a section 25 notice on any subtenant(s) may be required if they have the right to be granted a renewal lease.
- Consider whether the break date falls in the middle of any rental periods. Any rent paid in advance in respect of the period after the break date will not be recoverable by the tenant in the absence of an express provision.
- Consider whether, on the break date, there is a potential dilapidations claim you can pursue. In other words, are there outstanding disrepairs at the property which the tenant is responsible for repairing?
- Consider whether a formal handover should be arranged with the tenant or their agent(s) on the break date.

What happens on and after the break date?

At this stage, you will need to:

- Check whether the tenant has vacated the premises and returned its keys in accordance with the terms of the lease and any handover arrangements as agreed. If you have validly exercised the break right, but the tenant remains in occupation after the break date, you can treat it as a trespasser. If the tenant challenges the validity of the break, you may want to now consider issue proceedings seeking possession of the premises.
- If any subtenants have not vacated, despite the fact that the sublease has also terminated on the break date, they may also be treated as trespassers.
- Next, check whether the tenant has returned the property in accordance with the terms of the lease, including removing its chattels and fixtures and complying with its reinstatement obligations. For example, a tenant may have installed partitioning in the premises. You should ensure the tenant has removed this, so you are not left with it upon termination.
- If the lease is registered at the Land Registry, the tenant's title will need to be closed. The lease may state whether there is an express obligation for the tenant to do this. Otherwise, the landlord will have to deal with the removal of the entry from the Land Registry against the landlord's title.

If you require further information in respect of break clauses or if you are considering serving a break clause on your tenant, please contact us at enquiries@solegal.co.uk