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## **Rent Reviews**

If you occupy your business premises as a tenant, the lease document may provide for the rent to be reviewed at intervals: often every three to five years. There is inevitable scope for disagreement on the level of the new rent and a chartered surveyor, with an intimate knowledge of the property market, has a vital role to play in advising and possibly in representing you. You need to be sure that you comply – and in good time – with the various steps required by the rent review process. If you fail to do so, the rent that the landlord asks may apply automatically.

### **When do rent reviews usually occur and what is their purpose?**

Rent reviews take place at whatever intervals are agreed in the lease. Their purpose is usually to adjust the rent to the current market level at the review date (but see below).

### **Can rents go down as well as up?**

It depends on the terms of the lease. Some leases say that the rent will remain at the same level or increase (if market rents have increased) at the review date. This is often referred to as an *upward only* rent review clause (see section *Taking a lease*). Other leases allow the rent to go either up or down, depending on market rents at the time.

### **Are rent review clauses the same in all leases?**

No. The rent review clauses in leases are often long and complicated. This is partly due to the fact that each lease will reflect the needs of the particular occupier to whom it relates. Professional advice – from a chartered surveyor or solicitor – will help you to understand the implications of the rent review clauses in your own lease. See the section *Taking a lease* for more information on leases generally.

### **How is the rent review activated?**

Often, the first step in the review procedure occurs when the landlord gives you written notice that the review is to be activated. A specific figure will be quoted for the new rent. If this does not seem reasonable, you must write and say so immediately. There may be deadlines in the lease which, if you miss them, mean that you have to pay what the landlord is asking. Contact your chartered surveyor or solicitor on the procedures and either try to agree a new rent with the landlord or get your chartered surveyor to negotiate on your behalf. *Above all, do not ignore the issue. It will not go away.*

### **What happens if I cannot agree the new rent with the landlord?**

The lease will usually specify a procedure for resolving the disagreement. Normally, it will state that you should first try to agree with the landlord on the appointment of an independent third party (a chartered surveyor specialising in valuation) to decide the new rent. If you cannot agree, the lease usually provides for the appointment to be made by the President of The Royal Institution of Chartered Surveyors (RICS). The



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independent third party may act either as an *arbitrator* or as an *independent expert*. There are important differences.

The appointment of the independent third party does not prevent your continuing to negotiate with the landlord to try to agree the new rent.

### **What are the main differences between the roles of the arbitrator and the independent expert?**

The functions of an arbitrator are similar to those of a judge, though the processes are less formal than those of a court. Arbitrations are governed by The Arbitration Act 1996. The arbitrator reaches a decision – which is called an *award* – after hearing evidence from the different parties. The independent expert, too, may receive evidence and listen to arguments, but also has a duty to make his or her own investigations to determine an appropriate rent.

### **Who decides whether the independent third party is to act as arbitrator or independent expert?**

The rent review provisions in the lease will probably specify the capacity in which the independent third party is to act. In a few leases one of the parties, usually the landlord, has the right to decide whether the independent third party should act as an arbitrator or independent expert.

### **How does the independent third party procedure work?**

The purpose of appointing an independent third party is to achieve a fair, final and relatively quick, cheap and informal settlement of disputes about rent, without having to go to court.

### **On what basis is the revised rent established?**

The review provisions will usually require the independent third party to make a number of assumptions which will be set out in the lease. The rent will usually be assessed by applying evidence of rents agreed on the letting, rent review or lease renewal of broadly similar properties let on similar terms at approximately the same date. But remember that, if the rent review clause is *upward only*, the rent will adjust to the open market rental value only if this is higher than the current rent.

### **How does the RICS President choose the arbitrator or independent expert?**

The President will appoint a chartered surveyor with special training and experience to act as arbitrator or independent expert. A person will not be appointed if there is a real danger of bias, but it should be realised that the arbitrator or independent expert will probably have had dealings with other properties in the area. It is in the interests of both landlord and tenant that the person appointed has the appropriate expertise.



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### **On what basis is the arbitrator or independent expert paid?**

Following the appointment, the arbitrator or independent expert will ask you and your landlord to agree to the fee to be charged. Fees are open to negotiation but the arbitrator or independent expert has a duty to proceed even if agreement has not been reached. If you or the landlord feels that the fees are too high, there are procedures for challenging them in court after the rent review has been settled.

### **Does the landlord or tenant need to be professionally represented in arbitration or independent expert proceedings?**

It is not obligatory for you or the landlord to be represented, either by a chartered surveyor or a lawyer, as the proceedings are fairly informal. However, expert advice is essential, both in interpreting the precise terms of the lease (which will have an effect upon rent) and in obtaining details of transactions relating to other premises which may influence the level of rent. Landlords are very often advised by chartered surveyors and may be expert in property matters themselves. The RICS Contact Centre can give you names of local specialist chartered surveyors.

Presenting a case to an arbitrator without professional help can be risky. A surveyor who acts for you in dealings with the arbitrator is best placed to present specific evidence of comparable transactions and also to give an opinion as an *expert witness*, based on professional knowledge and judgment. Where disputes are referred to independent experts, the presentation of a case may be somewhat less important because they have to make their own investigations and use their own knowledge. Nevertheless, it is still risky to present a case without professional help.

### **What happens when the arbitrator or independent expert has reached a decision?**

The decision – an arbitrator's *award* or independent expert's *determination* – is usually released after his or her fees have been paid.

### **Who pays the fees of the arbitrator or independent expert?**

In the case of the independent expert, the fees will usually be payable equally by the parties, unless the lease provides otherwise. In an arbitration, the arbitrator has complete freedom to decide how the fees and the costs of the parties are to be apportioned.

### **When does the new rent become effective?**

Once the award or determination has been issued, any increase in the rent previously payable will become payable immediately and will be effective from the rent review date, even if that date has passed. Often, leases will provide for interest to be paid on the increase in rent from the date of rent review until the date of payment.



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### **Is an award or determination final?**

Essentially, an arbitrator's award is final and binding though in rare circumstances involving points of law or misconduct by the arbitrator the High Court has the power to set it aside. There is no right of appeal against an independent expert's determination. However, if it can be shown that the award or determination has been negligent, it may be possible to sue for compensation by way of damages.

### **Are there alternative and possibly cheaper ways to settle a rent dispute?**

Yes. It is possible for the parties, by agreement, to refer the dispute to a mediator. This could produce a quicker and less expensive resolution, although the mediator would have no authority to impose a rent upon either of the parties. Information regarding the whole range of dispute resolution procedures, including mediation and the Small Business Scheme may be obtained from the RICS dispute Resolution Service. Advice on rent reviews and the arbitration and expert determination procedures is available from the RICS Rent Review and Lease Renewal Helpline.

### **Further Information**

For a list of property related matters please visit the Business Property Advice page [www.rics.org/bpa](http://www.rics.org/bpa).

### **Find an RICS member**

If you want to find independent, impartial advice from a qualified professional with good local knowledge, contact us.

To find a chartered surveyor in your area visit [www.ricsfirms.com](http://www.ricsfirms.com)

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