

## Terminating a Guernsey commercial lease early

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**We want to renew the lease of our shop, but is there a way we can terminate the lease if we see a drop in business?**

On renewal the landlord may agree to give you a right to break the lease at a particular time, or if sufficient notice is given – called a 'break clause'. You would have to give some thought to what would be a suitable break date or notice period – for example, 2 years after renewal or on giving, say, 12 months' notice.

It would be possible to make a break clause conditional upon a downturn in business, but that would necessitate you opening your accounts to the landlord, and you may each have differing ideas of how much downturn in business has to be shown before you can exercise the break. A provision such as that would require careful wording and is therefore rare.

Your landlord may require that the break is conditional upon you satisfying certain conditions, and if you don't comply with those conditions you would lose the right to terminate the lease. An example would be that you are not in breach of any of the terms of the lease. From your perspective that could be quite an onerous condition because even a minor breach could jeopardise the right to break.

An ideal break clause for you will be completely unconditional, but the landlord is unlikely to agree to such a clause. A good compromise is a condition that the rent is paid up to date and that there are no subsisting underleases.

If you exercise a break you would want to ensure that the landlord refunds you any rent paid in respect of the period after the break date.

You should bear in mind that time is usually of the essence in relation to notice periods in a break clause. This means that if you didn't give the requisite notice you would lose the right to exercise the break.

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