

# The Landlord and Tenant Act 1954



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## Another Act - what's the big deal?

The Landlord and Tenant Act 1954 (the "1954 Act") might sound just like any other piece of legislation; however the importance of it for commercial leasehold transactions should not be overlooked.

Broadly speaking the 1954 Act governs the rights and obligations of landlords and tenants of premises which are occupied for business purposes.

So, how do you know if the 1954 Act applies to you?

Well...there are 3 simple requirements:

1. the tenant needs to be occupying the premises for business purposes;
2. the property needs to be being occupied by virtue of a lease (as opposed to a licence); and
3. the tenancy must not be specifically excluded from the 1954 Act.

If the above 3 points apply to your scenario the 1954 Act will apply unless one of the following exclusions applies:

- where the term of the lease is for 6 months or less (unless the lease allows for an extension); or
- where the tenant's total period of occupation does not exceed 12 months.

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## 1954 Act - Security of Tenure

If the 1954 Act does apply, the tenancy will automatically benefit from security of tenure.

The question is – what does that even mean?

In essence "security of tenure" is a phrase used to describe the statutory right granted to tenants under the 1954 Act to remain in occupation of its premises after its lease term expires. It means that the tenancy is protected by the 1954 Act and will continue to run until it is brought to an end in a prescribed way under the 1954 Act (regardless of the term set out in the lease!).

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## With one hand giveth the other taketh away

There is an answer – s237 Town & Country Planning Act  
Whilst the 1954 Act provides tenants with a right to remain in occupation of the premises it also sets out a method by which the tenant's statutory right can be excluded from the lease altogether. Ordinarily this exclusion will be used where:

- the lease is for a short period of time;
- the landlord intends to carry out redevelopment; or
- the tenancy is an underletting of part of a larger holding.

This list is not however exhaustive and ultimately it is a negotiation point between the parties to decide whether or not the lease should be 'contracted out' of the 1954 Act provisions. Whilst this is a bit of light relief for landlords the bad news is that the 1954 Act sets out an extremely prescriptive procedure which needs to be followed to ensure that the 1954 Act is validly excluded from the lease. Regardless of what is drafted in the lease, if the landlord fails to carry out the correct contracting out procedures the tenant will continue to benefit from security of tenure.

The landlord's ability to exclude the rights granted by the 1954 Act might be a gloomy concept for tenants, however it must be noted that the exclusion itself does not prevent the tenant from agreeing new terms of a new lease with the landlord.

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## What if you want out?

It is possible that whilst a tenant may benefit from security of tenure they no longer wish to remain in the premises. Alternatively, the landlord may no longer want the lease to continue, either in its current form (as the landlord would prefer for a new lease to be granted) or altogether.

The question is how can a landlord or tenant end the lease under these circumstances?

For the many non-domiciled players playing professional rugby in the UK, the benefits are even greater as payments made to off-shore image rights companies are capable of being completely exempt from UK tax.

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## Landlord wants out!

If the landlord wants to either:

- regain possession of the property or
- terminate the existing lease on the basis that he wishes to suggest new terms for a renewal lease

then a Section 25 Notice needs to be served.

The form of the Section 25 Notice used will depend on what the Landlord wants to do.

If the landlord wishes to terminate the lease with no prospect of renewal he must set out the date on which he wishes for the lease to end (which cannot be earlier than the end date of the lease or 6 months from the date of the notice) and his grounds for opposition. The grounds which the landlord must set out are statutory grounds and include circumstances where:

- the tenant has failed to maintain or repair the premises;
- the tenant has persistently delayed in paying rent;
- there are substantial breaches of the obligations under the tenancy or objections to the manner in which the tenant uses or manages the holding;
- the landlord can offer alternative accommodation;
- there are complex sub tenancies and the landlord can obtain a better rental return if the premises are let/ sold as part of a larger unit;
- the Landlord has an intention to demolish or reconstruct the premises on the termination of the current tenancy or intends to carry out substantial works of construction on the holding and could not reasonably do so without obtaining possession; and/or
- the Landlord intends to occupy the building for his own business.

Alternatively, if the landlord wishes to enter into a renewal lease the Section 25 Notice must, in addition to including the termination date for the existing lease, contain the outline terms of the renewal lease that the landlord is willing to grant.

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## Tenant wants out!

The 1954 Act provides the tenant with similar options to those provided to the landlord.

It is possible that the tenant might want to request a new tenancy on the termination of its existing lease. In this case the tenant is to serve a Section 26 Request which must specify a date on which the existing lease is to end and the tenant's outline proposals for the terms of the new lease. This notice cannot be served before the last year of the term of the lease nor after the landlord has served a Section 25 Notice.

Even if the tenant serves a Section 26 Request the landlord is still able to oppose the new tenancy by applying to court within 2 months of receiving the Section 26 Request and challenging the request on the 7 grounds set out above.

What if the tenant does not want to remain in occupation after the end of the term?

There are 2 options, the tenant can:

- vacate the premises by the contractual expiry date of the original lease; or
- serve a Section 27 Notice on the landlord giving at least 3 months' notice expiring no earlier than the end date in accordance with the term of the lease.

with their development. The adjoining owners still had rights to compensation – but they didn't have the nuclear option of an injunction.

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## Complexities of the law

The 1954 Act is a complicated area of law. It is important to consider early on whether as landlord or tenant you are caught by the provisions of the 1954 Act so that you can plan how to deal with the tenancy when it is reaching the end of its term.

Please note that this guide is a summary but it is advisable to obtain further legal advice if you find yourself considering the 1954 Act and are needing to serve notices or contract out of the 1954 Act altogether.

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## ...little bits of law

This is one in a series of leaflets published by Lewis Silkin LLP, providing information on a range of legal issues that face our developer clients. Other topics discussed range from boundaries to wildlife.

Professional advice should be obtained before applying the information in this client guide to particular circumstances.

For a full list of available leaflets please visit our website or contact [patrick.brown@lewissilkin.com](mailto:patrick.brown@lewissilkin.com).

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