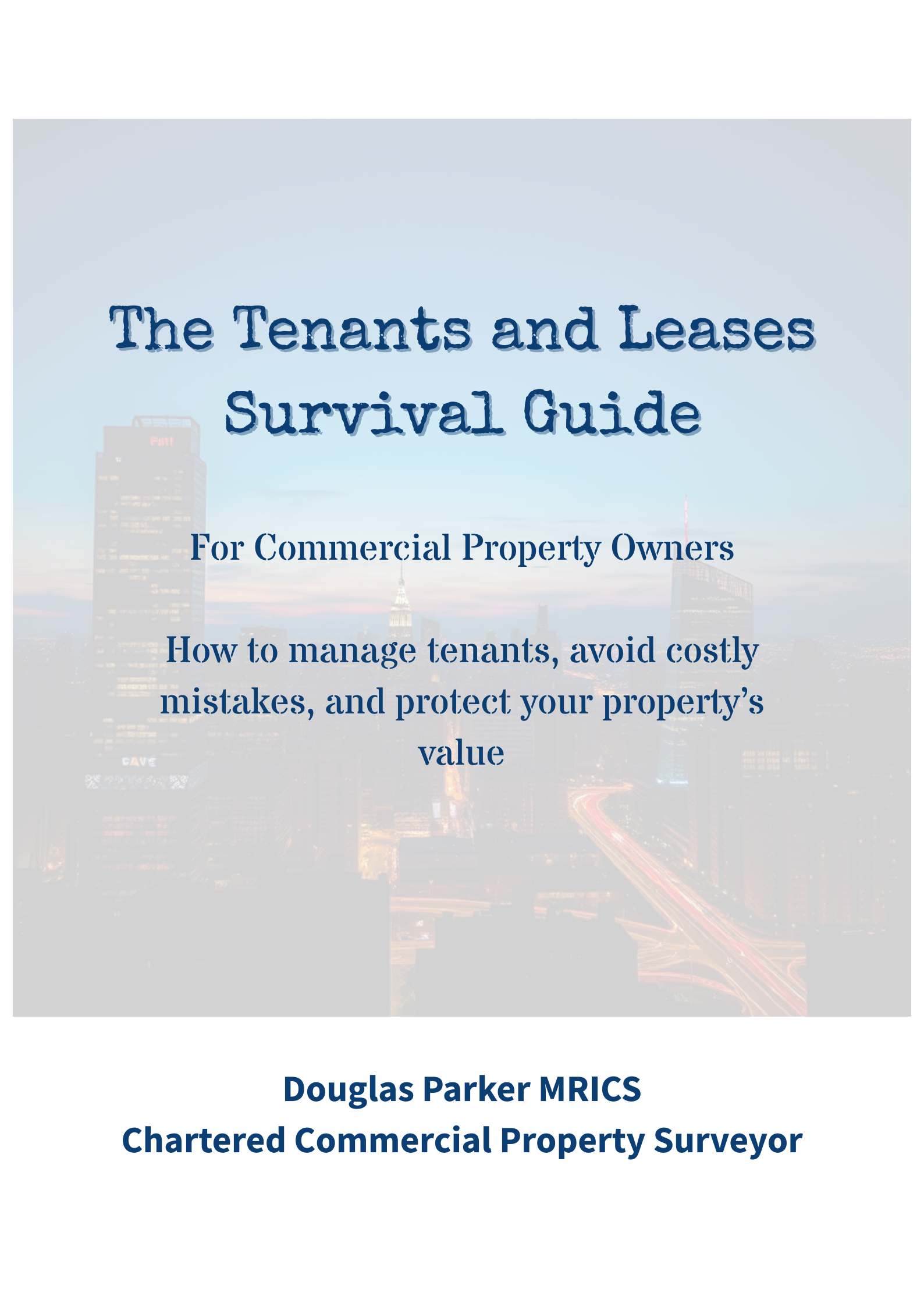




The Tenants and Leases Survival Guide

For Commercial Property Owners

How to manage tenants, avoid costly
mistakes, and protect your property's
value

Douglas Parker MRICS
Chartered Commercial Property Surveyor

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Getting Started

1. Introduction

Having to deal with problem tenants is one of the principal reason investors and landlords sell properties. Tenants can be a dream in some cases – rent paid on time, they will keep the property in perfect condition and even check with you if they can give it a lick of paint or invest in more fixtures. Some however can make your life extremely difficult. You are not alone.

Private landlords generally buy commercial properties as a means of generating income from investment capital. This might be windfall cash (such as an inheritance) or it might through a self-invested pension vehicle. Landlords can also be in the form of an owner-occupier business which sub-lets surplus space to another business. In all cases, this is a substantial sum to invest. A co-operative tenant can make the difference between a successful investment and a disaster.

This book will look at all potential problems that a landlord is likely to experience in the term of ownership of the property. Of course some might be obscure (in which case specialist advice might be necessary) but the common ones are covered alongside the most appropriate solution.

It should be noted that in all cases of dealing with problem tenants, any solution must be proportionate, legal, justified and ethical. A pragmatic approach also helps, and the most important consideration should always be what would happen in the worst-case scenario. This tends to be where the tenant discreetly vacates the property, leaving a large sum of arrears and damage for the landlord to deal with. This is not an uncommon occurrence and we will look at each of these individual issues separately.

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One of the main pieces of advice I would offer is that regular visits to the property to meet the tenant and speak about their business is probably the best way of foreseeing occupancy problems and addressing them before they become the landlord's problem. Alternatively, a reliable management agent can do this, but it's important the landlord ensures regular visits are undertaken and reported on. Commercial property makes an excellent investment vehicle, but it's not really a 'hands-off' investment.

At several places in this publication, reference is made to the Royal Institution of Chartered Surveyors (RICS) Code for Leasing Business Premises (1st Edition February 2020). This provides guidance for best practice in granting and agreeing leases and an explanation of terms that are considered fair. Note however this is a guide and is not binding on non-RICS registered parties and companies.

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2. What you Need to Know

- Always act reasonably, ethically and within the law.
- Always take an active interest in the occupation of the tenants. Do your best to foster a good working relationship.
- Seek legal advice if in any doubt.
- Regular property inspections are very important to prevent problems escalating.
- Always read and understand the lease. The terms within will dictate the action to be taken in most circumstances.
- A simple constructive conversation with a tenant will be the most effective, swift and cheapest way of dealing with problems in the first instance. Never be aggressive but listen to what the tenant has to say before attempting to get your view across.
- Generally speaking, the longer a particular situation goes on for, the more difficult (and potentially expensive) it will be to recover from. Always try to take prompt action.
- Unfortunately some tenants will fall into the category of 'opportunist' and will look for any reason not to pay rent or other property charges. In this situation (and the friendly approach hasn't worked) it might be better to be assertive and very clear about the situation and what you intend to do about it. Again, do not be aggressive as I've NEVER known that approach to work, and in fact it's very likely to make the situation worse.

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3. Forms of Occupation

It is important that any occupation of a commercial property is formalised. This does not actually have to be in the form of a Lease. It can be a Licence or a more flexible form of occupancy often called a Tenancy at Will in the UK and in some states in the US. There are pros and cons to each of these arrangements. The documents do not even have to be in a strict format, although it is important to emphasise that the clearer the basis of occupation, the easier life is likely to be if legal action is required to enforce any conditions.

Commercial Lease

This is arguably the most common form of agreement which grants legal occupation of a property. It is a contract between landlord and tenant and is subject to the usual requirements of contract law:

- **Offer** (landlord offering the premises),
- **Acceptance** (tenant agreeing),
- **Consideration** (payment of rent and other obligations),
- **Intention to create legal relations**,
- **Capacity** (both parties must have the legal ability to enter into a contract).

It is executed as a Deed* and grants the tenant 'exclusive occupation' of the property for a specific term (i.e. a period of weeks/months or years) subject to certain conditions which bind both parties.

A lease often has the facility to be 'broken' at certain points in time, such as the 3rd anniversary, 5th anniversary or in some cases a 'rolling break' which runs through the

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lease term. In all cases, the exercise of the lease break will be dependent upon a notice being served a minimum period prior to the break date. An example of this might be a lease for a term of 10 years, with a lease break at the 5th anniversary (of the start of the lease term) subject to 6 months written notice. This means the tenant **MUST** inform the landlord in writing that the lease break is to be exercised at least 6 months before the 'break date' (the date the lease effectively ends) this should be acknowledged.

*Note - A document executed as a deed means:

1. It must be signed by either multiple Directors of the companies (or a single Director plus a witness) of each party, and
2. Has a 12-year limitation period and does not require consideration (although consideration is often part of the agreement)

Licence

A licence is different from a lease in that it does not create an interest in land. It's simply a personal agreement between the licensor (landlord/owner) and licensee (occupier) and is not transferable. Therefore it cannot usually be assigned, sold, or sublet.

It will set out terms of the agreement, but it is highly likely not to be as explicit as a lease and will cover only the essentials. It should be noted that a licence is intended to only be a short-term basis of occupation. It should not be granted for more than 6 months, as any term longer than this **might** be regarded by a court ruling that it's more of a lease than a licence. The key distinction is whether the occupier has true exclusive possession. If the answer is yes - then a court might treat it as a lease regardless of how it's labelled.

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Typical Uses

- Serviced office agreements / co-working space.
- Pop-up retail shops.
- Market stalls, kiosks, or concessions.
- Short-term occupation while negotiating a full lease.

Risks for Landlords

- Misclassification: If the arrangement looks and behaves like a lease (long term, exclusive possession, rent), a court could rule it is a lease even if the document says 'Licence'.
- Limited Protection: Licences are more flexible, but they may offer less protection if the occupier causes damage or refuses to vacate.
- Regulatory Overlap: Some jurisdictions regulate licences similarly to leases once they cross certain time thresholds.

Best Practice for Landlords

- Keep licences short (commonly under 6 months).
- Use licences for genuinely flexible, non-exclusive arrangements.
- Be cautious not to inadvertently grant lease-like rights (e.g. long terms, renewal promises).

Tenancy at Will

Sometimes landlords and tenants need an interim arrangement before a formal lease is signed. A Tenancy at Will (UK, US), a month-to-month tenancy (US, Aus), or a short-term licence (common worldwide) is one of the most flexible (and informal) forms of occupation. It allows the tenant to occupy with the landlord's consent but can be

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terminated at any time by either party. The common feature is flexibility with minimal security of tenure.

In common with the Licence, the terms of the Tenancy at Will should be substantially different to that of a lease. This is to avoid the potential of the tenant acquiring security of tenure of the property should the agreement resemble a lease.

Features

- **No Fixed Term:** It lasts only so long as both landlord and tenant want it to.
- **Easily Ended:** Either side can terminate without reason, usually on short notice.
- **Interim Arrangement:** Commonly used when parties need a temporary solution before a formal lease is finalised.
- **Low Security:** The tenant has no long-term rights but the landlord also has little rent security.

Typical Uses

- Put in place whilst a new lease is being negotiated.
- Can also be used after a lease has expired but before a renewal is signed.
- Where redevelopment or sale is pending and the landlord doesn't want to commit to a long term.
- Informal occupation where flexibility is more important than security.

Risks for Landlords

- **Tenant Uncertainty:** The occupier could leave at any moment, disrupting income.
- **Legal Reclassification:** If the arrangement lasts too long or resembles a lease, courts may treat it as a lease.

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- **Limited Control:** Lack of formal clauses means fewer tools to enforce obligations.

Best Practice for Landlords

1. Use only as a **temporary measure**. Don't let it drift on for years.
2. Put the arrangement in writing (even a short letter) to clarify expectations.
3. Review regularly to decide whether to grant a full lease.

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Understanding the Lease

4. Lease Terms That Matter the Most

The lease sets out all terms of the occupation, including the covenants (a binding term) of each party. Leases must be read in their entirety to understand the full context of each aspect.

The principal lease terms commonly found are:

The Parties. Landlord and Tenant (sometimes also guarantors).

The Premises. A clear description of the space being let (floor, unit, boundaries).

The Term. Start date (note this can be different to the date of the lease agreement, and also different to rent commencement date too) and length of lease.

