

RENT REVIEW

History

In 1954, the Landlord and Tenant Act was introduced, the essential feature of which was to grant business tenants the automatic right to renewal at the end of a lease. As a result Landlords sought to protect their investment by ensuring that rent kept pace with inflation.

Evolution of the Rent Review Clause

Attempts have been made by successive governments to introduce flexibility in the rent review procedure, with the emphasis on upwards or downwards reviews so far without success. Occasionally a rent review clause contains a formula rent whereby the parties must agree the value of a hypothetical building and use that agreement to formulate the value of the subject building.

Rent Review Clause Interpretation

The principle behind the rent review is simple; the landlord wishes to ensure that he receives the maximum rent as at the effective date whereas the tenant wishes to ensure that he is not over-paying. In straightforward cases where there is ample comparable evidence the process should be simple.

However often there is no directly comparable evidence and the debate revolves around the interpretation of what evidence is available and how the resultant figure should be adjusted to be applicable to the subject property.

The Review Process

Typically a landlord will serve a rent review notice upon the tenant requiring agreement in accordance with the lease terms. Unless the lease specifically states that "time is of the essence" any time limits imposed by either party are unenforceable.

Occasionally a tenant will serve the rent review notice in order to advance negotiations. The effective date of the rent review is the date from which the new rent will apply. Rent review notices can be served after the rent review date in which case the rent review becomes retrospective to the effective date.

If agreement cannot be reached, determination by a third party may be necessary.

Arbitrator or Independent Expert?

The lease should specify how the matter is to be dealt with in the event of failure to agree by the parties. In the majority of leases an Arbitrator is to be agreed or appointed by a nominated person, usually the President for the time being of the Royal Institution of Chartered Surveyors.

The Arbitration process is an informal Court procedure and typically the parties will make representations to the Arbitrator setting out their claims; the views will be exchanged either in written form or at a

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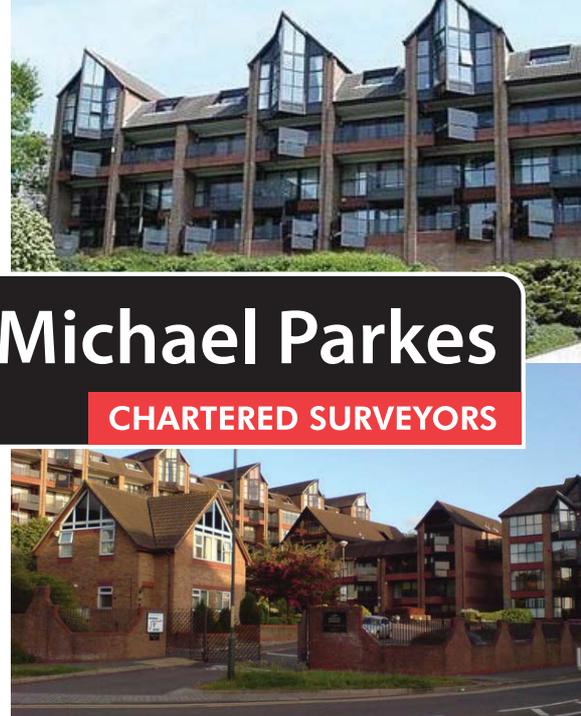
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hearing and afterwards the opportunity will arise to make counter representations. The Arbitrator will then adjudicate on the rent to be paid with effect from the review date, based on the evidence only.

Occasionally an independent expert is specified; this is someone who has expertise in the subject type of property. The procedure is similar to that at Arbitration with an expert usually calling for representations, exchanging them and then making his determination using the evidence and his expertise.

Professional Representation

There is never an obligation on either landlord or tenant to be represented during the rent review process. However expert advice and a technique in negotiating is often desirable and in some cases essential to ensure that the end result is fully in line with expectations. The available evidence must be weighed and adjusted to provide a useful basis for valuation.

Although informal compared to legal proceedings, should the matter proceed to determination by a third party, representation by a surveyor is almost essential; as with any quasi-judicial procedure the evidence needs to be placed before the Arbitrator or Expert in a way that can be easily interpreted to stand the best chance of success. A surveyor is well placed to present specific evidence of comparable transactions and set out an interpretation of the lease in the most favourable light.

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