This fact sheet tells you about business property leases. A lease is a legal agreement, drawn up in writing, which allows you to occupy and use a property for a certain length of time.

Use this fact sheet to:

- negotiate with your landlord if you want to end your lease;
- find out how your landlord can end your lease if you fall behind with your rent; and
- find out what your landlord can do to get back unpaid rent.

What is a lease?

A lease is a legal agreement, drawn up in writing, which allows you to occupy and use a property for a certain length of time. The terms and conditions of the lease describe the rights and duties that you and the owner of the property have. These terms and conditions may be referred to as your ‘tenancy’. We use both of the words ‘lease’ and ‘tenancy’ in this fact sheet.

The lease should state how much rent you have to pay. It should also state what services the owner should provide to you. We will use the term ‘landlord’ to refer to the owner of the property for which you have a lease agreement.

Your rights and duties will be covered by the lease agreement. There are no separate laws which set out extra rules. Courts in Scotland are unlikely to interfere with the terms and conditions of a lease. They are also likely to interpret those terms strictly. However, if your lease does not say anything about a particular matter, common law rules could help to decide what your rights and duties are. Common law rules have been established by past court cases. They are not based on existing written laws.

Business Debtline can give you guidance on how to check whether your landlord has followed the correct rules. Contact us for advice.

What should I do before signing a lease?

A lease is a legally binding agreement. Seek legal advice before entering into it. Make sure that you understand the terms and conditions of the agreement. Contact us for advice on how to search for legal advice that may be suitable for you.

Before signing a lease, check the agreement carefully to see:
what your rights and duties are; and
what your landlord’s rights and duties are.

These rights and duties are sometimes known as ‘covenants’.

Your agreement will tell you how much rent you have to pay. Check what is meant by the term ‘rent’ as this may include insurance costs and service charges (money you have to pay for the services the landlord provides).

Most lease agreements will:

- say how your rent may be affected if the premises are damaged or destroyed;
- tell you that you are not entitled to compensation at the end of the lease for improvements you make to the premises;
- refer to registration of the lease in the Books of Council and Session;
- say that the landlord has no right to recover possession of the premises before the lease runs out, unless you have surrendered the lease with the agreement of the landlord, or not paid your rent; and
- that the lease will end when the initial lease period runs out, with very limited rights to renew it. (This point does not apply to shops. See the later section Shops for more information.)

In most cases, your landlord has to give 40 days’ notice before the termination date to end your lease. However, this can be varied if both you and the landlord agree.

If both you and your landlord do not give the correct notice to terminate your lease, it will continue on the same terms for a set period of time.

If your original lease lasted for less than one year, it will continue for the same time period.

If your original lease lasted for at least one year, it will continue for one year.

This is called ‘tacit relocation’.

Tacit relocation continues on a yearly basis unless the appropriate notice to terminate is given by you or your landlord.
Shops

The rules about renewing the tenancy of a shop are set out in the **Tenancy of Shops Act 1949**. These rules apply when the landlord has sent you a ‘notice to quit’ under the lease and you cannot renew the tenancy on terms that you are happy with. If you rent a shop and these circumstances apply, the sheriff has the power to renew the lease for a period of up to **one year** on terms and conditions they think are appropriate.

If the lease is renewed in this way, the extended period is treated as a new lease. This means that if the landlord wants to remove you at the end of the extended period, they need to issue another notice to quit. However, you can apply for further renewals when each lease period ends.

If you apply to court to renew your lease, the court does not have to grant your application. The sheriff can dismiss your application if they think that it would be appropriate, based on all the circumstances.

There are certain situations where the sheriff must not renew your lease. These include the following:

- You are personally bankrupt.
- You run a limited company and the company is unable to pay its debts.
- You are in breach of any condition of the lease which, in the opinion of the sheriff, is significant.

**Negotiate with your landlord**

If you are struggling to pay the rent on your business premises, contact your landlord as soon as possible. Try to make an arrangement that you can afford to pay your ongoing rent and any missed payments. If you have fallen behind with your rent payments, this will usually involve paying your ongoing rent plus an amount towards the arrears. You will usually need to treat business rent arrears as a priority debt. This is because your landlord could take steps to end your lease agreement if you do not make an arrangement to which they agree.

You may wish to try to re-negotiate the rent payments with your landlord. If the property is likely to be difficult to rent out to someone else, your landlord may agree to reduce the rent for a certain period of time.

If you cannot re-negotiate better terms, then you may have to consider whether you can:

- end the lease (see the next section on **Break clauses**); or
- pass the lease on to someone else by ‘assignment’ or ‘subletting’ (see the later section on **Assignment and subletting**).
Break clauses

Your lease may contain a ‘break clause’ which gives you the right to end the lease at specific dates called ‘breakpoints’. A break clause will allow you to end the lease agreement so that you do not have to pay rent after the breakpoint. However, you would still have to pay any arrears that you built up before the breakpoint.

Assignment and subletting

The lease may allow you to ‘assign’ the lease. This would mean that you allow someone else to use the property and they would pay rent to the landlord. You need to tell your landlord if you assign the lease.

The lease may also allow you to ‘sublet’ the property. This would mean that you rent all or part of the premises to someone else. You would need to create a new agreement between you and the person who sublets the property. This is often known as a ‘sublease’.

If you choose to sublet your premises, you are still liable to pay your rent to the landlord. However, the tenant that you sublet to would pay you for being able to use the premises. This can then be used towards payment of your own rent. If you do sublet your premises, it is a good idea to make sure that the sublease ends before the date your own lease ends, or before a breakpoint.
Early surrender of lease

Your landlord may agree to your lease ending early. This is usually called ‘surrender’ or ‘renunciation’. However, they may want you to pay them a lump sum of money before agreeing to this. You may wish to get advice from a solicitor to make sure your rights are protected when your lease ends early. Contact us for advice about how to search for a solicitor that may be able to help you.