The Rent. The amount, frequency of payment, and method of review or adjustment.

Repairing Obligations. Who is responsible for maintaining what?

Insurance. This is typically arranged by the landlord, costs recovered from tenant.

Service Charges. Contribution to shared costs in multi-let buildings.

User Clause. This defines how the premises may (and may not) be used.

Assignment and Subletting. This refers to whether the tenant can transfer occupation to others.

Alterations. Can the tenant make changes to the property (structural vs non-structural)?

Landlord's Rights of Access. For inspection, maintenance, or compliance. The main covenants undertaken by the tenant are:

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- a. To pay rent, service charge and insurance on time.
- b. To seek the landlord's consent to carry out certain alterations (certain types of alterations will be expressly prohibited).
- c. Not to sub-let the property or assign the lease without the landlord's consent
- d. To properly carry out all obligations to repair, maintain and renew items (as applicable) during the term of the lease.
- e. Not to allow the property to fall into a state of disrepair (often referred to as the tort of 'Waste')
- f. To vacate the property at the end of the lease term in a condition comparable to how it was at the start of the lease (this might differ slightly)
- g. To allow the landlord access to inspect the property at reasonable notice

The lease will set out the appropriate course of action to be taken by the landlord in the event of breach of these conditions in most cases. If not, it will be a matter of application of the appropriate legislation and common law.

Common landlord covenants are:

- a. To allow the tenant to go about their business undisturbed by the landlord. This is known as 'quite enjoyment'.
- b. To maintain the building fabric (brickwork, roof, chimney, structural parts etc), window frames, external gutters, drains etc.

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- c. To ensure mains utility supplies are available for the tenant to use
- d. To ensure the property structure is insured (in most cases this is charged back to the tenant). Note the tenant is commonly responsible for their own internal insurance arrangements.

Note – the expressions lease ‘term’ and ‘terms’ can have slightly different meanings in the context of property.

- The ‘term’ of the lease means the period of time the agreement runs for. This can be cut short (through means of a lease break) or in some cases continues on the basis that tenant is entitled to a new identical lease under statute.
- The lease ‘terms’ generally refer to all of the conditions, covenants, benefits etc that bind both parties to the agreement.

Risks and Variations

- **Rent Security.** Some jurisdictions require rent deposits, others don’t.
- **Tenant Protections.** Some countries give business tenants automatic renewal rights, others leave it to the contract.
- **Regulation of Clauses.** Consumer protection laws or commercial codes may override what’s written.

How to Read a Lease (A Practical Guide)

- Always read it through in a logical way. Do not pick out isolated clauses, as there might be other associated conditions elsewhere in the lease.
- Start with: ‘*Who, What, Where, When, How Much.*’ Then go into the detail
- Then focus on: “*What happens if something goes wrong?*” (repair, rent arrears, assignment, insolvency).

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5. How Lease Terms Impact Value

One of the most important principles to be understood in commercial property investment, is that we need to think like investment managers, rather than property managers.

Think of it as maintaining a stream of income, rather than a property. What is most important to owners of investment property is maintaining the level and security of income. Therefore we need to know:

- How much income is received (i.e. the rent)?
- How often is it paid (paid monthly or quarterly, and in advance or in arrears)?
- How long the income stream will last (i.e. lease term)?
- Will the income maintain correlation to the overall market (rent reviews)?
- Are there any potential disruptions (lease breaks)?
- How much of the income do I get to keep (what are the repair and maintenance obligations)?
- What happens if the income is not received (lease forfeiture or distress of rent)?
- What redress do I have if something goes wrong (rent deposits and guarantors)?

It might be considered the property itself is almost secondary to the terms of the lease. It could also be considered the property is simply the 'vehicle' that represents something to provide in exchange for rental income. That's half the story. Just as the property owner likes to have the lease terms in their favour (which tends to increase capital value), it's also important to look at what the tenant will value too. Any increase in value to the tenant can justify seeking a higher rent. So for this reason it's important to consider both parties to the agreement.

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Understanding Yield in Commercial Property

In commercial property, **yield** is a measure that links the annual rental income of a property to its capital value. It is usually expressed as a percentage and calculated by dividing the annual rent by the property's market value. For example, a building producing \$100,000 per year in rent and valued at \$2 million would show a yield of 5%.

Yield is often thought of as a shorthand for return on investment, but it also reflects the **market's perception of risk**. A lower yield figure usually signals a strong tenant, long lease, and stable cashflow, meaning investors are willing to pay more for each dollar of rent. In basic terms, if a yield figure is low it means the rent represents a lower percentage of the capital value.

By contrast, a higher yield figure often suggests shorter leases, weaker tenant covenants, or other risks, which can suppress the property's capital value. So assuming the rent remains at a steady sum, if the capital value falls (reflecting a weaker perceived investment) then the rental figure represents a higher percentage of the capital value.

Why a High Yield Figure Isn't Always 'Good'

At first glance, a high yield rate may look attractive because it suggests a stronger cash return relative to value. However, it often masks the fact that the underlying property is considered riskier or less desirable. For landlords, this means the capital value is discounted; investors are only willing to buy the income stream at a lower price. Conversely, achieving a lower yield (known as yield compression) is often the goal of asset management, because it reflects greater confidence in the lease, tenant, and long-term prospects, and translates into a higher capital value for the same rental income.

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Worked Example: How Yield Affects Value

Let's assume the annual rent is **£100,000** and remains constant. The only variable is the **yield** applied by the market:

<u>Yield</u>	<u>Calculation</u>	<u>Capital Value</u>
5%	$£100,000 \div 0.05$	£2,000,000
7%	$£100,000 \div 0.07$	£1,428,571
9%	$£100,000 \div 0.09$	£1,111,111

What this shows:

- At **5% yield**, investors are confident in the lease/tenant, so they pay a premium → higher capital value.
- At **9% yield**, investors demand a bigger return to offset risk → lower capital value, even though rent hasn't changed.

Yield is not just about return, it's a **barometer of risk and confidence**. The landlord's job is to manage the property and lease so that investors see it as secure, compressing the yield and therefore increasing capital value.

Every clause can either support or undermine rental and capital value, and tenant security.

Key Lease Terms That Influence Value

1. Length of Term

- Longer leases = stable income, lower perceived risk, therefore higher capital value.

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- Shorter leases = flexibility but more uncertainty, sometimes higher rents demanded by investors.

2. Break Clauses

- Give tenants flexibility → but reduce investor confidence.
- Yield impact: A building with multiple break rights will usually value lower.

3. Rent Review Mechanism

- Indexed or 'upward-only' → investor-friendly, supports growth.
- Open market reviews → depend on comparables, more volatile.
- Turnover rent → aligns with tenant's success but adds variability.

4. Repair & Maintenance Obligations

- FRI/Triple Net leases (tenant bears repairs/insurance) → more attractive to investors.
- Landlord-heavy obligations → reduces net income and deters buyers

5. Alienation (Assignment & Subletting)

- Flexible assignment rights can improve tenant marketability.
- But uncontrolled subletting can damage covenant strength (tenant quality).

6. User Clauses

- Broad → property is more attractive on reletting/resale.
- Restrictive → can limit tenant pool and reduce rental growth.

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7. Security of Tenure / Renewal Rights

- In some markets, tenants have statutory renewal rights → A very distinct benefit to tenants and can justify a slight rental premium.
- Where this exists, landlords must account for longer-term occupation risk/reward.
- Sometimes these rights reduce flexibility for the landlord at the end of the lease term, therefore sometimes they are undesirable to an investor if the long-term aim is to redevelop the property.

Investor Perspective

Investors will assess lease terms against:

Stability (predictable cashflow is desirable)

Flexibility (the ability to re-let at higher rent)

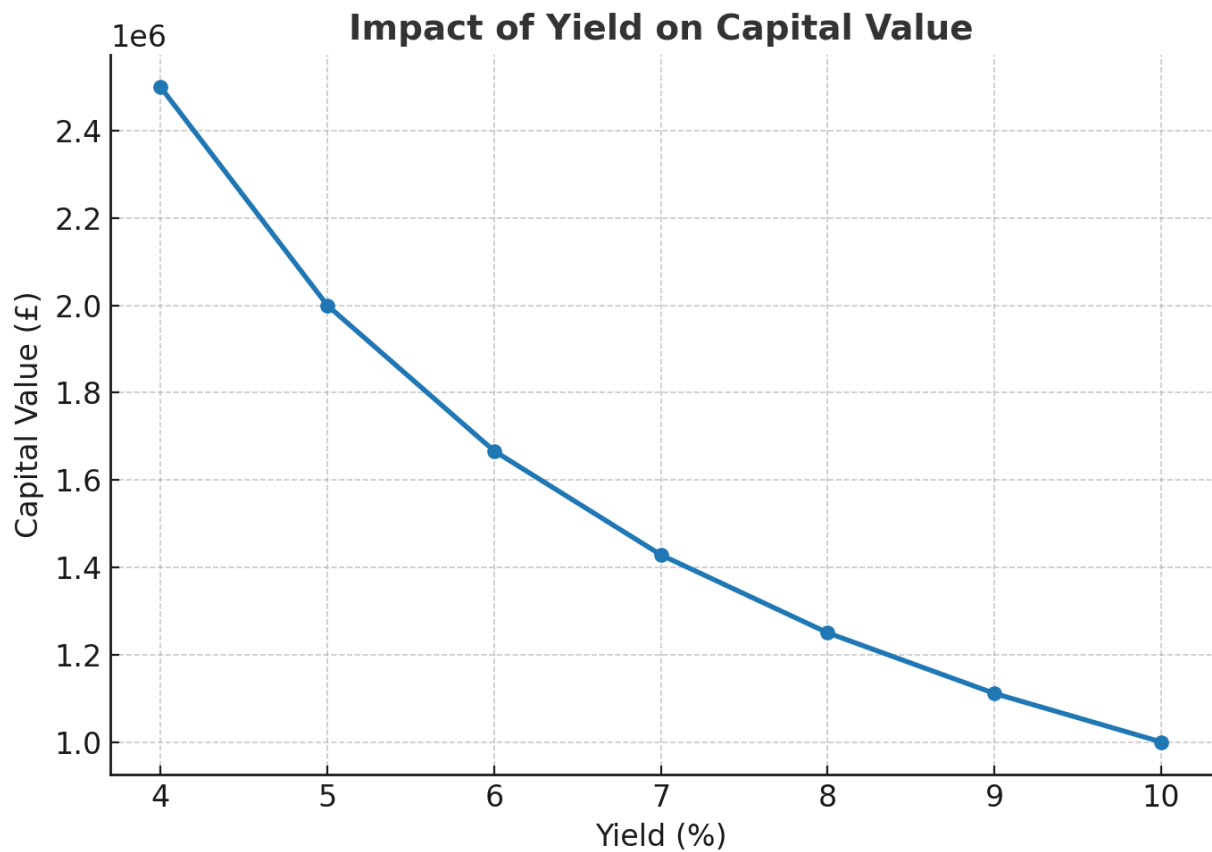
Risk (management of potential tenant default and void periods)

Even small differences (e.g. a 5-year term vs a 10-year term) can significantly change the valuation of an investment property.

A Practical Example

- Rent: \$100,000 per year
- Yield: 7% → Value = \$1.43m capital value
- If a tenant break clause is removed (by agreement) thereby changing the 'term certain period' from 5 years to 10 years, the yield could compress from 7% to 6%, therefore capital value = \$1.67m (+\$240,000 increase).

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The above graph demonstrates how the yield rate (y axis) and capital value (x axis, measured in £m) compare to each other. This is assuming an annual rent of £100,000.

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Managing Common Tenant Issues

6. Unpaid Rent, Service Charge, Insurance and Utilities

Non-payment is one of the most common and serious breaches of a lease. The lease definitions usually confirm whether 'Rent' also covers service charge and insurance. If they do, these can be pursued in the same way.

Unlike some lease breaches, non-payment can ultimately give the landlord the right to **forfeit the lease** (end it and retake possession). But forfeiture should be a last resort. There are several steps worth taking first, moving from informal to formal action.

