

Commercial landlords

Getting to grips with
your responsibilities



Responsibilities for commercial landlords

If you own a commercial property for rent, you'll know it comes with certain responsibilities to your tenant, or tenants, and the wider public. But there is often a great deal of confusion about who is responsible for what, especially when it comes to legal health and safety requirements and insurance: landlord or tenant? And it's no wonder, because as well as what's written in the lease, there are legal responsibilities on both sides that can sometimes overlap. The lease, the single most important document relating to the tenancy, should clearly lay out who is responsible for things like health and safety, insurance and building maintenance. But even if the landlord transfers all responsibility to the tenant for things like fire, gas and electrical safety, they still have an overriding legal duty to ensure they take reasonable measures to ensure the premises are safe if they exert any control over the building.

We look at each area of commercial property landlord responsibilities and clear up any misconceptions.

Fire safety

The person with control over the premises will have responsibility for fire safety, including evacuation procedures, which will usually be the tenant if the premises are rented as a workplace. However, the landlord should always include fire safety in any risk assessment undertaken, and may be responsible for providing equipment - like fire extinguishers - depending on the terms of the lease.

Under the Regulatory Reform (Fire Safety) Order 2005, the owner of the building may be deemed the "responsible person" for a rented premises if, for example, it is an unmanned storage warehouse. As well as evacuation procedures and risk assessments, the Order requires that the premises, any fire safety equipment and emergency exits are properly maintained and kept in working order.

Electrical safety

There is a legal responsibility on the landlord to ensure that electrical safety standards are maintained, with the Electrical Safety Council recommending that full testing is carried out every five years or when the tenancy changes, whichever is sooner. The landlord's responsibility includes wiring systems and fuse boards, with a duty of care to ensure all reasonable steps and precautions are taken to prevent personal injury to tenants, or damage to their property. Tenants are responsible for the safety of any electrical appliances bought or installed by them, and for undertaking risk assessments of their use of electricity and taking steps to ensure any employees are safe.

Fixtures and fittings

Fixtures and fittings belonging to the landlord need to be safe to use, correctly installed and maintained by them. Tenants are responsible for the safety of and maintaining any fixtures and fittings they install. This should be in the lease.

Commercial property insurance

Most commercial leases will seek to transfer the cost of insurance on to the tenant, or proportionately to tenants in premises with multiple occupation. But that doesn't mean landlords can wash their hands of their responsibility for insurance - indeed, it's in the landlord's interest to arrange the insurance themselves for a variety of reasons.

As well as being able to choose their own insurance broker or insurer, they can retain control over the whole process in the event of a claim, as well as specifying the level of cover, which can vary between insurers. There's no such thing as a standard commercial property insurance policy, with some, but by no means all, policies automatically including things like loss of rent or contents cover.

Standard cover usually includes damage to the building for insured perils, glass cover, plus property owners liability, while the following can sometimes be included as standard or paid-for extras:

- Loss of rent, also known as business interruption
- Legal expenses
- Accidental damage to buildings
- Landlord's contents cover
- Subsidence
- Malicious damage and theft by tenants
- Employers liability, if you employ someone to maintain your property

The level of cover required may be specified in the lease and, as long it is reasonable, all costs - including any excess in the event of claim - can be passed on to tenants. It's important to make sure you have to right cover, so if you are unsure how to insure a commercial property, speak with one of our experts.

Gas safety

The terms of the lease should clearly set out who is responsible for the safety of any gas installations in the building. It will often specify that the tenant is responsible for ensuring the safety of any gas appliance, installation pipework or flue installed in their workplace, while landlords should look after the safety of installations in any communal areas. The Gas Safety (Installation and Use) Regulations 1998 specifies that installations and appliances should be inspected annually by a Gas Safe engineer, with records kept for a minimum of two years. Failure to comply with regulations could result in a large fine, or imprisonment.

Refridgeration systems, heating or air conditioning

Responsibility for air conditioning, heating or refrigeration systems rests with the party who has control over the technical functioning of the equipment, which will usually be the tenant. But the landlord may retain responsibility for these if they retain some day-to-day responsibilities for running the site.