What if I don’t pay my rent?

If you do not pay your rent, your landlord can take further action against you. Your landlord could:

- use an ‘irritancy’ clause to end the lease early (see the next section Irritancy);
- use a power known as the ‘landlord’s hypothec’ (see the later section Landlord’s hypothec);
- try to seize money at the business premises (see the later section Attachment for rent);
- make a money claim through the sheriff court to get a decree against you (see the later section Court action to recover the arrears); or
- start insolvency proceedings against you or your limited company (see the later section on Bankruptcy and liquidation).

In the next sections we describe each of these types of action and what your rights are.

Irritancy

Irritancy allows a landlord to end a lease early (‘irritate’). Most leases contain clauses about when a landlord can use irritancy. It can normally be used when you do not keep to your duties under the lease. This may be a duty that involves money, for example not paying the rent, or it may be a duty that does not involve money, such as keeping the premises in reasonable condition.

If there are no irritancy clauses in your lease, the landlord can only irritate where you have failed to pay the rent for two years.

The Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 gives some protection to tenants.

- Where you have not kept to a term of a lease that involves money, for example you have not paid your rent, the landlord must send a notice by recorded delivery, giving you a minimum of 14 days to repay the arrears. The notice should say that if payment is not made, the lease may be ended. Your lease may state that you are entitled to a longer notice period.
- When you have broken a term of the lease that does not involve money, a landlord is not entitled to end a lease if “a fair and reasonable landlord would not seek to do so, in all the circumstances of the case”. Also, if the breach is one that can be put right in a reasonable time, you must be given a reasonable chance to put it right. If you still don’t put things right, the landlord can end the lease.
If there are rent arrears outstanding, your landlord can take further action to recover what you owe. See the later section Court action to recover the arrears.

After you have stopped trading, you can treat any rent you still owe as a non-priority debt.

Information:

self-help pack

Our self-help pack includes information on types of debt, guidance on completing a budget and how to negotiate with creditors. Contact us for a copy on 0800 197 6026.

Landlord’s hypothec

Under common law, your landlord has a right known as the ‘landlord’s hypothec’. This gives them security over moveable property that you own which is kept on land or in buildings that you rent from them. It does not allow your landlord to take these items from you.

In practice, the landlord’s hypothec will not benefit your landlord unless you become insolvent. If this happens, the landlord should be paid first out of any money raised by the sale of items covered by the hypothec.

The landlord’s hypothec is only security for rent that is due but unpaid. Your landlord’s rights under the landlord’s hypothec only continue for as long as that rent remains unpaid. However, the right does not apply to:

- items kept in a home, a mobile home, a croft or on agricultural land;
- property owned by someone other than you; and
- property a third party obtains from you in good faith.

If you are unsure about your landlord’s rights under the hypothec, contact us for advice.

Court action to recover commercial rent arrears

The landlord could make a claim through the sheriff court to recover your rent arrears, without repossessing the property. They can also do this if your business premises have previously been repossessed but you still owe rent arrears. The order that the court makes is called a decree. A decree will be recorded on your credit reference file for six years and can affect your ability to get further credit.

- When court action is taken against you, you will get a formal court document. This will be either a ‘summons’ or an ‘initial writ’, depending on the size of the debt. This gives details about the debt and tells you how much is being claimed.
- If you cannot pay off the debt in full immediately, you may be able to ask the court for time to pay the debt back. Contact us for advice.
- If you want to dispute all or part of the debt, contact us for advice.
If you can ask for time to pay, the sheriff should consider your circumstances and your income and outgoings before making a decision about how much you should pay each month is taken by the court. However, if it will take you a long time to pay the debt back based on the amount you have offered, the court may refuse your request.

If you keep to the payments ordered by the court, your landlord cannot usually take any further action against you. If you miss payments on a decree, the landlord can take further action against you, called ‘diligence’.

### Attachment for rent

If a creditor has got a decree against you, or other court order which allows them to take further action, they can send you a ‘charge for payment’. This is a formal written request asking you to pay what you owe. After the landlord has sent you a charge for payment and the time limit stated on it has run out (usually 14 days), they can ‘attach’ money held in business premises. This means that sheriff officers will be able to open cash tills themselves without getting the court’s permission first. This type of enforcement is known as a ‘money attachment’.

If your lease is registered in the Books of Council and Session, it will usually allow your landlord to take enforcement action straight away if you do not pay your rent or other charges due under the lease.

### Bankruptcy and liquidation

If you are an individual and you owe £3000 or more to your landlord, they could petition for your bankruptcy (sometimes called sequestration in Scotland). Bankruptcy is a court order which means that assets or property that you own could be sold to raise money to pay your debts. If you are threatened with bankruptcy, contact us for advice.

Business leases can be complicated. If your lease has not run out at the point when you are made bankrupt, contact us for advice. In some circumstances, you may still be liable for payments due under the lease even after the bankruptcy.

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**Warning:**

**money attachment**

When the landlord registers the lease, it can be passed to a sheriff officer who can carry out a money attachment by seizing money, cash or cheques that you hold. However, they must send you a charge for payment first.

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We have over 20 years’ experience of helping people just like you.

We are the only small business debt advice charity operating in the UK.

**Freephone 0800 197 6026**

www.businessdebtline.org
If your business is a limited company, your landlord could try to put your company into liquidation. Liquidation is the equivalent of bankruptcy for a company. If you are threatened with this, contact us for advice.

Business Debtline endeavour to keep our fact sheets as up-to-date as possible, however, we cannot be held responsible for changes in legislation or for developments in case law since this edition of the fact sheet was issued.