Early Steps

1. **Contact the tenant.** Sometimes it's a genuine oversight or short-term cashflow issue. Be understanding, but always ask: *what if this persists?*
2. **Agree a plan in writing.** If repayment terms are agreed, document them in a signed letter. Flexibility can generate goodwill, but keep a paper trail.
3. **Check arrears detail.** Clarify precisely what's owed (rent, service charge, insurance) and exactly when it was due. Setting a clear deadline often prompts action.

Escalating Action

4. **Use the rent deposit.** If one is held under the lease, it can be drawn down.
5. **Approach guarantors or parent companies.** They may have liability under the lease.
6. **Apply contractual interest.** Many leases allow interest on late payments, but it's rarely a true deterrent.
7. **Consider distress of rent (landlord's lien).** Seizing tenant goods is possible in some jurisdictions, but it's specialist and risky without advice.

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8. **Court action.** A possible route, but success depends on whether the tenant has meaningful assets.

Lease Forfeiture

If all else fails, the landlord may retake possession, but only if the lease expressly allows. Key considerations include:

- **Re-letting prospects** - How quickly could a new tenant be found?
- **Rent-free incentives** - Any delay to income stream must be factored in.
- **Property condition** - Will works be needed before re-letting?
- **Holding costs** - Vacant rates/taxes and insurance liabilities fall back on the landlord.
- **Portfolio impact** - Voids can harm the perception and value of neighbouring holdings.

Forfeiture is immediate and often hostile. Landlords sometimes use locksmiths outside working hours and post notices confirming forfeiture, with a contact number for enquiries. Alternatively, a court order can be obtained.

⚠ Important: Once aware of a breach, a landlord must act promptly. Continuing to bill rent as normal can waive the right to forfeiture. Quarterly billing gives more breathing space than monthly.

Landlord's Checklist: Rent Arrears & Non-Payment

- ☑ Confirm what 'Rent' includes in the lease (rent, service charge, insurance).
- ☑ Speak to the tenant first. Establish whether it's oversight, short-term cashflow, or something more serious.

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- ✓ Document any repayment plan formally in writing.
- ✓ Review other security options: rent deposit, guarantors, parent company.
- ✓ Apply contractual interest if applicable (but don't rely on it).
- ✓ Seek legal advice before pursuing distress of rent or court action.
- ✓ If considering forfeiture, weigh up re-letting timescales, property condition, and holding costs.
- ✓ Act promptly! Don't inadvertently waive your rights by continued billing.

Case Study: Payment Plan or Lease Forfeiture?

Background

One of the retail properties I managed had a tenant who had fallen significantly behind on rent and service charge payments prior to my involvement. The arrears built up partly because the previous lease had expired several months earlier, and billing had stopped when it ended. This created a backlog of rent and service charge owed as the business stayed in occupation.

The Problem

The tenant proved elusive, regularly offering excuses for non-payment. When forfeiture was threatened, he would pay a portion of the arrears, but never all. This cycle continued for some time, leaving my client frustrated and under pressure to act. The landlord was also reluctant to forfeit the lease outright, as an empty shop would have harmed the 'feel' of the wider shopping centre.

When arrears build up, a clear repayment plan can be more effective (and less costly) than rushing into forfeiture.

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Action Taken

We formalised the occupation under a **Tenancy at Will**, ensuring rent and service charges could once again be properly charged. To address arrears, I negotiated a strict **three-month repayment plan**, making it clear that payment in full was the only route to securing a new lease. The tenant was motivated to stay in the store, as his business was performing reasonably well.

Outcome & Lessons Learned

The tenant found the funds, cleared the arrears within the agreed timeframe, and was subsequently granted a new lease. The landlord avoided a disruptive void, and the payment plan restored control to the situation. The key lesson is that **forfeiture isn't always the best option**. Sometimes a structured plan, backed by the right legal framework, delivers a better outcome for both landlord and tenant.

7. Unauthorised Alterations

Tenants sometimes make changes to a property without following the proper procedure. Leases usually draw a clear line between **structural alterations** (anything affecting the fabric of the building, e.g. walls, roofs, foundations) and **non-structural alterations** (such as lightweight, removable partitions).

Non-structural changes may be permitted, but usually only with the landlord's written consent.

Structural alterations are almost always prohibited outright, unless specifically agreed in writing.

When Alterations Are Proposed

If a tenant applies to carry out alterations, their submission should include enough detail for you to make an informed decision, such as plans, material specifications, and any necessary approvals. Key questions to consider:

1. Will the property be reinstated at lease end?
2. Will the work interfere with structural elements or neighbouring occupiers?
3. What safety or compliance requirements apply (building codes, planning/zoning, fire safety, etc.)?

If everything checks out, a **Licence for Alterations** can be granted. This formal document sets out the terms of the works, the tenant's compliance obligations, and whether reinstatement will be required at lease expiry.

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When Tenants Bypass Consent

Sometimes tenants press ahead with work without permission. Regular inspections usually bring these cases to light. If you discover unauthorised works:

- Start by discussing the matter with the tenant.
- Remember, alterations should **never** proceed without a Licence. If they have, the tenant is likely in breach of covenant.

At this point you have two main routes:

1. **Retrospective consent.** Review the works as if they had been applied for. If acceptable (and with superior landlord/planning/building control consents in place), a Licence may still be issued.
2. **Reinstatement.** Require the tenant to remove the works and return the property to its original state.

Escalating the Matter

Where works are unsafe, inappropriate, or suggest alternative use of the property, stronger action may be required. Options include:

- Agreeing a compromised scope of work.
- Serving a formal letter requiring reinstatement.
- Seeking a court order to enforce reinstatement.
- Claiming compensation for damage.
- As a last resort, lease forfeiture (ending the tenancy).

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Important: Legal advice should always be sought before pursuing court action or forfeiture. If forfeiture is chosen, stop invoicing rent immediately. Continuing to do so could invalidate the action.

Case Study: The DIY Window Installation

Background

A private client of mine had let a modest high street retail unit, with storage space above, to a small food business run by two co-owners. On the surface, it was a standard lease of a typical UK property.

The Problem

The tenants decided the staircase to the upper floor lacked natural light. Their solution? Cut a hole in the wall and fit a new window — without permission. When the landlord visited, he noticed the alteration. The tenants shrugged it off, saying it “helped them see where they were going,” but became defensive when challenged. Concerned, the landlord asked me to step in.

Even small ‘improvements’ can create big risks. Never ignore unauthorised alterations.

Action Taken

I asked the tenants for Building Control approval, Planning Consent, and a sketch of the installation. They had none. Worse, a Building Surveyor confirmed that the window had been fitted with **no supporting lintel**, making it structurally unsafe.

I advised the tenants that:

- They were in breach of lease covenants (no consent for alterations).
- The work was dangerous and had to be rectified.
- A retrospective Licence for Alterations could not be considered until the installation was safe.

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The tenants resisted, claiming they hadn't realised permission was needed. Ultimately, my client had to arrange for a reputable contractor to rebuild the aperture properly. After some persuasion, the tenants agreed to pay the cost but it could easily have escalated into an injunction or even lease forfeiture.

Outcome & Lessons Learned

The landlord avoided a prolonged dispute, the unsafe work was rectified, and the tenants learned that lease obligations are not optional. The key lesson is that **unauthorised alterations can create serious legal and safety risks, and landlords must act swiftly to protect both the property and their position under the lease.**

💡 Lesson Takeaway

Even 'small' alterations can have major consequences. Always insist on approvals, and never ignore unauthorised works as they can create safety hazards and expose landlords to liability.

Landlord's Checklist: Unauthorised Alterations

- ☒ Carry out regular inspections. Look for signs of changes (new partitions, windows, extraction systems, etc.).
- ☒ If you spot an alteration, ask immediately for:
 - Building Control approval
 - Planning consent
 - Technical drawings or specifications
- ☒ Check whether the lease allows alterations, and if so, under what conditions.
- ☒ Assess whether the work is structurally sound and compliant with

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regulations (seek professional advice if needed).

✓ Do not grant retrospective consent (Licence for Alterations) until safety and compliance are confirmed.

✓ If unsafe or inappropriate, instruct the tenant to rectify the work or arrange repairs and recharge the cost.

✓ Where necessary, escalate:

- Formal breach notice
- Injunction or damages claim
- Lease forfeiture (as a last resort, with legal advice).

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8. Unauthorised Assignment or Subletting

This issue is surprisingly common when landlords take a 'hands-off' approach. The risk is simple: if you don't know who's in your property, you could lose control of it.

Warning Signs

Look out for these red flags that suggest an unauthorised change of occupier:

1. A request to change the name or address on invoices.
2. Rent arrears accompanied by signs of vacancy.
3. Unfamiliar individuals or businesses occupying the property.

Why It Matters

If the tenant vacates and a new party moves in without consent, the situation must be dealt with immediately. Accepting rent or even issuing an invoice to the new occupier could create a 'lease by implication'. If challenged, a court might award that occupier a lease, and this could mean **security of tenure for up to 15 years**.

Assignment vs Subletting

Assignment

- The existing lease is transferred in full to a new occupier (the Assignee).
- Terms don't change, the Assignee simply takes over the lease and the occupation.
- A **Licence to Assign** is required from the landlord, followed by a **Deed of Assignment** between the old and new tenant.

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- The landlord is not a direct party to the Deed of Assignment, which reduces their control.

Subletting

- The tenant keeps their own lease but grants an 'underlease' to another occupier. This underlease sits 'beneath' the principal lease (known as the 'headlease').
- The underlease usually mirrors key terms of the headlease but may have restrictions, such as:
 - Rent must not fall below the headlease rent.
 - The sublease must end at least one day before the headlease expires.
 - Often contracted out of 1954 Act protection.

Both arrangements are usually only valid with the landlord's formal written consent (Licence to Assign or a Licence to Sublet).

What to Do If It Happens Without Consent

If you find someone in occupation who shouldn't be there:

- **Do not bill them for rent.** If money is taken in error, refund it immediately.
- Establish who they are and how they came to occupy the premises.
- If they are unwelcome, issue a formal letter confirming the illegal occupation and requiring them to vacate.
- If they refuse, they are trespassing and legal proceedings may follow.

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The longer unauthorised occupation continues, the harder it is to unwind. The original tenant remains liable under the lease, but they may be hard to trace or unwilling to co-operate.

Further Considerations

- **Guarantors:** In some cases, a landlord is obligated to grant a guarantor a new lease if they take over rent payments when the original tenant becomes insolvent. Whether this is desirable depends on the guarantor's strength and suitability. My advice is to investigate the financial standing of the guarantor (before the start of the lease) as though they were being granted a new tenancy.
- **Part-occupation:** Allowing part of a building to be used by an unlisted occupier can also breach lease terms (under 'sharing occupation'). Courts can, in some cases, award that party a lease protected with security of tenure. Therefore it's vital to be acutely aware of who is in the property.
- **Group sharing:** Many leases allow another company within the same corporate group as the tenant to share the premises. The link must be demonstrable (e.g. via Companies House in the UK) and generally speaking – landlord's consent is not needed for this.

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Case Study - The Assignment that Wasn't

Background

A few years ago, I managed a small parade of 'tertiary' retail units, scruffy, management-heavy, but with a strong community feel. The tenants were generally cheerful and helpful, though often resourceful in ways that caused complications. One recurring problem was their tendency to assign leases without going through the proper process.

The Problem

About 15 years before my involvement, the lease of a small independent supermarket had been assigned to a new tenant. Most of the paperwork was completed correctly, but the tenant's solicitor failed to register the assignment at the Land Registry. This seemingly small omission meant the assignment was not legally valid, despite the landlord granting a Licence to Assign.

The new tenant (Assignee) paid rent for several years before quietly assigning the lease again, this time without informing the landlord. He then stopped paying rent altogether. By the time I became involved, the situation had spiralled:

- The 2nd tenant couldn't validly assign the lease, as his own occupation wasn't legal.
- The historic tenant (the original lessee) couldn't be traced, preventing retrospective correction.
- Charges had been registered against the original leasehold title, complicating matters further.
- Rent arrears had reached around **£140,000**.
- The latest occupier (the unauthorised 3rd tenant) had been trading for years, raising the question of whether he had acquired rights to a lease.

