

Commercial Property Factsheets

Getting out of a lease

What are your options?

Options depend on your lease. You may be able to:

- Terminate the lease, under a break clause.
- Negotiate termination with the landlord.
- Assign the lease - ie sell it to a new tenant.
- Sub-let the premises, or part of them.

Termination under a break clause

If you can terminate at a specified point, because there is a 'break clause' in your lease, you may have no continuing liabilities to the landlord. Check the notice you have to give, and that you have complied with conditions in the lease, such as keeping the premises in repair, and that rental payments are up to date (breaches may lose you the right to terminate).

Termination - no break clause

If you can negotiate termination, you may have no ongoing liabilities to your landlord but he will try to get you to pay - a fee for terminating, payment of his professional fees and payment for repairs and redecoration.

Assigning

Finding a new tenant to take over your lease - someone to 'assign' it to - is usually the best way of realising any value it has but leases for fewer than three years often prohibit assignment and you may need your landlord's consent - which usually can't be unreasonably withheld. Or there may be restrictions on use that limit who you can assign to.

If you can assign, you'll usually have legal liabilities for all future payments owed by future tenants, or have to guarantee some or all of the next tenant's payments. The landlord will try to negotiate other payments from you that you may be able to pass onto, or share, with the new tenant.

Assignment negotiations can cost more and take longer than negotiations to terminate. First, you have to find the new tenant, and may have to pay an agent to help. Second, you have to negotiate with both the new tenant (who will pay the landlord's professional fees? Will the new tenant pay you a premium, or vice versa?) and the landlord.

If your lease has less than two years to run it's probably better to negotiate to terminate the lease, to avoid the costs and risks of assigning it.

Sub-letting

Rental from sub-letting could cover part or all of your rent and leave you free to move but sub-letting won't get you out of the lease - you retain all your liabilities as a tenant and you have the additional burden of managing your sub-tenant.

Sub-letting may not even be allowed - check the lease for restrictions on sub-letting - or you may need the landlord's consent.

Strengthen your hand

Whether negotiating an assignment or termination with the landlord put yourself in the landlord's shoes:

- Is the market strong? The more potential reliable new tenants out there, the more reasonable the landlord is likely to be with you.

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- Does the landlord have cashflow problems? If so, the landlord may want a quick agreement.
- Has the landlord breached the lease? Use that in your negotiations.

You need judgement, experience and a good knowledge of the local market so use both your own - and your adviser's - negotiating skills. Don't give your position away. If the landlord knows you are desperate to get out of the lease, the landlord will have the upper hand.

If in doubt, **take legal advice**.