Asbestos

The “duty holder” has a responsibility to manage asbestos under the Control of Asbestos Regulations 2012. Under an FRI lease this will usually be the tenant, but if the duties are not clearly defined in the lease it will be the person who has the most control over the building. The 2012 regulations state that the duty holder must take reasonable steps to find out if there is asbestos in the building and assessing the risks of anyone being exposed to fibres.

It may not be necessary to remove the asbestos, merely identify and manage the risk, but any work carried out to the part of the building containing asbestos must be carried out by a licensed contractor.

Buildings constructed after 2000 should not contain asbestos, but anything constructed before that must include asbestos in any risk assessments before building work is carried out.

Minimum energy efficiency standards (MEES)

New regulations came into force on April 1, 2018 which made it a legal requirement for eligible rented properties to have an Energy Performance Certificate (EPC) rating of no worse than E.

The implementation of the regulations is staggered:

- From now, it’s unlawful to grant new leases on a commercial property which has an EPC rating worse than E
- From April 1, 2023 it will be unlawful to continue to let eligible commercial property which does not meet the minimum standards.

Exemptions include listed buildings, if the changes required would breach the terms of the listing; temporary structures; industrial sites or workshops; detached buildings with a floor space of less than 50 square metres; and some vacant buildings or those due for demolition.

Maintenance and repairs

Most commercial properties are let on a Fully Repairing and Insuring (FRI) Lease, which places the onus on the tenant for any repairs, as well as any costs to return the building to its original state at the end of the tenancy.

Most tenants will undertake a survey of the property at the start of the tenancy, and may well seek to exclude any areas already deemed in need of repair, or ask the landlord to undertake work for any major structural issues before accepting the tenancy. Don’t assume that all maintenance and repairs are the responsibility of the tenant.

If the building is let to multiple tenants, the landlord will usually retain responsibility for maintaining and cleaning communal areas and the structural integrity of the main building. The landlord will usually levy a service charge for maintaining these areas, much like on leasehold domestic flats. Sometimes, the tenant may want to carry out building work to the property once they are in occupation. The landlord should accept this as long as it is reasonable, but may want to consider retaining the right to make the tenant put the building back to its original condition at the end of the lease.

The Code for Leasing Business Premises

Drawn up in 2007, the Code for Leasing Business Premises is a voluntary best practice code created by a collaboration between commercial property professionals and industry bodies representing both landlords and tenants. Its intention is to promote fairness in commercial leases, and landlords are encouraged to adhere to 10 key points, summarised below:

1. Landlords should make a written offer clearly stating key points including the cost of rent, length of lease, rent review arrangements, and repair obligations.
2. Rent deposits and guarantees should be clearly stated, including the amount, the duration and the arrangements for paying or accruing interest at a proper rate. Tenants should be protected against the default or insolvency of the landlord.
3. The length of term must be clear, including break clauses and renewal rights. The only preconditions to tenants exercising any break clauses should be that they are up to date with the main rent, give up occupation and leave behind no continuing sublease.
4. Rent reviews should be clear and headline rent review clauses should not be used. Landlords should on request offer alternatives to their proposed option for rent review priced on a risk-adjusted basis.
5. Fair assignment and sub-letting clauses.
6. Landlords must, during negotiations, provide best estimates of service charges, insurance payments and any other outgoings that tenants will incur under their leases.
7. Tenants' repairing obligations should be appropriate to the length of term and the condition of the premises. Unless expressly stated in the heads of terms, tenants should only be obliged to give the premises back at the end of their lease in the same condition as they were in at its grant.
8. Landlords' control over alterations and changes of use should not be more restrictive than is necessary to protect the value of the premises and any adjoining or neighbouring premises of the landlord. Tenants should not need consent to internal, non-structural alterations unless they could affect the services or systems of the property.
9. Where landlords are insuring the property, the insurance policy terms should be fair and reasonable and represent value for money, be placed with reputable insurers, and the full insurance details should be available on request. Rent suspension should apply if the premises are damaged by an insured risk or uninsured risk, other than where caused by a deliberate act of the tenant. If the property is damaged by an uninsured risk and becomes uninhabitable, tenants should be allowed to terminate their leases unless you agree to rebuild at your own cost.
10. Landlords should handle all defaults promptly and deal with tenants in an open and constructive way. At least six months before the termination date, landlords should provide a schedule of dilapidations to enable tenants to carry out any work.

