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Landlord & Tenant Act 1954 - The Basics

Inside

Introduction

Part II of the 1954 Act is perhaps the most important legislation governing commercial premises. The provisions of Part II of the Act were substantially amended with effect from 1st June 2004 and did away with many of the tactical manoeuvres that were available under the old regime.

This guide sets out the basic principles introduced by the Act (as amended), the procedure that needs to be followed to renew a business lease and the grounds on which a landlord can seek to terminate a tenant's lease under the Act.

Who gets protected by the Act?

The Act applies to "business tenants' – i.e. more or less anyone who lawfully occupies premises under a lease for the purposes of their business.

What protection does that Act give?

The Act confers protection known as "security of tenure".

There are two basic elements to this: (i) the "statutory continuation" of the tenancy and (ii) the tenant's right to apply to Court for a new lease.

- *Statutory Continuation:* Provided the tenant remains in occupation, a protected business tenancy does not automatically terminate on the contractual expiry date ("term date") but continues on more or less the same terms until renewed or terminated in accordance with the Act .
- *Right to Renew:* If the tenant or landlord cannot agree a new lease, either can apply to court to determine the terms. Renewals are divided into "opposed renewals" where the landlord opposes renewal with a view to obtaining possession and "unopposed renewals" where the landlord agrees to the renewal but disputes the terms of the new lease. The landlord can only oppose renewal on certain grounds (see below).

There are other ways a tenancy can be terminated outside of the Act, namely by:

- forfeiture;
- surrender; or
- a tenant's notice to quit.

A point to flag is that there are special rules for agreements to surrender and advice should always be taken on this.

What if the tenant wants to go?

The tenant can terminate the tenancy in various ways depending on what stage has been reached. In outline:

- by vacating on or before the term date;
- by serving a section 27 notice giving at least 3 months' notice to expire on or after the term date; and
- by discontinuing any application for a new tenancy or not taking up a new lease.

Procedure

The Act sets out a strict procedure for the lease renewal or termination (i.e. the service of notices, counter notices and application to court). The time limits imposed by the Act are critical and the Court has no discretion to extend them.

- *Landlord's Section 25 Notice:* The landlord can activate the procedure by serving a section 25 notice which states a termination date for the tenancy. Broadly the termination date cannot be more than 12 months nor less than 6 months from service of the notice and cannot be earlier than the term date of the lease. The notice must state either (i) that the landlord opposes the grant of a new tenancy setting out the grounds on which he opposes or (ii) that the landlord does not oppose the new tenancy, setting out his proposed terms for the tenancy including the term and rent.
- *Tenant's s.26 Notice:* The tenant can activate the procedure by serving a section 26 notice specifying a termination date (the same rules for calculating the date apply) and proposing terms for the new tenancy. If the landlord wishes to oppose the grant of a new tenancy, he must serve a counter notice on the tenant within two months, stating the ground(s) on which he seeks to oppose. If the landlord does not serve a counter-notice, he will not be able to oppose the tenant's application although he can still oppose the terms of the new tenancy proposed by the tenant.
- *Opposed Renewal:* If the landlord opposes renewal but the tenant disputes the ground(s) of opposition, the tenant can make an application to court for a new tenancy and strict time limits apply. Alternatively, the landlord can make an application for possession based on the grounds of opposition.
- *Unopposed renewal:* Usually the parties agree the terms of the new lease by negotiation. If that is not possible then either the landlord or the tenant can apply to Court to have the terms set and again a

strict timetable applies. In practice, when the deadline is approaching, the tenant should ask the landlord to extend the time limit (which must be agreed in writing). Usually extensions are agreed but the tenant must be vigilant and apply to Court if no extension is agreed. If the tenant fails to apply to the Court or to agree an extension of time by the deadline date, he will lose the protection of the Act and the tenancy will come to an end on that date. It is therefore critical for the tenant to diarise key dates and be proactive.

What goes into the new Lease?

The new terms will be whatever the parties agree. If they can't agree, the Court decides the terms.

As a rough guiding principle, the new lease will follow the old lease unless there is some good reason for a change (e.g. a change of circumstances or the old lease being very out of date). The party seeking the change has to justify that to the Court and the Court seeks to balance the parties' interests, keeping in mind the fundamental policy of the Act to protect the tenant's security of tenure.