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Never assume the tenant's solicitor has tied up every loose end. Always confirm that lease assignments are correctly registered at the Land Registry.

Action Taken

I worked with solicitors to:

- Investigate and confirm the legal status of each occupier.
- Explore options to remove charges against the original leasehold title.
- Consider whether the landlord could pursue arrears, despite the broken chain of assignments.
- Assess the risk of the unauthorised tenant being granted security of tenure under the Landlord & Tenant Act 1954.

The process required close liaison with the courts and the Land Registry, but the situation remained complex and unresolved.

Outcome & Lessons Learned

At the time of writing, the case is still ongoing but the lesson is already clear: **lease assignments must be completed properly and registered without exception.** A 1% error in process led to 15 years of complications and £140,000 in lost income. Landlords cannot rely solely on tenants' solicitors, they must take responsibility for ensuring assignments are done correctly.

💡 Lesson Takeaway

Even small procedural errors in lease assignments can snowball into years of disputes and huge arrears. Landlords should always check that assignments are properly completed and registered.

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- ✓ Watch for warning signs: invoice address changes, unexplained arrears, unfamiliar occupiers.
- ✓ Confirm lease terms: is subletting or assignment prohibited, or only allowed with consent?
- ✓ If you find an unauthorised occupier:
 - Do **not** bill or accept rent.
 - Refund any accidental payments immediately.
 - Establish who they are and how they came into occupation.
 - ✓ Issue a formal letter stating the breach and requiring action (vacate or apply for consent).
 - ✓ Consider whether retrospective consent is acceptable (Licence to Assign/Sublet).
 - ✓ Trace and involve the original tenant. They remain liable under the lease.
 - ✓ Escalate if needed: legal proceedings for trespass, court order, or lease forfeiture.
 - ✓ Always seek legal advice before pursuing high-stakes remedies.

9. Lease Breaks

A **lease break** is a contractual facility allowing either party to end a lease before its intended expiry. Breaks are typically set on anniversaries of the lease commencement (e.g. year 3 or 5), though some leases include a **rolling break**, which allows termination at any time after a certain point, provided sufficient notice is given.

Example of a rolling break:

'This lease may be terminated at any date after the 1st anniversary of commencement, subject to at least 6 months' written notice'

Conditions for Tenant Breaks

Tenant break options usually come with conditions. On the break date, the tenant must ensure:

- **Rent is fully paid** up to the break date (including full quarters if payable in advance).
- **Property is handed back** in accordance with repairing obligations, ready to be marketed.
- **All belongings are removed**, unless alterations are retained under a Licence for Alterations.

The **RICS and Law Society Code for Leasing Business Premises** recommends tenant breaks should only depend on:

1. Paying all basic rent due before the break date.
2. Vacating and leaving no subtenants/occupiers.
3. Disputes over condition or dilapidations to be resolved later, as at normal expiry.

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4. Landlords refunding any rent/service charge paid for periods after the break.

Landlord Breaks

Landlord breaks are generally simpler. They often require no explanation unless tied to redevelopment or other specified grounds.

The Value of Break Clauses

Break options carry **real financial value** because they shift risk. A tenant break increases uncertainty for the landlord, which can lead to:

- Higher rent (to compensate for the risk of early exit).
- Lower investment value, as valuers consider only the “term certain” (the period up to the earliest break date) as secure income.

Conversely, removing a break (by agreement, usually via a **Deed of Variation**) can increase investment value. Landlords sometimes offer concessions (e.g. temporary rent reductions) to persuade tenants to surrender a break option.

The Importance of Correct Service

Serving a break notice correctly is absolutely critical. Many disputes (and fortunes) hinge on small errors such as:

- Using the wrong date.
- Serving at the wrong address.
- Misjudging notice periods.

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Even large office tenants have lost millions from defective notices, through failing to serve correctly (keeping the lease 'live'). Because landlords often resist breaks, they may exploit any technical flaws.

Best practice:

- A break notice can be a simple one-page letter.
- Unless absolutely confident, instruct a solicitor to draft it.
- Ensure timely service, and keep proof of delivery.
- If a notice is defective, a landlord may accept it anyway, but this is discretionary.

Notice Date vs Break Date

- **Notice date:** when the break notice must be served (e.g. 6 months before).
- **Break date:** the actual lease end date, when the tenant must vacate.

These must not be confused. Errors here are a common cause of failed breaks.

Revoking a Break

Once a break notice is validly served and accepted, it generally cannot be revoked. Continuing occupation could accidentally create a new tenancy protected under security of tenure. The safe route is to put a new lease in place if both parties agree to continue.

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Landlord's Checklist: Lease Breaks

- ✓ Confirm break conditions in the lease (notice period, rent obligations, reinstatement).
- ✓ Diary key dates: both notice date and break date.
- ✓ If you receive a tenant's notice, check it carefully against lease requirements.
- ✓ Always consider instructing a solicitor for drafting or reviewing notices.
- ✓ Ensure property inspections are carried out before handover.
- ✓ If negotiating removal of a break, weigh the impact on investment value

Case Study: Using a Lease Break to Remove a Problem Tenant

Background

I was acting for a landlord whose property was let to a small car bodywork business. On paper, it should have been a straightforward tenancy. In reality, it turned into one of the worst tenant situations I've ever encountered.

The Problem

The tenants seldom paid rent, turned the surrounding parking area into a scrapyard, and used the estate's roads for mini drag races. They also engaged in drug use on site and even physically threatened nearby residents when challenged. Unsurprisingly, the business itself was poorly run, and when I checked Companies House, I discovered an application had been lodged to strike off the company.

Break clauses give landlords decisive power, but only if notices are served correctly and on time.

The Break Notice in Action

The lease included an **Insolvency Clause**, allowing termination if the company entered administration, liquidation, or strike-off. Initially this looked like a perfect opportunity, but when we served notice, the tenant's accountant quickly claimed the strike-off application was 'an error'. On legal advice, and to avoid the risk of a wrongful termination claim, we reluctantly withdrew.

Fortunately, the lease also contained a **landlord's break clause**, exercisable nine months later with six months' notice. This time we acted decisively. I drafted the notice myself, delivered it by hand to the company director, and was gone before they realised what had happened.

The Outcome & Lessons Learned

Six months later, the tenants were out. The landlord regained control of the property without the risk of drawn-out litigation. The key lesson? Even when one route fails, understanding the lease properly can reveal alternative mechanisms to achieve the same outcome. Break clauses, used correctly, can be a landlord's most effective tool in dealing with otherwise unmanageable tenants.

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10. Lease Surrender

A **lease surrender** is when a lease is brought to an end before expiry, outside of any break option. Because most leases don't set out surrender terms, it's left to negotiation between landlord and tenant.

The terms will often depend on who initiates the discussion and why. A commercial, pragmatic approach usually delivers the best result.

Key Considerations for Landlords

When a tenant requests to surrender, ask:

1. Do they want to vacate completely, or re-negotiate under a new lease ('surrender and regrant')?
2. How much time remains on the lease? A long unexpired term increases the landlord's bargaining power and the likely surrender premium.
3. Is a replacement tenant waiting? If so, the landlord may accept a lower premium to reduce risk and avoid a void.

Surrender Premium

The **surrender premium** is the compensation paid by the tenant to the landlord. It is open to negotiation and can range from nil to a very substantial sum.

Example approach to calculating a premium:

- Remaining rent due until the next break.
- Remaining service charge for that period.
- Dilapidations liability.

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- Less a discount for receiving the sum upfront.

This can lead to high figures, which tenants often resist. Deals usually involve compromise and discounting to reach an acceptable premium.

Where the landlord wants the tenant out, the calculation is harder. In such cases, a round figure may be agreed simply to achieve certainty and regain possession.

Documentation

A surrender must be formalised, usually by one of two deeds:

1. **Deed of Surrender** – ends the lease but may preserve certain liabilities, e.g.:
 - Dilapidations obligations.
 - Rent/service charge up to date.
 - Landlord indemnified for taxes.
 - Refund of overpayments to the tenant.
 - Property returned with vacant possession.
2. **Deed of Surrender and Release** – a ‘clean break’ absolving both parties of all obligations. Often used where the building is due for demolition or redevelopment.

If it's a **surrender and regrant**, liabilities are usually carried into the new lease to prevent escape from existing breaches.

Beware Informal Surrenders

Landlords must avoid inadvertently accepting a surrender ‘by operation of law’. For example, if tenants post keys back, this can be taken as surrender if not dealt with correctly.

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If the landlord does **not** want the tenancy to end:

- Return the keys immediately.
- Confirm in writing that the lease remains in place under its original terms.

Failing to do so risks losing rights to rent recovery and enforcing other tenant obligations.

Case Study: Negotiating a High Surrender Premium

Background

Several years ago, I acted for a landlord who owned a large office building. The tenant had around four years left before the next break option in the lease.

The Problem

The tenant wanted to surrender early, but my client was strongly against it. The property was difficult to let, and we anticipated a void period of at least two years if the tenant vacated. An early surrender risked significant income loss and holding costs.

Always model the landlord's likely losses (rent, service charge, dilapidations) before naming a surrender figure.

Action Taken

I calculated a surrender premium based on:

- All remaining rent to the next break.
- The service charge expected over that period.
- Dilapidations liability.
- Less a discount for receiving the payment upfront.

This produced a very high figure, which the tenant unsurprisingly rejected. However, it established a strong negotiating position.

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After further discussions, we agreed on a revised figure with a more substantial discount. This balanced the tenant's desire to exit with my client's need to mitigate risk.

Outcome & Lessons Learned

The tenant secured their surrender, but only by paying a meaningful premium. My client avoided a total loss of income, and the deal reflected the commercial reality of the situation.

The lesson? **Start high, know your calculations, and use the numbers to protect your position in negotiations.**

Landlord's Checklist: Lease Surrenders

- ✓ Confirm the tenant's true intention — full exit, or surrender/regrant?
- ✓ Assess remaining lease term and calculate an appropriate premium.
- ✓ Consider market demand — is there a replacement tenant lined up?

- ✓ Decide whether liabilities (dilapidations, arrears, overpayments) should survive surrender.
- ✓ Use the correct documentation:
 - Deed of Surrender (liabilities retained).
 - Deed of Surrender and Release (clean break).
 - ✓ If regranteeing, ensure breaches or liabilities are carried into the new lease.
 - ✓ Never accept returned keys without a formal agreement. Return them with a written statement if you wish the lease to continue.
 - ✓ Always seek legal advice before agreeing terms.

11. Neglect of Property

Neglect is one of the most common issues landlords face. Fortunately, it can usually be managed through **active inspections** and a clear understanding of repairing obligations in the lease.

A well-drafted lease should set out exactly which party is responsible for which repairs. However, when buying an investment with an existing lease, it's important to review those obligations carefully. Vague or poorly drafted clauses create risk and disputes, both during the lease and at expiry.

Types of Repairing Obligations

1. Full Repairing and Insuring (FRI) or Triple Net Lease

- The tenant is responsible for the entire building, including the external structure, roof, foundations, and doors.
- The landlord usually arranges the insurance and recovers the cost from the tenant.
- Most common where a single tenant occupies the whole property.
- Disputes often arise over expensive repairs (e.g. roofs) if obligations aren't clearly worded.

2. Internal Repairing and Insuring (IRI) Lease

- The tenant is responsible only for internal finishes (e.g. paint, carpets, ceiling tiles).
- The landlord maintains external and common areas, typically recovering costs through a service charge.
- Common in multi-let buildings.

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Common Causes of Disrepair

- Blocked gutters leading to damp walls and vegetation growth.
- Burst or leaking pipes, sometimes hidden until damage becomes visible.
- Roof leaks causing rot, ceiling collapse, and costly structural issues.
- Repeated vehicle or machinery impacts to walls/doors in industrial units.

‘Maintain’ vs ‘Repair’

- **Maintain** = carry out routine servicing and preventative work (e.g. clearing gutters).
- **Repair (or repair and replace)** = fix damage or replace items when necessary.
- Watch wording carefully:
 - ‘Keep in repair’ = maintain to the condition at lease commencement.
 - ‘Place and keep in repair’ = tenant must improve the property to a higher standard and then maintain it, a much heavier obligation.

