

## **The Landlord & Tenant Act 1954 and Security of Tenure**

The Landlord and Tenant Act 1954 governs the rights and obligations of landlords and tenants of premises which are occupied for business purposes.

Here is a brief outline the machinery for the working of the Act:

### **Summary**

#### **Security of tenure for the tenant**

In broad scope, the tenant of premises from which a business is carried on has security of tenure when the agreed term of his lease comes to an end. This means that, even though the fixed term of the lease has ended, tenants of business premises have:

- the right to remain in occupation at the end of the contractual term of a lease; and
- the right to apply to court for the grant of a new lease.

#### **Grounds for regaining possession**

The landlord can only object to this and regain possession of the property on certain specified grounds, the most important of which are:

- where the landlord requires the property back either for development purposes, or to occupy himself;
- where the tenant has a history of non payment of rent, or not complying with the lease obligations;
- where premises have been split up by subletting into a number of units and the whole premises would command a higher rent if let together under one lease.

In most cases lease renewals are conducted against the background of these statutory rights without any application to court being made and renewals are concluded by agreement between landlord and tenant, rather than by court proceedings.

## **Exclusion of security of tenure**

The security of tenure conferred by the Act can be excluded by agreement. This is most usually done where:

- the landlord intends to carry out a redevelopment;
- the lease is for a very short term;
- it is an underletting of a part of a larger holding.

## **Importance of professional advice**

The Act sets out strict procedures which need to be followed, and makes provision for service of formal notices to exercise rights conferred by the Act. It is essential to take specialist advice (both legal and surveying) about the effect of any notice and what action should be taken to protect the position under the Act.

## **Terminating leases with security of tenure**

Leases often have contractual rights for tenants to terminate a lease during its term (commonly referred to as break clauses). This note does not cover the manner in which these rights can be exercised. Specific advice is needed about these provisions which may require very strict compliance by the tenant of conditions in the break clause.

Under the Act a business tenancy which is protected will continue (even after the end of the stated term granted by the lease) until it is brought to an end in a number of different ways set out by the Act.

This concept is extremely important (from the point of view of both the landlord and the tenant) because it may be in the interest of either landlord or tenant to take action when the lease is nearing its expiry.

Some notices given in accordance with the Act must be in the form set out by the Act, but some need not be in any particular form. However legal advice should be obtained before serving any

notice. Even small technical errors in the giving of a notice can render it invalid. The consequences of that can be very serious.

The most common notices bringing an existing, protected business tenancy to an end are the following:

- **Notice by the landlord under section 25 of the 1954 Act (section 25 notice)**

This is a notice given by the landlord. It cannot be given before the last year of the term of the lease, nor can it be given after the tenant has served upon the landlord a request for a new tenancy under section 26 (see below). In effect it allows the landlord to start a procedure which will end, either in the tenant being granted a new lease, or in the tenant vacating.

A section 25 notice must specify the date on which the landlord proposes to bring the existing lease to an end.

The date of termination in the notice cannot be earlier than;

- the end date of the lease; or
- six months from the date of giving the notice

It cannot be later than 12 months after the date of that notice.

The notice must also:

- state whether the landlord will oppose any application to court for a new lease, and, if so, on which of the grounds laid down by the Act;
- outline terms on which the landlord is prepared to grant the renewal lease, the length of term proposed and the rent which the landlord is seeking.

- **Request by the tenant under section 26 of the 1954 Act (section 26 request).**

This is a notice given by the tenant requesting a new tenancy upon termination of the old one. A section 26 request must specify a date on which the existing lease is to end.

It cannot be served before the last year of the agreed term of the lease, nor can it be served after the landlord has served a section 25 notice.

As in the case of the landlord's section 25 notice the date of termination cannot be earlier than six months after the date of the section 26 request nor more than 12 months after that date. A section 26 request cannot bring the existing lease to an end before its normal expiry date.

The section 26 request must also set out the tenant's outline proposals for the terms of the new lease, covering the same points as set out above for the section 25 notice

**• Notice by tenant expiring on or after the lease expiry date under section 27 of the Act**

The tenant alone has the right (under section 27 of the Act) to bring the tenancy to an end:

- by giving notice at least three months before the date on which the tenancy would otherwise expire. Such a notice is recommended when the tenant does not wish to renew his lease and wishes to be sure that his lease is not continued automatically by the application of the 1954 Act;
- if the term of the lease has expired but the tenancy is continuing under the 1954 Act, the tenant may bring that continuing tenancy to an end by giving not less than three months' notice in writing to the landlord.

It is important to note that if a notice is served under section 27 of the Act, the tenant no longer has any right to remain in occupation following the expiry of the notice, and loses the security of tenure protection conferred by the Act.

