

Landlord and Tenant

Society of Chartered Surveyors Ireland

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Background

Mechanism to keep rents up to date with market/provide for inflation.

Originally leases had no reviews – 99 years – no inflation.

From late '50's early 1960's leases were 28/42 years.

Typical reviews were 7 or 14 yearly.

Lease lengths shortened – 21/35 – 20 – 10/15.

Review pattern settled at 5 yearly – except for a brief period in the 1970's when 3 yearly were common.

Post Jan 2010 Leases v. Legacy leases.

Basis of Review

Varying Bases – read the lease!!

Open Market

% of T.O. with base rent

% of T.O. with no base.

Linked to CPI

Link to other property type –
3rd generation offices in...

% of Market Rent

Cap & Collar

The Process

Inspection

Read the lease

Advice to Client

Service of Notice – Required

Time of Essence/Deemed?

Figure required?

Counter Notice needed?

Negotiations

Referral to Third Party –
Procedure?

The Process (cont'd)

Settlement – memo's
etc.

Failure – Reference to
Third Party – steps.

Who appoints Third
Party?

Arbitrator or Expert –
choice – when to use?

Agree 3rd party or refer?

3rd Party Process

Arbitrator v Expert

Arbitration

Must invite evidence – oral/written.

Cannot rely on own knowledge.

Actions governed by Arbitration Act 2010.

Process is quasi judicial.

Can only decide on evidence placed before tribunal.

Costs at discretion of Arbitrator – unless agreed.

Reasoned Award Generally.

Extremely Limited Scope for Appeal to High Court.

Insulated against Claim for Negligence.!

Expert

Need not hear evidence.

Uses own Expertise.

Can/Must make own investigations.

Governed by Common Law.

No power of Discovery.

No Hearing

No Reasons.

Costs as per Lease.

Limited Possibility of Appeal.

Open to Claim for Negligence.

Role of The Surveyor

- Dual Role – Expert Witness/Advocate.
- Role of surveyor as Expert Witness.
- Duties of the Surveyor acting as Expert Witness.
- Statement of Truth.
- Role of Advocate.
- Practice Statements and Guidance Notes.
- Fee - Incentivised?

Other Issues

- ‘Non Standard’ Leases.
- ‘Contra Preferentum’, Lease Rectification etc...
- Tenant's Improvements.
- Upward Only Clauses post 2010.
- Lease vs Licence - Tara Street Dart Station
- Landlord’s Consent on assignment –
Perfect Pies v Chupn Ltd.
Meagher & Anor. V Luke J Healy Pharmacy Ltd.
- ‘Contra Preferentum’, Lease Rectification etc...

Lease Renewal

- Determined by Circuit Court Judge.
- Governed by Landlord and Tenant (Amendment) Act 1980.
- Lease of 5 to 20 years – Tenant Decides!
- Lease on Same Terms as Existing, except...
- Gross Rent.
- ‘Tenement of Similar Character ..Comparable Area..’.
- How triggered – Notice to Quit/Notice of Intention to Claim Relief.

Lease Renewal (Cont'd)

- Grounds for Refuting Lease Renewal.
- Compensation – How Assessed
- Court Lease – No Automatic Rent Reviews.
- Rent Reviews decided by Circuit Court.
- Reviews not 5 yearly!
- Process Expensive and Uncertain.
- Appeal to High Court.

Things to Watch (1)

- Rent Review Date.
- Basis of Review.
- Reference to Whom?
- Choice of Arbitrator or Expert.
- Comparisons - Proving.
- Headline vs Net Effective Rents.
- Notional Condition on Review.
- Notional Term on Review.
- Hierarchy of Evidence.
- 'Without Prejudice' Correspondence.

Things to watch (2)

- Notional Term.
- Service of Notices.
- Time of Essence/'Deemed'.
- Floor Areas – Agreed/Recited?
- Disregards – Usual and Unusual.
- Presumption of Reality.
- Improvements.
- Hierarchy of Evidence.
- Post Review Evidence.

Periodic Tenancies

- Approach with Caution!
- Commences on day after lease expires.
- How Terminated?
- What if no Notice Served by Tenant?
- ‘Half a Year’s’ notice – 183 days.
- Mealiffe v Walsh.
- Mesne Rates!

Reading

- Handbook of Rent Review - Reynolds & Fetherstonhaugh.
- A Surveyor's Handbook – Rent Review – Loveday, Guest & Rainey - RICS Books.
- Case in Point/Rent Review – Male & Jefferies – RICS Books.

Case Law

- Hynes v Independent Newspapers.(Time of Essence)
- Starmark Enterprises (Time of Essence).
- Calderbank v Calderbank (Costs)
- Macey v Tyler (Special Tenant).
- Tea Trade Properties v CIN Properties (Notional Term).
- Canary Wharf Investments (3) Ltd v Telegraph Group Ltd (Presumption of Reality).
- Co-Operative Wholesale Society Ltd v National Westminster Bank plc. (Headline Rent).
- Plinth Properties Investments v Mott Hay & Alderson (Restricted User).

Case Law (cont'd)

- Broadgate Square plc v Lehman Bros Ltd. (Headline Rent).
- Scottish Amicable Life Assurance Society v Middleton Potts & Co. (Headline Rent)
- London & Leeds Estates Ltd v Paribas Ltd (Notional Condition).
- The Land Law Company Ltd v Consumers Association Ltd (Restricted User).
- Segama NV v Penny Le Roy Ltd (Post Review Comparables).
- Land Securities Plc v Westminster City Council (Admissibility of Arbitrator's Award as Evidence).
- Smith v CIE (Lease v Licence).

THANK YOU

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