Managing Repairs in Practice

1. **Inspections.** Schedule regular visits (with reasonable notice, usually 24+ hours).
2. **Evidence.** Photograph and document issues.
3. **Responsibility check.** Confirm who is liable under the lease before raising it.

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4. **Communication** — Raise issues verbally first, then follow up formally in writing.
5. **Deadlines** — Give the tenant a reasonable time to act; shorten if there's a safety risk.

If the tenant refuses or fails to act, landlords may (depending on lease wording):

- Enter the property to carry out works and recharge the cost (must be reasonable, with quotes obtained).
- Treat costs as a **debt**, not damages, for easier recovery.

Escalating Matters

If neglect is substantial, landlords may claim damages or pursue forfeiture, but only after serving the appropriate notice:

- In the UK, this is a **Section 146 Notice** under the Law of Property Act 1925. Equivalent procedures exist in other jurisdictions.
- Notices must specify the breach, allow time to remedy, and inform the tenant of their rights.
- Forfeiture cannot proceed if the landlord has **waived the breach** (e.g. by knowingly accepting rent).

Tenants may apply for **relief from forfeiture**, and courts often grant it if:

- The tenant compensates the landlord.
- The tenant shows intent to comply with obligations going forward.

Because remedies involve serious legal consequences, specialist real estate litigation advice is always recommended once disputes escalate.

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Case Study: When Gutters Become a Lawsuit

Background

I once visited a small industrial unit where the landlord hadn't inspected the exterior for several years. The gutters were completely blocked with leaves and debris.

The Problem

Rainwater overflowed directly onto the brickwork, keeping it constantly damp. Over time, vegetation started to grow on the walls, and water penetrated into the building. The tenant complained about damp and mould, arguing the landlord had failed to maintain the building.

Action Taken

An inspection confirmed that simple gutter cleaning — which should have cost less than £200 — would have prevented the issue. Instead, the landlord faced a dispute over who was responsible for the damage and whether the property was fit for use. Eventually, the landlord paid for repairs and entered into a dispute resolution process with the tenant.

Outcome & Lessons Learned

A lack of proactive inspections turned a trivial maintenance task into a costly dispute. The lesson is clear: **small neglect issues, left unchecked, can snowball into structural problems and legal claims.**

💡 Lesson Takeaway

Neglect usually starts small. Regular inspections and preventative maintenance save landlords from disputes and major expense later.

12. Rights of access for the Landlord

Most leases include a clause giving the landlord the right to access the property, but this right is always balanced against the tenant's right to **quiet enjoyment**, which is the ability to use the premises without unreasonable interference.

When Landlords Can Enter

Access should be exercised carefully and typically falls into these categories:

1. **Viewings.** Where the lease is close to expiry or the tenant is vacating.
2. **Repairs or inspections.** To carry out works or check the tenant's compliance with obligations.
3. **Emergencies.** For urgent repairs to prevent damage or risk to safety.
4. **Enforcement.** To pursue remedies for breach of lease (e.g. arrears, neglect, forfeiture).

Notice Requirements

- 'Reasonable notice' is usually required. While leases often specify a minimum (commonly 24 hours), what is 'reasonable' can depend on the circumstances.
- Tenants cannot permanently bar access but may request alternative times if proposed visits are genuinely inconvenient.
- Emergency access may override notice requirements.

If Tenants Refuse Access

If tenants repeatedly deny access without justification:

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1. **Record everything.** Keep written correspondence with dates and details.
2. **Warn of consequences.** Explain that refusal could worsen property defects for which the tenant may be liable.
3. **Send a follow-up notice**
 - Confirm the proposed date and time.
 - State the purpose of the visit and whether contractors will attend.
 - Reference the lease clause allowing access.
 - Warn that abortive costs may be charged if access is denied again.

Persistent refusal is a serious breach. In extreme cases, landlords may:

- Seek legal orders (injunctions or possession).
- Pursue forfeiture of the lease (where local laws allow).

⚠ Important: Before pursuing forfeiture, landlords must avoid **waiving their rights**, for example, by knowingly accepting rent after the breach.

Always seek legal advice before escalating.

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Case Study: When Access Was Repeatedly Denied

Background

I once acted for a landlord of a multi-let property where one tenant consistently refused to allow inspections. The lease clearly allowed for landlord access with reasonable notice, but every request was ignored or met with vague excuses.

The Problem

The landlord grew concerned that repairs were being neglected. Without access, it was impossible to confirm whether health and safety issues existed. Tenants have the right to quiet enjoyment, but persistent refusal without cause was a breach of the lease.

If a tenant repeatedly refuses access, always escalate in writing and reference the lease clause, it strengthens your position if legal action becomes necessary.

Action Taken

We sent formal letters reminding the tenant of their obligations and warning that continued refusal might result in liability for any hidden damage. When the tenant still refused, a final notice was issued specifying the inspection date, citing the lease clause, and warning of abortive costs.

The tenant eventually allowed access, reluctantly. The inspection revealed water ingress and early signs of mould, which could have developed into serious structural and health issues. Repairs were organised, with costs apportioned under the lease.

Outcome & Lessons Learned

By escalating step by step and keeping a paper trail, the landlord avoided both prolonged dispute and major repair bills. The key lesson is that **access clauses are there to protect both parties**. Landlords must use them consistently, and tenants must understand they are not optional.

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Landlord's Checklist: Access Rights

- ✓ Review the lease for access clauses (inspection, repair, viewings, emergencies).
- ✓ Always provide reasonable notice (minimum 24 hours is standard, but check context).
- ✓ Keep correspondence and records of all requests and refusals.
- ✓ Be clear about purpose and timing when requesting access.
- ✓ If entry is repeatedly refused, issue a formal notice citing the relevant lease clause.
- ✓ Warn tenants of possible liability for delays or costs caused by refusal.
- ✓ For persistent breaches, seek legal advice on remedies (injunction or forfeiture).
- ✓ Never waive rights unintentionally by continuing to act as if the lease is valid after a serious breach.

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13. Adherence to Historic Positive Covenants

When a property is sold, it's not uncommon for the transfer agreement to include a **positive covenant**. This is a legal obligation on the buyer to *do something* in relation to the land. Examples might include:

- Erecting and maintaining a fence.
- Providing access rights.
- Carrying out certain maintenance.

This is different from a **negative covenant**, which requires the owner to *refrain from doing something* (e.g. not building above a certain height).

The General Issue

While negative covenants are usually enforceable against future owners of the land, positive covenants are more complex. In many legal systems, they do not automatically pass to subsequent buyers. This creates a potential gap:

- The seller expects performance of the covenant in perpetuity.
- A new buyer may not be directly bound, unless mechanisms are in place to transfer the obligation.

Why It Matters for Investors

If you purchase a property with attached land, you may inherit obligations that affect costs, liability, and future use. Conversely, if you sell but retain adjoining land, you'll want assurance that future buyers remain bound by protective obligations.

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Example: England & Wales

In England & Wales, positive covenants don't automatically 'run with the land'. This means that if the original buyer sells on, the original seller may struggle to enforce the covenant against new owners.

To overcome this, the standard practice is to:

- Enter a **restriction on the property title**, and
- Require each new buyer to enter into a **Deed of Covenant** with the previous owner.

This way, the obligation continues to pass from one owner to the next. Without this safeguard, sellers may find themselves unable to enforce obligations, or buyers may unexpectedly inherit disputes.

Never assume obligations "disappear" when land changes hands — historic covenants can still affect costs, liability, and property value.

Positive covenants can be tricky: in many systems they don't automatically bind future owners, but the liability can still resurface. Always review obligations carefully and confirm how they transfer in your jurisdiction.

Landlord's Checklist: Historic Positive Covenants

- ✓ Always review property transfer documents for positive covenants.
- ✓ Distinguish between positive (do something) and negative (refrain from something) obligations.
- ✓ Check how such covenants are enforced in your jurisdiction. Rules vary widely.
- ✓ Where you are the buyer, confirm whether obligations pass automatically or require a deed or agreement.

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- ☑ Where you are the seller retaining adjoining land, ensure there is a mechanism to bind future buyers.
- ☑ Factor in the cost of compliance (e.g. fencing, maintenance) when valuing property.
- ☑ Seek local legal advice when buying or selling land subject to historic covenants. Enforcement rights can be highly technical.

14. Loss of Property Tax Relief

In most commercial leases, property taxes (such as business rates, council rates, or municipal property taxes) are paid by the tenant. This arrangement protects the landlord from recurring tax liability and allows the tenant to claim any reliefs or exemptions available.

However, when a property becomes vacant, liability usually falls back on the landlord. Many jurisdictions offer a **relief period** for vacant premises, but the rules vary widely. Relief might apply to:

- Industrial or warehouse properties.
- Heritage or listed buildings.
- Properties below a certain assessed value.
- Charitable or non-profit occupiers.

Once that relief expires, the landlord may face full tax liability until a new tenant is in place.

Example: England & Wales – Business Rates Relief

In England & Wales, vacant commercial properties benefit from **Empty Property Relief**:

- **3 months' relief** is standard.
- **Industrial properties** receive an additional 3 months.
- **Listed buildings** are exempt until reoccupied.

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Case Study: The Disappearing Relief Period

Background

I advised a landlord with a mid-sized retail unit. The tenant was approaching lease expiry and had fallen behind on rent. To the landlord's surprise, the tenant vacated the property almost two months early, but didn't tell the landlord directly. Instead, the tenant informed the local authority that the premises were now empty.

The Problem

This triggered the start of the **Empty Property Relief** period, even though the lease was still technically running. By the time the lease reached its official end and the landlord regained full control, the 3-month relief period had already expired. The landlord was left liable for full business rates immediately, with no buffer to cover the void.

Action Taken

The landlord challenged the decision, arguing that the lease was still 'live' and the property should be treated as occupied. However, without clear evidence of actual use, the local authority refused to extend relief. The landlord had no protection in the lease to recover the cost from the outgoing tenant.

Don't assume tax relief starts when you get the keys back. It may already be running down if the tenant has left early.

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Outcome & Lessons Learned

The landlord had to pay several months of unexpected rates before finding a new tenant. The lesson was clear: **monitor tenant vacation dates closely, and make sure leases include indemnity provisions to recover losses if relief is triggered early.**

Landlord's Checklist: Managing Property Tax Relief

- ✓ Understand how property taxes are assessed and who is liable under the lease.
- ✓ Review what exemptions or reliefs apply in your jurisdiction (vacancy, small business, charity, heritage).
- ✓ Factor likely relief periods into financial planning for voids.
- ✓ Monitor tenant occupation closely near lease expiry to ensure relief is not triggered prematurely.
- ✓ Consider lease clauses requiring tenants to indemnify landlords for any lost relief caused by early vacation.
- ✓ Keep evidence of actual occupation (e.g. inspections, utilities use) in case of disputes with tax authorities.
- ✓ Always clarify liability with a property lawyer or tax advisor when acquiring a new asset.

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15. Change of Legal Use

Every lease specifies the **permitted use** of the property. Sometimes this is tightly defined, while in other cases it may allow for limited alternatives (often subject to landlord's written consent). This protects both parties:

- The landlord ensures the property isn't used for unsuitable or damaging purposes.
- The tenant gains certainty about what activities are authorised.

An unauthorised change of use can often be linked to other breaches, such as subletting or alterations. Importantly, the permitted use under the **lease** is separate from the permitted use under **planning or zoning laws**. A landlord may agree to a particular use, but this does not guarantee approval from the local authority. Tenants often underestimate this distinction.

Warning Signs of Unauthorised Use

- Unapproved alterations to the premises.
- People living in the property when it is not designed or authorised for residential use.
- Increased traffic, parking issues, or a change in customer profile.
- New or unfamiliar occupants operating in the premises.

Why Permitted Use Matters

- **Suitability.** Ensures the property is used in a way it was designed for.
- **Neighbouring impact.** Prevents disruptive or conflicting uses.

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- **Value protection.** Preserves the property's rental and investment value.
- **Control.** Gives the landlord leverage to charge a premium if a tenant wants to change use.