**• Consequences of service of notices under sections 25 and 26 of the Act**

If a section 25 notice or section 26 request is served:

- either party has the right conferred by the Act to apply to court for the grant of a new tenancy to the tenant, but must comply with the required timescales to preserve this right;

- the landlord can oppose the tenant's application for a new lease, if he can satisfy one of the specific grounds of opposition mentioned above in the introductory summary (see 'Ground for regaining possession').
- either party can also apply for an interim rent to be determined which is the rent payable for the period following the end of the existing lease until the date from which the new lease takes effect (or the date when the tenant brings the tenancy to an end);
- the application to court must be made before the date of termination set out in the section 25 notice or section 26 request, although the parties can agree to extend this timescale, provided they do that before the date of termination. However if no application to court is made before the date of termination or any extended timescale agreed, the tenant loses the protection of the Act, and will have to vacate the property.

### **Opposition by the landlord to grant of new tenancy**

This note does not attempt to deal with opposition by the landlord to the grant of a new tenancy in any further detail, because for the most part, landlords do not oppose the request for a new tenancy. Where they do, the specific facts of each case will merit special consideration.

However, it is important to note the following:

- the landlord must say whether he opposes a new tenancy (and if so on which of the specified grounds) in any section 25 notice he gives;
- if a tenant makes a section 26 request, and the landlord wants to oppose it, he must serve a notice on the tenant indicating this and stating on which grounds he opposes it within two months of the service of the section 26 request;
- if a landlord does oppose the tenant's application for reasons other than the tenant's non-payment of rent or other non compliance with the lease, the tenant becomes entitled to compensation on leaving, based on the rateable value of the premises;

## **The new lease granted under the Act**

A significant benefit to the tenant of the renewal arrangements set out in the Act is that the court can oversee, and if the parties cannot reach agreement, decide:

- the terms of the new lease to be granted;
- the length of the lease; and o the rent payable.

## **Lease terms**

Landlord and tenant are free to agree anything they like. However, if they cannot agree, and the court is asked to settle the terms, the starting point is that the new lease will largely reflect the terms of the expiring (or expired) lease. Either party can propose changes if they can demonstrate that the changes are reasonable for a modern lease in comparison with the terms of the expiring lease (eg because it was granted a long time ago, or because there have been changes in the law which need to be reflected in the lease).

However, the courts are extremely unlikely to agree to the inclusion of terms against the will of one of the parties if these depart from the underlying commercial terms incorporated in the previous lease and change the balance of the commercial bargain between the parties.

## **Length of lease**

The court is not able to order the grant of a lease for a term of more than 15 years, although this doesn't stop the parties agreeing a longer term if they choose. Generally speaking the courts will be more likely to agree to the length of term requested by the tenant than by the landlord.

So if a tenant wants a short lease, even if the old lease was for a much longer period, the landlord may not be able to insist on the tenant taking a longer lease. If the tenant wants a longer term than the landlord is prepared to agree to, and the landlord can show that he needs flexibility, perhaps because he has development plans, the court may order the inclusion of a break clause.

## **Rent**

If the parties cannot agree the rent to be paid, the court also has power to decide this. This is to be a market rent, which is to ignore the fact that the tenant is in occupation, and any goodwill of the business carried on there, and is adjusted to ignore the effect of certain types of improvements carried out by the tenant at his expense.

## **Tenancies excluded from the Act**

If the landlord and tenant have agreed that there should be no security of tenure conferred by the lease, formal steps need to be taken. Before the grant of the lease, or exchange of agreements for lease:

- the landlord must serve a formal notice on the tenant in a prescribed form;
- the tenant must respond by making a declaration, also in a prescribed form, that he understands the effect of the lease being excluded from the protection of the Act.

A lease which has been excluded from the protection of the Act will expire on the term expiry date stated in the lease (or earlier if any break right is exercised) and will not benefit from the continuation tenancy conferred by the Act. Accordingly:

- the tenant will have no right to carry on his business from the premises or to remain there;
- unlike a lease with security of tenure under the Act, the landlord has complete discretion whether he grants a new lease to the tenant and does not have to give any reason for refusing to grant a lease or explain why he wants the premises back;
- if the landlord is willing to grant a new lease, there is no presumption that this will follow the terms of the previous lease.

If, against the wishes of the landlord, the tenant remains in occupation of the premises, then he would be a trespasser and would be liable to the landlord for damages. The landlord would also be entitled to obtain a court order requiring the tenant to vacate.

Another important effect of agreeing to exclude the security of tenure provisions of the Act is that the right of the tenant to compensation upon being compelled to vacate the premises is excluded.

*The Landlord and Tenant Act 1954 is highly technical and this article should be treated as a guide only. It is a summary of the more important aspects of the Act and necessarily simplifies some of the Act's provisions. Professional advice should always be sought in connection with any specific matter.*