

The logo for QRE Real Estate Advisers, featuring the letters 'QRE' in white on a red square background.

QRE

REAL ESTATE  
ADVISERS

# The Ups and Downs of Rent Reviews

Guide for Landlords and Tenants

# Rent Reviews, A Hypothetical Scenario

**The Rent Review clause is regarded by many as the most important clause in the lease. The detail in the drafting of the Rent Review clause can have major implications when one is determining their opinion of rental value, which in turn may impact on the investment value/capital value of the property. Great care is needed when drafting this clause from both a landlord's and tenant's perspective.**

The Rent Review clause sets out a hypothetical scenario, which the parties to the Rent Review must assume exists for the purposes of arriving at the relevant rent. Should third party determination be required, the Arbitrator or Expert is obliged to base their award on the specific hypothetical scenario defined in the lease.

It is therefore critical that their Valuer understands the wording of the rent review clause and is capable of supporting their view with case law.

# A recent history

## What goes up, can now come down



### 2009 – Land & Conveyancing Law Reform

In 2009, Section 132 of the Land & Conveyancing Law Reform Act was passed.

This legislation effectively abolished upwards only rent reviews in all Commercial Property with effect from 28th February 2010.



### 2010 – Non Retrospective Legislation

Leases before 28th February 2010 still contain upward only rent reviews. As a result, a 2 tier system is now in place – leases before this date and leases after.

# Your Lease is the Bible...

**Your lease sets out all the assumptions and disregards for establishing the “hypothetical scenario”, under which your surveyor must carry out the Rent Review process.**

**Review clauses vary from lease to lease but a typical review clause will include the following assumptions:**

- That the rent shall be the full open market rent of the demised premises let as a whole without fine or premium
- That the rent should be determined on the basis of letting with vacant possession
- That a ‘willing landlord’ is leasing to a ‘willing tenant’
- A notional term as defined in the clause
- That all tenant covenants contained within the actual lease have been fully performed
- That the premises are ready and available for immediate occupation
- If the demised premises have been destroyed or damaged, that they have been rebuilt and reinstated

## **A Rent Review Clause will also typically disregard the following:**

- **The fact that the tenant is in occupation of the property**
- **Any goodwill that the tenant has generated as a result of being in occupation of the property**
- **Any tenant fit out and improvement works (other than required works)**
- **Any rent free concession or other inducements which might be available to the tenant**

# The Role of Your Rent Review Surveyor



## Stage 1

- Receive instruction from Client
- Review the Lease and Rent Review Clause in particular
- Inspect and measure on the appropriate basis – which will depend on asset class and location
- Establish if any improvements have been carried out to the premises, which affects rental value – was landlord's consent obtained? Was an improvement notice served?
- Collate and analyse evidence, making appropriate adjustments for size, date, condition, term of lease and keeping in mind 'The Hierarchy of Evidence'
- Prepare rent review report detailing opinion of rental value
- Take Instructions from client

## Stage 2

- Serve review notice (if required by the Lease)
- Acknowledge rent review notice is served. Serve counter-notice if relevant
- Enter negotiations – with opposing party or their appointed valuer
- Hopefully agree by negotiation – if not, stage 3 begins

## Stage 3

- Refer to Third Party (either Arbitrator or Independent Expert) as per the lease
- If a third party cannot be agreed apply for an appointment.
- Prepare submissions, counter submission or attend Oral Hearing
- Consider serving 'Calderbank Offer' (See Explainer below)
- Await Third Party's decisions

### Explainer...

### What is a 'Calderbank Offer'?

**A Calderbank is a 'sealed offer'. It is an offer to settle made before arbitration. It can influence the issue of costs; both of the valuers and those of the proceedings.**

# Your expert advisors in QRE



## Caitriona Ryan

MRICS, MSCSI

Caitriona has over 17 years' experience in the Irish Commercial Property Market, specialising in Professional Services. She is a fully qualified chartered surveyor and advises Clients on all aspects of landlord & tenant including Rent Reviews, Rating & Valuation. Caitriona is experienced across all sectors of the market from office to retail to industrial and has recently been involved in challenges to the Vacant Site Register.



## Hugh Markey

FRICS, FSCSI

Hugh has over 40 years' experience, focusing on the retail market. He is a Fellow of both the Royal Institution of Chartered Surveyors and the Society of Chartered Surveyors Ireland.

He is a Deputy Chairperson of the Valuation Tribunal. He is a member of the Dispute Resolution Committee of the Residential Tenancies Board. He specialises in landlord and tenant matters, particularly pertaining to retail property and regularly acts as an expert witness before the courts. He also acts as an Arbitrator and Independent Expert in rent reviews.



## Paul McElearney

FRICS, FSCSI

Paul has worked for over 38 years as a property professional in Ireland. Paul held the position of Head of the Property Valuation Team in IBRC's NAMA unit, and Property Manager in the Asset Management Team in Bank of Ireland. He is a Fellow of the Society of Chartered Surveyors Ireland (FSCSI) and Fellow of the Royal Institute of Chartered Surveyors (FRICS). Paul also has a Diploma in Arbitration Law (UCD) and was elected as a Fellow of the Chartered Institute of Arbitrators and is a member of the Presidents Panel in the SCSi.

