

Security for a landlord – Rent deposit deeds

A rent deposit tends to be a landlord's security for the tenant obligations under a lease. A rent deposit deed is a document which governs the terms of a rent deposit paid by a tenant to a landlord usually at the date a lease is completed (at the start of the lease term). The deposit tends to be for an agreed sum of money (i.e. 3 months' worth of rent) as security for the landlord. Rent deposit deeds are increasingly common for commercial lease transactions. They are sometimes used alongside or instead of a guarantor. A landlord could request for both forms of security to be provided by the tenant (however a tenant is likely to prefer that a rent deposit deed OR a guarantor is provided instead of both). Ultimately this will largely depend on what has been agreed between the parties and their bargaining strength.

The rent deposit deed will govern the rent deposit paid by the tenant to the landlord. Both the landlord and the tenant will of course be party to the deed, and the deed will include provision for the landlord to be able to make withdrawals from the deposit. Nevertheless, the circumstances in which the landlord will be able to withdraw from the rent deposit must strictly comply with the rent deposit deed. A landlord is likely to find a rent deposit deed being the most attractive option compared to having a guarantor as the landlord will have immediate access to funds should the tenant breach its obligations under the lease. On the other hand, a tenant who for example is a newly incorporated company may instead prefer to offer security to the landlord in the form of a guarantor especially if the newly incorporated company are unable to provide the capital to the landlord which may be several months' worth of rent (which could run into the thousands).

Common examples of which will allow the landlord to withdraw from the rent deposit include the following:-

If the tenant has failed to pay any sums due under the lease; Failure by the tenant to observe or perform any of its covenants and conditions in the lease or the rent deposit deed. Costs associated with the enforcement by the landlord of the obligations of the tenant under the lease or the rent deposit deed.

A rent deposit deed also tends to require that the tenant 'tops up' the rent deposit should there be any permitted withdrawals from the rent deposit. There is also likely to be provision which requires that the rent deposit must not fall below a certain amount.

There are many considerations for both the landlord and tenant when entering into a rent deposit deed. It is usual for a landlord or a landlord's solicitor/ representative to draft a rent deposit deed and this is something we can assist and advise on. Alternatively, we can assist with negotiating the terms and provide advice regarding a rent deposit deed already drafted. A tenant for example may want to consider the provisions for when the deposit is repayable to the tenant.

This is a brief summary of rent deposit deeds and there are many considerations for both the landlord and the tenant to take into account, so please contact our commercial property team for further advice.