Degrees of Breach

- **Minor deviations** may be manageable through discussion (e.g. a shop selling additional product lines).
- **Serious deviations** such as unauthorised residential use or illegal/immoral activities are likely to justify enforcement, potentially including lease forfeiture (if expressly provided for in the lease).

Good Leasing Practice

Modern leasing codes and professional standards emphasise balance:

- Landlords should not restrict changes of use more than necessary to protect property value and neighbouring interests.
- Consent for internal, non-structural alterations should not be unreasonably withheld if they don't harm value, compliance, or safety.
- Where reinstatement is required at lease end, this should be clearly set out in the heads of terms.

Landlord's Checklist: Change of Use

- ☑ Review lease terms to confirm the permitted use and any conditions for change.
- ☑ Distinguish between lease use and planning/zoning use. They are separate approvals.
- ☑ Monitor property for signs of unauthorised activity (traffic, alterations, unfamiliar

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occupants).

- ✓ Address minor deviations early through dialogue before they escalate.
- ✓ Escalate serious breaches (e.g. residential or illegal use) with formal notices.

Forfeiture may be an option.

- ✓ When drafting leases, be clear about restrictions, permitted flexibility, and reinstatement obligations.
- ✓ Ensure planning/zoning requirements are considered separately. Tenants may need to apply in addition to seeking landlord consent.
- ✓ Seek legal advice before enforcing forfeiture or making claims for breach of covenant.

Case Study: Unauthorised Residential Use Above a Restaurant

Background

A tenant was running a restaurant on the ground floor of a property. During routine management, it became clear that the tenant was also using the upper floor as an **unlicensed House in Multiple Occupation (HMO)**. This was never authorised under the lease, and the building was not equipped for residential use.

The Problem

This presented multiple risks:

- **Legal non-compliance** with housing and safety regulations.
- **Planning risk.** Residential use had not been approved by the local authority.
- **Insurance exposure.** The property policy may have been invalidated by the unauthorised use.

Reputational damage if issues escalated to enforcement action

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Action Taken

At the time, the tenant was negotiating a new lease. Rather than terminate the relationship outright, my client agreed to grant the lease, but with additional safeguards. We inserted **landlord's break clauses** at the 2nd and 3rd anniversaries. This gave my client flexibility to end the lease early if the tenant continued to present risks.

Outcome & Lessons Learned

The tenant remained in place, but under much closer scrutiny. The landlord's ability to exercise a break provided security and control. The case reinforced a key lesson: **when a tenant deviates from permitted use, landlords must respond decisively, either by enforcement or by reshaping lease terms to manage risk.**

Break clauses are not just about flexibility, they're a powerful tool to manage tenant risk when past behaviour raises red flags.

Sample Lease Clause: Permitted Use

Permitted Use

The Tenant shall use the Premises only for the Permitted Use stated in this Lease and for no other purpose without the Landlord's prior written consent.

Change of Use

1. *The Tenant shall not change the use of the Premises without the Landlord's prior written consent, which shall not be unreasonably withheld where the proposed use:*
 - *does not adversely affect the value, character, or energy efficiency of the Premises;*
 - *complies with all applicable planning/zoning and statutory regulations;*
 - *does not conflict with the use of any adjoining or neighbouring premises owned by the Landlord.*
2. *Any consent granted by the Landlord may be subject to conditions, including the Tenant's obligation to:*

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- *obtain all necessary planning/zoning approvals;*
- *indemnify the Landlord against any additional costs, taxes, or insurance premiums arising from the change of use;*
- *reinstate the Premises to the original Permitted Use upon lease expiry, if reasonably required by the Landlord.*

Prohibited Uses

The Tenant shall not use the Premises for any immoral, illegal, or hazardous activities, or for any purpose that may invalidate the Landlord's insurance.

Tenant's Checklist: Considering a Change of Use

- ☑ Review your lease to confirm the **Permitted Use** and any restrictions.
- ☑ Check whether landlord consent is required for your proposed use.
- ☑ Apply early, landlords may take time to review and impose conditions.
- ☑ Confirm whether **planning/zoning approval** is required in addition to landlord consent.
- ☑ Assess whether your proposed use will affect **insurance cover** or premiums.
- ☑ Consider whether the change will increase **traffic, parking, or environmental impact**. These may trigger objections.
- ☑ Budget for potential reinstatement costs if the landlord requires the property to be returned to its original use at lease expiry.
- ☑ Avoid uses that are **immoral, illegal, or hazardous**, as these are almost always expressly prohibited.
- ☑ Keep a record of all correspondence and approvals for future protection.

A clear and enforceable use clause protects landlords, guides tenants, and ensures that properties are used in ways that preserve both value and compliance.

16. Compliance with Legislation

It is almost impossible to find a commercial lease that does *not* require the tenant to comply with all relevant laws and regulations. The main reason is simple: to protect the landlord from liability, fines, or prosecution. But equally, the tenant is usually best placed to manage compliance, since they know the day-to-day nature of their business operations.

Typical areas of legislation include:

1. Health and safety (including fire safety)
2. Planning law
3. Building regulations and controls, including licences or approvals for works carried out (e.g. wiring or alterations)
4. Environmental law (waste disposal, emissions, pollution control)
5. Local property statutes such as business rates or equivalent taxes

In addition, tenants are often obliged to ensure that any works carried out during the lease term remain compliant when they vacate the premises.

Negative covenants

Many leases also include 'negative' covenants, which are clauses preventing tenants from:

- Carrying out activities that would breach legislation
- (Occasionally) applying for planning consents connected with the property without landlord approval

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Why this matters

Non-compliance can have significant consequences. For example:

- Fire safety failures may trigger closure notices.
- Environmental breaches can lead to criminal prosecution, with liability extending to the property owner in some jurisdictions.
- Planning or building control breaches can affect the property's value and complicate future lettings or sales.

Remedies for landlords

If a tenant fails to comply, remedies usually follow a familiar sequence:

1. Raise the issue verbally with the tenant
2. Confirm in writing if not remedied
3. Serve formal notice
4. As a last resort, consider lease forfeiture (if permitted)

Above all, it is vital the landlord does not end up liable for statutory breaches caused by a tenant's actions (or inaction). Proactive monitoring, clear lease drafting, and prompt enforcement are the best protections.

Landlord's Checklist: Compliance with Legislation

✓ **Lease wording.** Ensure the lease obliges the tenant to comply with *all* applicable laws, present and future.

✓ **Clarity on responsibility.** Be clear who pays if statutory upgrades or compliance works are needed during the lease term.

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- ✓ **Evidence of compliance.** Request certificates or proof (fire safety, environmental licences, electrical signoffs, etc.) at regular intervals.
- ✓ **Monitor changes in law.** Keep aware of new legislation that could affect the property or tenant obligations.
- ✓ **Escalation process.** Act quickly if non-compliance arises: verbal → written → notice → enforcement.

Tenant's Business Challenges

17. Business Problems and Tenant Insolvency

Even with the best efforts of landlords to choose strong tenants, businesses sometimes fail. Insolvency is an unfortunate fact of commercial life. For landlords, the key risks are unpaid rent, service charge arrears, and the uncertainty that follows when a tenant enters formal insolvency proceedings.

Spotting the Warning Signs

It is rare for a tenant to enter insolvency without first falling into arrears. Warning signs often include:

- Repeated late rent or service charge payments
- Sudden requests to vary lease terms (e.g. rent holidays or reduced space)
- Declining staff numbers or reduced trading hours
- Visible deterioration of the business or premises

Landlords should aim to prevent arrears from accumulating. Once insolvency proceedings begin, recovering unpaid rent becomes far more difficult.

Reducing Risk Before Granting a Lease

Due diligence is essential when selecting a tenant. Wherever possible, landlords should:

- Review the tenant's financial profile (credit checks, company searches, or local business registry reports)
- Check for any prior insolvency history or outstanding debts

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- Request security such as a rent deposit, rent guarantee, or letter of credit
- Consider requiring a personal guarantor in the case of smaller companies

These measures won't prevent insolvency, but they help reduce the landlord's exposure.

Global Approaches to Insolvency

While the names and processes vary between countries, most insolvency regimes fall into four broad categories:

1. **Business Rescue / Reorganisation**

Aim: keep the company trading while restructuring debts.

Examples: *Administration* (UK), *Chapter 11* (US), *Insolvency Administration* (Australia), *Judicial Recovery* (Brazil).

2. **Debt Compromise Arrangements**

Aim: reach an agreement with creditors to pay a reduced portion of debts.

Examples: *Company Voluntary Arrangement (CVA)* (UK), *Deed of Company Arrangement* (Australia), *Bankruptcy Plans* (various jurisdictions).

3. **Liquidation / Winding Up**

Aim: cease trading, sell assets, and distribute proceeds to creditors.

Examples: *Creditors' Voluntary Liquidation (CVL)* (UK), *Chapter 7 Bankruptcy* (US).

4. **Court-Ordered Insolvency**

Aim: forced winding up following a creditor petition or judicial order.

Examples: *Compulsory Winding Up (CWU)* (UK), *Involuntary Bankruptcy* (US).

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Across these categories, landlords face two common risks: **arrears are usually treated as unsecured debt (which is a very low priority for repayment)**, and **leases may be disclaimed or terminated if the premises are no longer required**.

Case Example: The UK System

In the UK, insolvency procedures include:

- **Administration:** An Insolvency Practitioner seeks to rescue or restructure the company. Rent for premises that remain in use is generally paid as a priority expense, but arrears accumulated beforehand are rarely recovered.
- **Company Voluntary Arrangement (CVA):** Allows a business to continue trading while paying only part of its debts. Once approved, landlords are bound by the CVA terms, even if they voted against it. CVAs can significantly reduce rents payable.
- **Creditors' Voluntary Liquidation (CVL):** The company ceases trading and assets are sold. If premises are still needed to store stock or equipment, rent may be paid temporarily, but leases can be disclaimed without dilapidations being honoured.
- **Compulsory Winding Up (CWU):** A court-ordered liquidation initiated by a creditor. All enforcement action (including rent recovery through seizure of goods) is frozen once proceedings begin.
- **Schemes of Arrangement / Restructuring Plans:** Hybrid mechanisms approved by the court, allowing debts to be reorganised even if some creditor groups object.

These UK examples illustrate how complex insolvency procedures can be, and why landlords must seek legal and professional advice.

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Global Tenant Insolvency Pathways (and Example Procedures)

Business Rescue / Reorganisation	UK: Administration US: Chapter 11 Australia: Insolvency Admin Brazil: Judicial Recovery
Debt Compromise Arrangements	UK: CVA Australia: DOCA US: Bankruptcy Plans
Liquidation / Winding Up	UK: CVL US: Chapter 7 General: Asset Sales
Court-Ordered Insolvency	UK: CWU US: Involuntary Bankruptcy General: Judicial Orders

Practical Steps for Landlords

- **Stay informed:** If you hear rumours of financial distress, communicate with the tenant early.
- **Act promptly:** Issue reminders and formal notices at the first sign of arrears.
- **Engage with insolvency practitioners:** Administrators and liquidators may not prioritise landlords unless you actively make your claim.
- **Be realistic:** In most cases, unpaid arrears are unlikely to be recovered. Focus on regaining possession and re-letting.

Landlord's Checklist: Tenant Insolvency

- ✓ Screen tenants thoroughly before leasing (credit checks, guarantors, deposits).
- ✓ Watch for early warning signs of arrears or financial distress.
- ✓ Understand your local insolvency procedures and how leases are treated.
- ✓ Maintain regular contact with insolvency practitioners if proceedings begin.
- ✓ Act quickly to re-let the property if a lease is disclaimed or terminated.

18. Company Change/Sale

It is common for businesses to be bought and sold. For landlords, this can sometimes cause unnecessary concern, but in reality the transfer of ownership in a tenant's company does not usually change the lease itself.

If the lease is granted in the name of the company (and references the company's registered number rather than the directors personally), then a change of shareholders or directors does *not* alter the tenant's obligations. The company remains legally bound to the lease. Unless the new owners specifically approach the landlord to negotiate, no automatic change to the lease arises simply because the company has changed hands.

