

RICS Small Business Retail Lease

An Introduction for Professional Advisors

In association with: **BRITISH RETAIL CONSORTIUM**
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Background

The British high street is in decline. There are a number of factors that are contributing to this from the changing consumer behaviour to the high street becoming a very expensive place to be. Consumer spend on the high street is half what it used to be and continues to fall whilst there has been a rise in spend in out-of-town shopping centres, supermarkets and online. A suite of measures and incentives are required to attract businesses back to the high street.

One of those measures is to address the often complex and time consuming commercial property leasing process. RICS and the British Retail Consortium have been working to address how the commercial property leasing process can be improved to encourage new businesses to take up space on the British High Street.

Making the leasing process shorter and less complicated for a small/new business is intended to attract them towards taking up vacant space on the high street. This simplified contract provides a tenant with fixed property costs and a clear picture of the responsibilities they're signing up to.

For the landlord they have achieved a rental income on a previously unoccupied space that is now re-establishing its viability in the market place. For both parties the costs of a long lease negotiation process are significantly reduced.

This lease has been drafted with the principles of the industry approved Code for Leasing Business Premises in mind. This can be viewed at www.leasingbusinesspremises.co.uk

Lease Renewal Rights

Two versions of this lease are available. One which has the protection of the Landlord and Tenant Act 1954 and one which does not.

The Code for Leasing Business Premises states that the fallback position under the Landlord and Tenant Act 1954 is that business tenants have rights to renew their lease. It is accepted that there are a number of circumstances in which that is not appropriate. In such cases landlords should state at the start of negotiations that the protection of the 1954 Act is to be excluded and encourage tenants to seek early advice as to the implications.

Specific Details of RICS Small Business Retail Lease

- We have produced the lease in short form for retail property, in relatively simple terms, flexible, for a short term lease (up to 5 years) with no rent review.
- The lease is intended as suitable for lock up shop/high street type retail property. We expect it to be particularly useful for smaller landlords and smaller tenants (eg business start ups)
- The landlord will have to provide an Energy Performance Certificate to the prospective tenant.
- We do not expect Carbon Reduction Commitment considerations to apply. This assumes a small landlord, a small tenant, and direct metering of electricity and gas supplies.

Particulars of Lease

- A series of items need to be added in e.g. the identity of the parties, the address of the property and the building, and the amount of any deposit, as well as the length of the lease, the rent payable, rent free period and the permitted use.
- For the permitted use, we intend this use be fixed as the lease is not a long term property interest.
- 1954 Act protection. We have produced two versions of the lease, one protected, the other not. Both parties need to consider which is appropriate to the particular circumstances. If the lease is not to be protected the Landlord must ensure that appropriate notices are served and a statutory declaration signed by the tenant at the right time with the necessary details inserted in clause 14. If this is not done the lease will have the protection of the 1954 Act.
- Plans. Ideally a plan should be attached showing the extent of the property, and also, where appropriate the building

Lease Terms

- **Insured risk** – we have included a detailed list. The lease includes a duty on the landlord to insure. The definition is also relevant for clause 6.4.2 in relation to damage by an “insured risk”.
- **Clause 5 – Rent Obligation** – Please note that rent is payable monthly in advance.
- **Clause 5 – Insurance** – There is no obligation on the Tenant to pay extra for buildings insurance. The general aim is that with a short term lease, the tenant’s liabilities should be readily understood. It is for this reason there is also no service charge.

The tenant is only responsible for rent and (as usual) all outgoing.

Budgeting and a business plan is therefore much easier. To this extent, the issue as between landlord and tenant is one of pricing.

- **Clause 6.4 – Repair/Decoration** – Under clause 6.4.1 the tenant must keep the property clean, tidy and in no worse state of repair and decoration than that in which it now is/was, depending on whether this is the renewal of an earlier lease. The lease requires a schedule of condition to be attached. If it is a lease renewal, the same schedule of condition would be used. Damage by insured risks is excepted. The Schedule of Condition should be checked and agreed by both parties.
- **Clause 6.5 – Alterations** – The tenant may have a *facia* sign, with landlord’s approval not to be unreasonably withheld as to design, size and position. Without consent, the tenant may erect internal counters, shelving, partitioning etc, subject to the tenant removing these items at the end of the lease. The tenant may not carry out other alterations. If any other alterations are needed this should be agreed and documented before the lease is signed.
- **Clause 6.9 – Disposal** – The tenant may not sublet. Landlord’s consent to an assignment of the lease is not to be unreasonably withheld. We believe it is reasonable for the tenant to be able to assign, rather than have a prohibition on any disposal. The tenant will have started a business, and should be able to benefit from its disposal. Please note there is no automatic duty on the outgoing tenant to give an Authorised Guarantee Agreement. This position will therefore be governed by statute, with an Authorised Guarantee Agreement to be entered into where the landlord reasonably requires.
- **Clauses 6.10/6.11 – Statutory Requirements/Insurance Requirements** – These clauses require the tenant to comply with both statutory requirements and insurers requirements.
- **Clause 6.16 – Deposit** – We have included basic provisions to allow for the tenant to pay a deposit to the landlord at the beginning of the lease. The amount should be agreed at the outset. The landlord/landlord’s agent would hold the money against any breach of the lease, this potentially including rent and lack of repair.

- **Clause 8 – Damage** – If the whole or a large part of the property becomes unfit for use or inaccessible, then (a) rent is suspended, and (b) either party may end the lease by giving notice to the other. As this is a short term lease, it would not be right to require the tenant to wait for up to 3 years while the property was rebuilt.
- **Clause 12 – Tenant Break** – We have drafted the lease to give the tenant flexible break arrangements. The tenant may break the lease at any time after a given date by giving a particular length of notice. The only condition is therefore the need to give the right notice. The agreed date and period should be included in clause 12.1

Additional Items

- **Service Charge** – To allow the prospective tenant to budget accurately, and to prepare a detailed business plan, perhaps for its bank, we have prepared the lease with no service charge provisions. Again, this is a pricing issue for the parties.
- We have included in clause 7.2 an extra landlord’s obligation beyond the quiet enjoyment and insurance obligations. Assuming a lock up shop on the ground floor, with residential or offices above, occupied separately, a tenant would expect a landlord to carry out repairs where the lack of repair affected the tenant’s ability to trade. As examples, a roof leak, or an overflowing water tank, or broken pipe, may all be relevant. These are examples of what we cover in clause 7.2.
- We have included clause 13 to cover resolution of disputes i.e. alternative dispute resolution, rather than immediate resort to the courts.

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RICS is an **independent** professional body originally established in the UK by Royal Charter. Since 1868, RICS has been committed to setting and upholding the **highest standards of excellence and integrity** – providing **impartial, authoritative advice** on key issues affecting businesses and society.

RICS is a **regulator** of both its individual members and firms enabling it to **maintain the highest standards** and providing the basis for **unparalleled client confidence** in the sector.

RICS has a worldwide network. For further information simply contact the relevant RICS office or our Contact Centre.

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