

## A Brief Guide to Rent Deposits on Commercial Leases

Just when a new business needs all the capital it can get hold of, its landlord asks for a rent deposit before granting a lease. Some key points to note:

1. As a separate issue, the rent deposit is paid to the landlord immediately before the lease completes. This is in addition to the first instalment of rent (rent is paid in advance and the first instalment can typically be for up to 3 months' worth of rent). The workings of the rent deposit are formally covered in a supporting document (often a "Rent Deposit Deed").
2. Usually, the landlord will hold the rent deposit until the lease ends. However, if the tenant assigns the lease to another party (with the landlord's consent) then this will also end the arrangement (although the landlord may well require a replacement rent deposit from the incoming tenant). In some cases, the landlord may be prepared to agree that the rent deposit arrangement will end sooner. For example, it might be agreed that the deposit can be released if the tenant achieves a certain level of net profit over a defined period (e.g. a net profit that exceeds three times the annual rent over a period of three consecutive years) but this will be up to the landlord.
3. The level of the rent deposit is typically the equivalent of a set number of months' worth of rent (e.g. 6 months). If the landlord charges VAT on the rent, they will also want to collect a sum to represent that VAT with the rent deposit. If the landlord has to make a withdrawal from the rent deposit or if the rent increases following a rent review, the tenant will be required to make a payment to top up the value of the rent deposit so it remains the equivalent to a set number of months' rent.
4. Whilst the landlord will usually have to account to the tenant for interest earned on the rent deposit, the landlord will hold the rent deposit in a landlord's bank account – the tenant will have no access to this money. If the tenant breaches the lease, the landlord will make a withdrawal to cover the value of the breach/any associated expenses and notify the tenant of the amount withdrawn and why.
5. When the rent deposit comes to an end, the landlord will return the balance to the tenant. The balance will normally include any interest earned on the deposit. However, if tenant has not complied with the conditions of the rent deposit deed and the lease (for example, payment of all rent due), the landlord may deduct a sum to cover these breaches/associated expenses from the balance before returning it to the tenant.
6. Sometimes, the landlord may require the tenant to grant them a charge over the rent deposit. If so, then the landlord will want to register a charge against the tenant company at Companies House.
7. If the landlord still has concerns about the tenant's ability to comply with their obligations in the lease, then they may look for additional protection as well as a rent deposit. For example, they may require the tenant to provide a guarantor.

Please note that this Summary is intended for information purposes only and is not intended to act as a substitute for independent legal advice. If you are intending to enter into a lease/rent deposit deed, then it is important that you take independent legal advice in relation to your particular transaction.

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