

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

Are you thinking about ending your lease? You will need to follow the break clause provision in the lease and notify your landlord correctly in order for the termination to be effective.

Before serving the break notice

- **Break Clause** - You must have the right to exercise the break clause. If you are not the original tenant (for example, the lease was assigned to you from the previous tenant), then you will need to check, in your lease, whether the break right is expressed to be personal to the original tenant under the lease. Your solicitor will be able to verify this, but upon assignment, the original tenant's right to exercise the break clause is lost.
- **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?
- **Legal owner** - Only the legal owner can exercise a tenant's break right. The simple way to check this is by obtaining official copies of the register at the Land Registry.
- **Joint tenants** - if there is more than one tenant, then all tenants must serve the notice. That is unless one of them has the authority of all to exercise on their behalf.
- **Landlord's identity** - Because the break notice must be served on the registered proprietor, you must confirm the identity of the current landlord. If the landlord's interest is registered at the Land Registry, obtain official copies. It may also be necessary to examine recent rent demands in case the person who makes the rent demands is different from the registered proprietor of the landlord's interest. Where a landlord's interest is not registered, the tenant should check who sends the rent demands and to whom rent payments are made.
- **Break conditions** - are there any conditions that will need to be satisfied by you, as a tenant, to operate the break? If so, at what point in time do these conditions need to be met? Break clauses may impose several pre-conditions on the tenant, which may be absolute or qualified. For example, an absolute condition states that the tenant has paid the rent and adhered to its covenants and conditions. If you are in breach of a covenant or condition, you will be prevented from exercising the break clause. On the other hand, a qualified condition is such that the tenant is required to have 'materially' or 'substantially' or 'reasonably' complied with its obligations.

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. It is recommended you use a solicitor in order to draft this.

- 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 landlord.

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 landlord 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.
- 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 what repair or reinstatement obligations you need to comply with by the break date or whether there is a possibility the landlord will pursue a dilapidations claim on the break date for any outstanding repairs at the premises. Legal advice should be obtained in this respect.
- If you change your mind and wish to remain in the property after the break date, consider approaching the landlord to agree that the break will not be effective. Your solicitor can take this step for you.
- Consider whether a formal handover should be arranged with the landlord or their agent(s) on the break date.

What happens on and after the break date?

- If you have served a valid break notice and have satisfied the conditions for the operation of the break clause, your lease will have come to an end on the break date. This is regardless of whether or not the lease is protected under the LTA 1954.
- It is important to note that all rents and payments (including interest on late or unpaid payments) must be paid up to date on the break date. Failure to do this will result in the break clause being invalid. This is potentially the cause of the break clause being invalid. All payments must be up to date so ask your landlord for a full statement.
- You must vacate the property and return the keys to the landlord in agreement with the terms of the lease and any arrangement you may have made with the landlord or its agents. Failure to do so may result in the tenant being treated as a trespasser at the premises.
- If any conditions to the break right have *not* been satisfied, it will be necessary to ascertain whether the landlord has waived the conditions so that the break is effective. For example, waiver

by conduct may occur where the landlord accepts possession of the property following the purported exercise of the break.

- If your lease was registered at the Land Registry, the leasehold title will need to be closed. Your lease will state if this is an obligation that will need to be borne by you or the landlord.

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