

Surveyors say landlords adopting flexible approach

SCS calls on Minister to host property forum on rent review clauses

Sunday 3rd May 2009. The Society of Chartered Surveyors has said it believes landlords are adopting a flexible and realistic approach where warranted to tenants who have asked for rent deferrals or rent reductions.

In a submission to the Minister for Justice, Equality and Law Reform, the SCS said that according to its members landlords are agreeing confidential concessions - notwithstanding the terms of the lease - to help tenants get through the current economic difficulties.

The SCS was recently invited by the Minister for Justice, Dermot Ahern to address how the Society and its members might “contribute towards ensuring that we continue to have a dynamic and vibrant retail sector which supports employment within the economy and which, at the same time, provides an appropriate return for investors”

The President of the Society, Sean McCormack said “its worth pointing out at the outset that we act for landlords and tenants on a regular basis and that we also appoint Arbitrators and Independent Experts when rent disputes arise. So our members are at the coalface and are very aware of the pressures the current recession has brought to bear on both sides. Our members are telling us that landlords are carefully weighing up the commercial reality of losing a tenant against the legal and financial obligations of that tenant and acting accordingly.”

The submission notes that while some retailers have been hit hard by the economic downturn and have raised legitimate concerns, their views represent only one side of the story. It points out that landlords must also deal with a set of challenges including the historic purchase price of property, funding terms and fluctuating valuations.

According to the submission “a lot of commercial property (retail, office, industrial) is owned by a variety of institutions and/or funds who have acquired the properties in order to generate rental income to pay pensions or dividends towards policies or shareholders.”

McCormack said commercial leases and rent reviews are complex agreements made at a particular moment and thereafter are subject to the ebb and flow of supply and demand. “We have a highly efficient system in place for dealing with rent disputes but given the legal context of a commercial lease any interference in existing contracts could give rise to legal difficulties. For that reason and to ensure that no one group is placed at

serious disadvantage we believe any interference would need to be delicately nuanced.
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As an illustration of the complexity of the area, McCormack pointed to the matter of fluctuating rental values both upwards and downwards. “This is not a new phenomenon.” according to McCormack. “In fact, over the last 30 years, we have witnessed downward pressure on rents on a number of occasions. The market has responded adequately without outside interference. Leases when entered into reflect market conditions at that time. It is open to both landlords and tenants to alter, by negotiation, the original agreement. This has and continues to be necessary to ensure that tenants in occupation of business premises continue to operate and remain in business, so that landlords receive a necessary return on their investment”.

The SCS is calling on the Minister to convene the stakeholders to review the practice in commercial real estate leasing in Ireland. McCormack said that “We need to tease it out, examine and explain what is at stake and gather all the information together. We also propose gathering information from a survey of our members. Then we will be in a position to map a course forward.”

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