What might change in practice

While the lease remains intact, there are still some potential areas for impact:

1. Guarantors

If there is an individual rent guarantor, a company sale may trigger requests to substitute that guarantor. Any proposed replacement must be thoroughly vetted, and the lease varied formally if a new guarantor is agreed.

2. Re-gear or surrender requests

New directors or owners may wish to reshape the lease to suit their business plans. This might involve a lease surrender, or a re-gear of existing terms. A re-gear can be a positive opportunity: for instance, a landlord might agree to a rent reduction in exchange for removal of a tenant's break clause, providing security of income in return for flexibility to the tenant.

3. Due diligence enquiries

For larger businesses or corporate acquisitions, solicitors acting for the buyer will often request detailed information:

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- Service charge budgets and accounts
- Insurance schedules
- Rent deposit arrangements (including whether interest has accrued)

These requests do not usually alter the lease, but can create additional administrative work for the landlord or managing agents.

Universal considerations

The principles above apply across jurisdictions: whether in the UK, US, or elsewhere, a company change does not in itself override the lease. However, some countries have additional rules, for example in certain European jurisdictions, tenants must notify landlords of significant ownership changes, and in parts of Asia, change of control provisions can be written directly into commercial leases.

For landlords, the key takeaway is to distinguish between **a change in the tenant company itself** (which may affect the lease) and **a change in the company's owners or directors** (which generally does not)

Landlord's Checklist: Company Change or Sale

- ✓ Confirm whether the lease is granted to the company entity (not individuals).
- ✓ If a guarantor is replaced, carry out full due diligence and document the change formally.
- ✓ Treat re-gear requests as opportunities to negotiate win-win terms.
- ✓ Be prepared to provide service charge, insurance, and rent deposit documentation during due diligence.
- ✓ Understand any local legal requirements for notifying or consenting to company ownership changes.

Bringing it Together

19. Conclusion

A good relationship with tenants is one of the most powerful tools a landlord has. In most cases, clear communication and mutual goodwill will prevent small issues from becoming major disputes.

While it is essential to understand the legal terms of a lease, goodwill and co-operation are often more effective (and certainly cheaper) than relying solely on legal action. In practice, the longer a problem is allowed to continue, the harder (and more expensive) it becomes to resolve.

Before granting a lease, landlords should carry out thorough due diligence. There are many online resources to help review a company's financial standing, directors, and trading history. Where there is any uncertainty, it may be safer to insist on a rent deposit, request a guarantor, or simply decline to proceed. Commercial property ownership is never risk-free, but with careful planning it is possible to minimise and manage that risk.

Some landlords hesitate to act against problem tenants for fear of vacancy, but inaction can often cause greater financial damage in the long run. In extreme cases, landlords have even sold properties at a loss rather than deal with difficult tenants.

It is also natural for tenants to raise complaints, whether about repairs not being carried out, or works being undertaken that they object to. These situations can escalate if mishandled, but the most effective approach is often the simplest: listen carefully to the tenant's perspective. Frequently, being heard is all the tenant wants, and the specific "problem" becomes secondary. This can even be an opportunity to rebuild goodwill.

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The strategies outlined in this booklet should be treated as a series of practical tools, fall-back options when informal conversations are not enough. The landlords who succeed are usually those who take a **proactive but balanced approach**: actively managing their properties, staying aware of tenant needs, and maintaining open lines of communication without becoming intrusive.

Commercial property is, at its heart, a partnership between landlord and tenant. The more constructive and transparent that partnership is, the greater the long-term value for both sides.

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Key Takeaways for Landlords

1. Build Strong Tenant Relationships

- Goodwill and clear communication prevent most disputes.
- Listening is often more effective than legal escalation.

2. Be Proactive, Not Reactive

- Deal with arrears or breaches early. Problems always grow if left.
- Regularly review leases, tenant performance, and compliance.

3. Do Your Homework Before Granting a Lease

- Check company background, directors, and financial stability.
- Use tools: credit checks, public registries, references.
- Where risk exists, require deposits, guarantors, or extra security.

4. Know the Common Pitfalls

- Unauthorised alterations, arrears, planning issues, compliance breaches.
- Tenant insolvency rarely results in arrears being recovered. Focus on regaining possession quickly.

5. Use the Lease as a Safety Net, Not the First Step

- The lease provides remedies (notices, CRAR, forfeiture), but these are last resorts.
- Early intervention and negotiation are almost always cheaper.

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6. Protect the Value of Your Property

- Lease terms directly affect rental value, capital value, and saleability.
- Be ready to re-gear when opportunities arise.
- Monitor compliance (statutory, environmental, planning) to avoid liability.

7. Think Long-Term

- Tenants are partners in your investment. Treat them as such.
- Proactive management protects your income stream and preserves goodwill.
- The most successful landlords are visible, fair, and engaged without being intrusive.

Final Reminder: Commercial property is never risk-free, but with active management, strong tenant relationships, and a clear understanding of your lease obligations and remedies, you can minimise risk, maximise income, and protect long-term value.

20. Disclaimer

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Introduction to me

My name is Doug Parker, and Montbart Limited is my company. Embarking on the journey of a Property Management degree course at the University of Reading in 2002 through distance learning (whilst still in the Royal Air Force) I have now been involved full time in commercial property for over 15 years. I've worked in the private and public sectors, on almost all property types and I've worked on client and consultancy sides.

My career in property has not been a linear path, and whilst working for Network Rail in 2017 I underwent assessment (successfully, after a few attempts) to gain membership of the Royal Institution of Chartered Surveyors via the Professional Route. I also hold the Chartered Banker MBA from Bangor University.

I've always been drawn to the entrepreneurial side of property and my passion lies in adding value to properties and portfolios. This is because it involves creativity, an understanding of the legal and financial complexities and (to me) is the 'alchemy' of being successful in commercial property investment.

Montbart Limited is an independent real estate asset management consultancy and is registered with the Royal Institution of Chartered Surveyors.

If the subject of optimising your commercial property or portfolio strikes a chord, please visit my website at www.optimisecre.co.uk.

Appendix - Global Regional Variations

Introduction to Regional Variations

While the principles of good property management are universal, the **legal and regulatory frameworks differ significantly around the world**. Landlords and investors should be aware that remedies, enforcement processes, and statutory obligations vary depending on the jurisdiction.

The purpose of this appendix is **not** to provide exhaustive legal detail for every country. Instead, it highlights the **key themes where regional differences matter most** - enforcement, insolvency, planning/zoning, statutory compliance, and security arrangements.

By setting out some broad international comparisons, this appendix aims to:

- Help landlords and investors understand where local practices may diverge from the UK framework.
- Provide context for international readers who may be more familiar with US, European, or Asia-Pacific systems.
- Emphasise the importance of **seeking local professional advice** when dealing with specific issues.

In practice, the *foundations remain the same*: proactive management, clear leases, and open communication with tenants. But the **tools available to landlords** (legal remedies, insolvency processes, compliance standards) can differ greatly by region.

Every country has its own rules, and this appendix only scratches the surface. Use it as context, not instruction and always speak with a local adviser before making

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Appendix Contents: Regional Variations

Themes Covered:

a. **Lease Enforcement & Remedies**

How landlords address breaches and recover possession across regions.

b. **Unauthorised Alterations**

How tenant works are controlled and enforced internationally.

c. **Unauthorised Subletting & Assignment**

Variations in consent, enforcement, and tenant rights around occupation transfers.

d. **Lease Breaks & Surrenders**

How early lease exits are managed, from strict UK break clauses to negotiated surrenders elsewhere.

e. **Security Deposits & Guarantees**

The tools landlords use to protect themselves against arrears and breaches.

f. **Planning & Zoning**

Regional approaches to permitted use, planning controls, and land regulation.

g. **Compliance with Legislation**

How different jurisdictions apply safety, environmental, and building laws.

h. **Business Challenges & Insolvency**

What happens when businesses fail, and how landlords are treated in insolvency.

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Lease Enforcement & Remedies

One of the most important areas of variation between jurisdictions is how landlords can enforce lease terms when tenants fail to comply. While the principle is the same everywhere, landlords need a mechanism to protect income and regain control, the **processes and protections differ widely**.

Universal Principles

- **Remedy hierarchy:** Most landlords start with informal dialogue, then written notices, before escalating to legal enforcement.
- **Termination rights:** Almost all systems allow a landlord to recover possession if the tenant seriously breaches the lease.
- **Court involvement:** The extent to which a landlord can act unilaterally versus needing judicial approval is the biggest point of difference.

Regional Variations

United Kingdom

- Landlords have traditional rights such as *forfeiture* (ending the lease for breach).
- For rent arrears, the *CRAR (Commercial Rent Arrears Recovery)* procedure allows seizure of tenant goods without court action, though tightly regulated.
- In practice, landlords often use statutory demands or court possession proceedings when arrears are substantial.

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United States

- Lease enforcement is state-specific. Some states permit relatively fast eviction procedures ('summary possession'), while others require full court hearings.
- 'Self-help' remedies (changing locks, seizing goods) are heavily restricted or prohibited in many jurisdictions.
- Landlords typically rely on court-ordered eviction and debt claims.

European Union (general)

- Enforcement is often more tenant-protective.
- Court approval is usually required for lease termination or eviction.
- In countries such as France or Germany, mandatory notice periods and formal procedures must be observed even for clear breaches.

Asia-Pacific

- Systems vary widely:
 - **Australia:** Similar to the UK, with forfeiture rights and debt recovery actions, though some states mandate mediation before court.
 - **Singapore / Hong Kong:** Landlords often have stronger rights to re-enter for non-payment, provided procedures are followed.
 - **China / India:** Enforcement may be slower due to court backlogs; many landlords favour negotiated settlements.

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Comparative Snapshot

Region	Key Features of Lease Enforcement
UK	Forfeiture rights; CRAR procedure; possession via courts if needed
US	State-specific; court eviction common; self-help often prohibited
EU	Strong tenant protections; mandatory court involvement; notice periods
Asia-Pacific	Mixed: Australia (forfeiture + mediation), Singapore/HK (landlord rights strong), China/India (court-heavy, slower)

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Unauthorised Alterations

Universal Principles

- Most leases restrict tenants from making alterations without landlord consent.
- Alterations typically fall into two categories:
 - **Structural** (walls, roofs, major systems) → almost always require explicit landlord approval.
 - **Non-structural / internal** (decor, partitions, fittings) → often permitted with landlord consent, sometimes deemed consent.
- The core risks to landlords are:
 - Reduced property value if works are poorly done or non-compliant.
 - Liability for planning/building regulation breaches.
 - Cost of reinstatement at lease end.

Regional Variations

United Kingdom

- Landlords usually require tenants to obtain a *Licence for Alterations*.
- Building regulations approval and planning permission may also be needed.
- If unauthorised works are carried out, landlords can insist on reinstatement or withhold consent to assign/sublet until breaches are remedied.

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United States

- Commercial leases often include detailed alteration clauses, with specific thresholds for when landlord consent is required.
- Many states allow landlords to withhold consent 'reasonably' but 'reasonableness' can vary by case law.
- Local building codes and ADA (accessibility) compliance must still be met, even if the landlord wasn't aware of the work.

European Union (general)

- In civil law countries (e.g. France, Germany, Spain), unauthorised alterations may give landlords immediate termination rights.
- Strong statutory building codes mean even minor works often need formal permits.
- Enforcement is court heavy. Landlords usually need judicial approval to force reinstatement.

Asia-Pacific

- **Australia:** Alteration clauses are similar to the UK, with landlord consent generally required; mediation is often encouraged before formal enforcement.
- **Singapore / Hong Kong:** Very strict rules, landlords often retain approval rights for almost all alterations; non-compliance can be a fast track to forfeiture.
- **China / India:** Enforcement is weaker in practice; landlords may struggle to enforce reinstatement until lease expiry, though damages can be pursued in court.

