

RISK OF AN UNINSURED RISK!

A standard commercial Lease will usually provide that:-

1. The landlord insures the property against certain specified risks.
2. The tenant will reimburse the landlord in respect of the premium.
3. There will be no repairing obligations on the part of the tenant's property in respect of any damage covered by uninsured risks.
4. In event of damage or destruction of the property by an insured risk, the landlord will apply the proceeds of insurance to make good the damage. The tenant will also usually be entitled to cease paying rent for as long as they cannot use the property.
5. Failure to reinstate the property by the end of the loss of rent period will usually allow both parties to terminate the Lease.

However what is the position with regard to any risks which the landlord has not insured against ?

In such an instance the tenants repairing obligations in the Lease would not necessarily exclude them from having to make good the damage at their own expense and might not allow for a rent suspension period. Certainly, where a tenant takes a short term Lease it might not be fair on the tenant to pay rent on an unfit and unusable property and compel them to restore the property for the landlord's sake. *The code for leasing business premises in England & Wales* (which is endorsed by a number of property related

bodies) also suggests that a modern Lease should allow the tenant to terminate the Lease forthwith when the property is no longer useable following damage by an uninsured risk, unless the landlord reinstates at his own cost. It is unlikely however that the landlord would be willing to take on the risk of covering any un-insured risk as he would ultimately be left with the choice of reinstating the property at his own cost or be left without a building, any tenants and no rent !

Therefore, apart from the draft and considerations it would be crucial at the outset of these negotiations for the landlord and tenant to strike a compromise (with regard to any un-insured risks) with the landlord usually receiving some sort of assurance by the tenant to only partly make use of a suspension of rent for a certain period.

The bottom line therefore of the uninsured risks debate is who bears the brunt of exposure to rebuilding and reinstating costs!

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