## CONTACT US

QRE

REAL ESTATE  
ADVISERS

### Dublin Office

2 Shelbourne Buildings  
Crampton Avenue  
Dublin 4, D04 W3V6

+353 1 637 5555

### Cork Office

Penthouse Floor  
No. 6 Lapps Quay  
Cork

+353 021 601 0201



Sales • Leasing • Tenant Rep • Advisory • Valuations

## Sales

**QRE** offers the most comprehensive private treaty sales process for the commercial real estate market in Ireland. Our team has an in-depth knowledge of the Irish investment market and advises on all sectors.

## Leasing

At **QRE** we like to term our Leasing Agents as Investment Agents. We do this as it is your Leasing Agent who will ultimately drive the investment value of your property.

We place a strong emphasis on communication and relationships and we are proud to work with some of the country's leading landlords and developers.

## Tenant Rep

**At QRE** we have a dedicated team of tenant representation advisors who provide independent non-conflicted occupier advice to all sectors of the commercial real estate market.

## Advisory

**QRE** offers a range of landlord and tenant advisory services such as rent reviews and lease renewals across all property types.

## Valuations

**The QRE Valuations Team** provide comprehensive valuation, advisory and consultancy to a wide spectrum of end users including real estate owners, investors and lenders using the latest valuation software technology, conforming to international standards.



# Glossary

**Arbitration:** An arbitrator is appointed, either by agreement between the landlord and the tenant or in accordance with the lease, by a body such as the SCSl. They can only make a decision based on the evidence presented to them. They can determine costs, unless there is prior agreement. An arbitrator is bound by the Arbitration Act 2010 and the lease terms.

**Award:** This is the finding of the Arbitrator. It may be 'Final' or 'Final Save as to Costs'.

**Advocate:** This is part of the dual role the valuer plays in a third party process (see 'Independent Expert' under I). Their role is to put forward a case supporting their opinion of value.

**Binding:** Third party determinations are binding and almost impossible to challenge.

**Calderbank:** A Calderbank is a 'sealed offer'. It is an offer to settle made before arbitration. It can influence the issue of costs; both of the valuers and those of the proceedings.

**Costs:** These are the costs of the arbitration and the valuer's costs.

**Compensation:** This can arise should a landlord refuse to renew a tenancy.

**Directions:** These are the instructions given by the arbitrator or expert setting out the procedures to be followed.

**Dilapidations:** Repairing clauses vary but usually a tenant is responsible for at least some repairs. Dilapidations arise when the condition falls below the standard agreed. It can be a particular issue on lease renewal.

**Diminution in Value:** This is the maximum a landlord receives even if the cost of completing a Schedule of Dilapidations is higher.

**Ex Parte:** If one of the parties refuses to cooperate with an arbitration process, the arbitrator may proceed with hearing one side only.

**Expert:** An expert differs from an arbitrator insofar as they must rely on their own expertise in arriving at a decision. They usually call for submissions. Costs are as set out in the lease.

**Gross Rent:** This is the rent determined by a judge of the Circuit Court in the case of a lease renewal.

**Hierarchy of Evidence:** Not all evidence is of the same quality and third parties will attach differing weights to different types of evidence.

**Independent Expert:** This is the other part of the valuer's dual role. Their duty is to the arbitrator or expert, to assist them in arriving at a decision.

**Improvements:** These are works carried out by a tenant, with the consent of the landlord and generally fall to be ignored on review.

**Judge:** A judge of the Circuit Court determines the rent on the renewal of a lease.

**Lease:** This document determines the basis for the rent review. Leases vary and may be open to interpretation.

**Memorandum of Rent**

**Review:** This is a document recording the agreement reached on every lease.

**Mesne Rates:** This is effectively rent after the lease has expired.

**Notional:** The lease will provide for a notional term on which the rent is to be determined and may also dictate a notional specification of the premises (fitted etc.).

**Notice of Intention to Claim**

**Relief:** This is the notice a tenant must serve before the end of their lease if they want to renew.

**Notice to Quit:** This is the notice a landlord should serve in order to trigger the lease renewal process.

**Opinion of Value:** This is the valuer's honest opinion of the rental value of the property to be reviewed in accordance with the lease terms.

**Periodic Tenancy:** This is the arrangement after a lease expires and a new lease has not been agreed upon.

**Revised Rent:** The lease will set out a basis for determining and arrangements for over/underpayments.

**Reasoned:** Since the coming into force of the 2010 Arbitration Act, all arbitrators' awards have to be 'reasoned'; that is unless otherwise agreed by the parties. Expert awards are not reasoned.

**Refuting a Tenancy:** There are limited grounds for a landlord refuting a tenant's right to a new tenancy.

**Society of Chartered Surveyors**

**Ireland:** The President is usually the party nominated in leases to appoint an expert or arbitrator.

**Statement of Agreed Facts:**

Usually, an arbitrator will require the valuers to agree as many of the facts as possible relating to the property under review.

**Witness:** Occasionally, witnesses may be introduced in an arbitration.



[qre.ie](http://qre.ie)