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Comparative Snapshot

Region Approach to Unauthorised Alterations

UK Licence for Alterations; landlord can require reinstatement

US Threshold-based clauses; ADA and building code compliance key

EU Strict permits; unauthorised works can justify termination

Asia-Pacific Strong approval rights (Singapore/HK); mediation common (Australia);
enforcement slower in China/India

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Unauthorised Subletting/Assignment

Universal Principles

- Most commercial leases prohibit tenants from assigning (transferring) their lease or subletting space without landlord consent.
- The risks to landlords include:
 - Loss of control over who occupies the property.
 - Reduced tenant quality (and therefore risk to rent payment).
 - Breach of planning, licensing, or building regulations.
- Remedies typically involve either:
 - Refusing consent (if reasonable grounds exist).
 - Enforcing lease covenants to prevent or undo the subletting.

Regional Variations

United Kingdom

- Assignments and subleases generally require landlord consent, which cannot be 'unreasonably withheld'.
- Landlords may impose conditions: Authorised Guarantee Agreements (AGAs), rent deposits, or reinstatement of arrears before consent is given.
- If subletting occurs without consent, landlords can seek forfeiture, damages, or injunctions.

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United States

- Lease terms govern. In many states, landlords may withhold consent arbitrarily unless the lease explicitly requires 'reasonableness'.
- Some jurisdictions (e.g. California, New York) require reasonableness by statute or case law.
- Enforcement often requires court eviction if an unauthorised assignee/subtenant refuses to vacate.

European Union (general)

- Civil law countries (e.g. France, Spain) often allow subletting unless the lease *expressly* forbids it.
- Even when prohibited, enforcement may require judicial action.
- Some countries (like Germany) are more tenant-friendly, granting tenants statutory rights to sublet parts of premises in certain cases.

Asia-Pacific

- **Australia:** Generally follows the UK model, landlord consent required, not unreasonably withheld. Disputes often go to mediation.
- **Singapore / Hong Kong:** Very landlord-friendly. Breach of subletting clauses can trigger immediate forfeiture.
- **China / India:** Legal remedies exist but enforcement is often slow; landlords may prefer negotiated surrenders or settlements.

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Comparative Snapshot

Region	Approach to Subletting & Assignment
UK	Consent required; cannot be unreasonably withheld; AGAs common
US	Consent rules vary by state; may be absolute unless lease says otherwise
EU	Subletting often permitted unless expressly prohibited; tenant-friendly in parts
Asia-Pacific	Consent usually required; strong landlord rights in Singapore/HK; slower enforcement in China/India

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Lease Breaks & Surrenders

Universal Principles

- **Break clauses** give either party the right to end a lease early, usually subject to strict notice requirements.
- **Surrenders** involve landlord and tenant mutually agreeing to terminate before expiry.
- For landlords, the key risks are:
 - Loss of income if a tenant exits unexpectedly.
 - Reduced property value if a break option makes the lease less secure.
 - Cost of negotiation if a surrender is proposed.

Regional Variations

United Kingdom

- Break clauses are common, but highly technical. If the tenant fails to meet *every* condition (notice format, rent up to date, vacant possession delivered), the break can be invalid.
- Surrenders must be agreed in writing, often with a surrender premium payable.
- Strict case law makes break enforcement a frequent source of dispute.

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United States

- Break clauses are less common in commercial leases. Tenants usually remain bound for the full term unless they negotiate an 'early termination option' upfront.
- Surrenders are usually negotiated; landlords may require tenants to cover re-letting costs or pay a termination fee.
- Some states allow tenants to 'assign back' if the landlord agrees, but it's not automatic.

European Union (general)

- Varies by country.
 - **France:** Tenants of certain leases (e.g. commercial leases of 9 years) have statutory rights to break every 3 years ('3-6-9' leases), even if not written into the lease.
 - **Germany:** Breaks must be expressly agreed; otherwise, leases are binding until expiry.
- Surrenders are usually possible but require notarisation in civil law systems.

Asia-Pacific

- **Australia:** Break clauses are rare; surrenders are usually by negotiation with financial settlement.
- **Singapore / Hong Kong:** Very landlord-friendly, break clauses must be expressly negotiated; otherwise, leases bind until expiry.
- **India / China:** Early exits often negotiated informally, but enforcement of terms can be slow.

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Comparative Snapshot

Region	Break Clauses	Surrender Practices
UK	Common, but highly technical; strict compliance required	Formal written surrender, often with premium
US	Less common; early termination usually negotiated with fees	Negotiated surrender; landlord recovers re-letting costs
EU	France: statutory 3-year break rights; Germany: only if agreed	Often notarised; depends on civil law formalities
Asia-Pacific	Rare; must be expressly negotiated	Typically negotiated; landlord-friendly in Singapore/HK

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Security Deposits & Guarantees

Universal Principles

- Security deposits and guarantees provide landlords with protection against arrears, damages, or tenant default.
- Amount, form, and enforcement vary significantly worldwide.
- Common tools: cash deposits, personal/corporate guarantees, letters of credit.

Regional Variations

United Kingdom

- Rent deposits common (often 3–6 months).
- Guarantors widely used, especially for smaller companies.
- Deposit deeds may specify whether interest accrues.

United States

- Letters of credit frequently used, especially in larger leases.
- Cash deposits common for smaller tenants.
- Personal guarantees are often negotiated and vary by state.

European Union (general)

- Cash deposits standard (often 3–12 months).
- Bank guarantees widely used in place of deposits, especially in Germany and the Netherlands.

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- Civil law countries may require deposits to be held in specific ways (e.g. separate accounts).

Asia-Pacific

- **Australia:** Rent deposits or bank guarantees standard, usually 3–6 months.
- **Singapore / Hong Kong:** Large cash deposits common (6–12 months), reflecting landlord-favourable markets.
- **China / India:** Cash deposits more common than bank guarantees; amounts vary widely but can be substantial relative to rent.

Comparative Snapshot

Region	Security Practices
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UK	Rent deposits (3–6 months); guarantors; interest terms
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US	Letters of credit; personal guarantees; cash deposits
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EU	Cash deposits (3–12 months); bank guarantees; civil law requirements
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Asia-Pacific	Australia (3–6 months); Singapore/HK (6–12 months); China/India rely on cash deposits
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Planning & Zoning

Universal Principles

- Landlords and tenants must ensure the property is used in accordance with local planning or zoning laws.
- Breaches can lead to fines, closure orders, or reduced property value.
- Leases usually require tenants to comply with permitted use restrictions, but ultimate liability can sometimes fall back on landlords.

Regional Variations

United Kingdom

- Town Planning system; 'Use Classes Order' categorises property uses.
- Change of use may require planning permission; responsibility often pushed onto tenants, but landlords must also remain alert.

United States

- Local zoning ordinances dictate permitted use, density, parking, signage.
- Zoning is highly fragmented and varies city by city, sometimes neighbourhood by neighbourhood.
- Variances (exceptions) can be sought, but process can be slow and political.

European Union (general)

- National planning frameworks with strong protection of heritage/urban character.
- For example: strict conservation rules in historic centres (e.g. Paris, Rome).

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- Environmental and sustainability rules increasingly embedded in planning decisions.

Asia-Pacific

- **Australia:** State planning systems regulate land use; tenants usually must comply with permitted use conditions.
- **Singapore / Hong Kong:** Centralised, highly controlled planning/zoning; breaches can trigger swift enforcement.
- **China / India:** Planning/zoning exists but enforcement may be inconsistent; risks of informal/unauthorised use higher.

Comparative Snapshot

Region	Planning / Zoning Features
UK	Use Classes Order; change of use requires planning consent
US	Local zoning ordinances; variances possible but complex
EU	Strong heritage/environmental controls; strict permits
Asia-Pacific	Australia state planning; Singapore/HK centralised; China/India uneven enforcement

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Compliance with Legislation

Universal Principles

- Tenants are almost always required to comply with **all relevant laws** (health & safety, building codes, planning/zoning, tax obligations, environmental standards).
- Landlords typically require tenants to indemnify them against any breaches.
- Key risks for landlords:
 - Regulatory penalties falling back on the property owner.
 - Reduced asset value if the property is non-compliant.
 - Costly remedial works if tenants vacate without addressing breaches.

Regional Variations

United Kingdom

- Tenants must comply with legislation including:
 - Health & Safety at Work Act, Fire Safety regulations
 - Building Regulations and planning permissions
 - Environmental law
 - Local property taxes (business rates)
- Non-compliance may give landlords forfeiture rights, and tenants are often obliged to leave the property compliant at lease end.

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United States

- Strong focus on compliance with federal, state, and local codes.
- Accessibility: Americans with Disabilities Act (ADA) is a major requirement; non-compliance can trigger lawsuits.
- Environmental regulations (EPA) and local building codes are key.
- Lease language often allocates compliance responsibilities in detail, especially for capital improvements.

European Union (general)

- EU directives drive consistent standards in areas like energy performance, health & safety, and environmental protection.
- Member states transpose directives into national law, so details vary.
- For example: strict fire codes in France, energy certificates in Germany, environmental regulations in the Netherlands.
- Compliance is typically enforced through inspections, with strong penalties for breaches.

Asia-Pacific

- **Australia:** Similar to the UK, with occupational health & safety (OHS), planning, and building codes. Tenants usually bear compliance costs.
- **Singapore / Hong Kong:** Highly regulated, especially for fire safety and licensing of food/retail premises. Non-compliance can quickly lead to closure orders.

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- **China / India:** Regulations exist but enforcement can be inconsistent; risk often falls back on landlords to ensure statutory compliance is met.

Comparative Snapshot

Region	Statutory Compliance Highlights
UK	Health & safety, planning, building regs, environmental law, business rates
US	ADA, EPA, strong local/state building codes; lease details often critical
EU	Driven by EU directives (energy, safety, environment); national enforcement varies
Asia-Pacific	Australia similar to UK; Singapore/HK very strict; China/India patchy enforcement

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Business Challenges & Insolvency

Universal Principles

- Businesses can and do fail; insolvency is a key risk for landlords.
- Warning signs: arrears, late payments, sudden lease variation requests, reduced trading activity.
- Landlords typically sit as **unsecured creditors** → arrears are rarely recovered once insolvency proceedings begin.
- The landlord's priority is usually to **regain possession quickly** and re-let.

Regional Variations

United Kingdom

- Several formal insolvency processes:
 - *Administration*: business rescue attempt; rent for premises still in use is a priority expense, but arrears usually lost.
 - *Company Voluntary Arrangement (CVA)*: allows tenant to continue trading while paying only a portion of debts; landlords bound by its terms.
 - *Creditors' Voluntary Liquidation (CVL) / Compulsory Winding Up (CWU)*: business closes, assets sold, lease often disclaimed.
- Landlords must act promptly, lodge claims, and communicate with administrators.

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United States

- Bankruptcy law is federal:
 - *Chapter 11*: reorganisation; tenant may continue trading, renegotiate leases, or reject unprofitable leases.
 - *Chapter 7*: liquidation; business closes, assets sold, lease usually terminated.
- Landlords may receive 'administrative rent' for periods where premises are used, but arrears are unsecured.
- Court approval central to all proceedings.

European Union (general)

- Insolvency laws vary by country but follow similar themes:
 - Business rescue/restructuring (e.g. France's sauvegarde, Germany's Insolvenzplan).
 - Liquidation processes for winding up.
- EU is moving toward harmonisation of insolvency frameworks.
- Tenant protections can be strong; landlords often face delays in repossession.

Asia-Pacific

- **Australia**: Voluntary Administration and Deed of Company Arrangement (DOCA) similar to UK's Administration/CVA.
- **Singapore / Hong Kong**: Court-driven insolvency; administrators may disclaim leases if premises not required.

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- **China / India:** Insolvency systems developing but court processes often slow; enforcement uneven. Landlords may struggle to recover possession quickly.

Comparative Snapshot

Region	Key Insolvency Features
UK	Admin, CVA, CVL, CWU; arrears rarely recovered; leases can be disclaimed
US	Chapter 11 (reorganisation), Chapter 7 (liquidation); court-driven
EU	Mix of restructuring & liquidation; tenant-friendly in parts; harmonisation underway
Asia-Pacific	Australia (Admin/DOCA); Singapore/HK court-driven; China/India slower enforcement

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Closing Note

Across the world, the rules and remedies may differ, but the principles of good property management remain the same: clear leases, proactive oversight, and constructive relationships with tenants. By understanding both the **universal themes** and the **regional variations**, landlords can better protect their investments and unlock long-term value wherever they operate.