In addition to that general principle, there are some specific rules set out in the Act as well as rules of thumb/practice followed by the Court. The most important of these are:

- *Rent:* The new rent will be the open market rent of the property as at the date of the Court hearing and on the basis of the other terms of the new tenancy.
- *Term:* The parties can agree whatever term they wish but the Court cannot grant more than 15 years.
- *Break clauses:* It is quite common for a landlord to be granted a break clause to enable the landlord to pursue a redevelopment which is genuine but not yet sufficiently advanced to justify the Court refusing a new tenancy. Typically the clause might be exercisable in 1-3 years time.

It is sometimes argued that other professionals may be better suited than Judges to decide what the terms of the new tenancy should (e.g. the rent should be set by a valuer). As a result of this, a procedure known as PACT (Professional Arbitration on Court Terms) has been created by the RICS under which issues in lease renewals can be referred to specialist arbitrators/experts. This route is not commonly used but in appropriate cases can be effective.

Grounds on which a Landlord can Oppose Renewal

The landlord's ground(s) of opposition must be included in the landlord's section 25 notice or counter-notice and the landlord cannot later amend this.

The grounds are:

a) failure to repair

b) persistent delay in paying rent

c) other substantial breaches by the tenant

d) suitable alternative accommodation is offered

e) subletting of part

f) landlord intends to redevelop/demolish

g) landlord intends to occupy

Ground (f) is the most commonly used ground and has two elements:-

a subjective intention to redevelop – this is usually proven by the landlord producing board minutes or a signed building contract or indicative plans etc; and an objective ability to carry out the work i.e. the landlord has to show there are no significant obstacles to the redevelopment. This is usually established by showing that there is a reasonable prospect of getting planning and/or other permissions and that funding for the development has been secured.

Statutory Compensation

A tenant is entitled to statutory compensation from a landlord where a landlord opposes renewal on grounds (e), (f) or (g) only.

Compensation is assessed at 1x the rateable value of the property or, where the tenant has been in occupation for 14 years or more, at 2x the rateable value.

Compensation becomes due on the tenant quitting premises.

Leases often include clauses excluding the right to compensation but such a clause will not be effective if the tenant has been in occupation of the premises for the last 5 years up to the date of quitting.

Interim Rent

As stated above the statutory continuation tenancy is on more or less the same terms as the tenant's lease. One clause which doesn't apply is the rent review clause. The Act covers this by allowing the landlord (and since 2004, also the tenant) to apply for a 'interim rent', which is payable from the earliest date which could have been put in the section 25/26 notice. The level of the interim rent (which will be set by the Court if not agreed) is very roughly the market rent for the premises. In practice, this is usually dealt with by backdating the term of the new lease in lieu of determining the interim rent.

Costs

The vast majority of lease renewals are resolved by agreement/negotiation. However, tenants do often have to issue proceedings to protect their position even though cases rarely go to a full trial. In such cases the parties usually bear their own costs.

Costs are usually only a factor where either party unilaterally discontinues proceedings or if a disputed issue goes to a full trial. Needless to say, especially in the latter situation, the costs can be substantial.

Tenancies outside the Act

It is possible to occupy commercial premises but not get the protection of the Act. The main situations where this arises are:

- *A "contracted-out" tenancy:* The landlord and tenant can agree that the Act will not apply to a letting. This requires the parties to follow a strict notice procedure before entering into the tenancy.
- *Occupying under a "licence" or a "tenancy at will":* The Act does not apply to these less formal arrangements. However there are strict requirements for setting up these

arrangements and advice should always be taken on whether a particular arrangement does in fact create a licence/tenancy at will or something else. If you get this wrong, you risk creating a protected tenancy.

- *A fixed term tenancy of less than 6 months:* This is a further arrangement which is expressly excepted from the Act. This exception also has "bells and whistles" and so again advice should be taken before relying on this exception. As ever, getting it wrong means that you risk creating a protected tenancy.

The Future—do we still need the 1954 Act?

The 1954 Act is a well established feature of both property law and commercial life. However there have been calls, mainly from landlords, for the Act to be abolished. These voices generally say that the Act is no longer necessary. They say that the Act was introduced to protect tenants when commercial properties were in shortage after the war. Now, there is a mature and well supplied commercial property market which offers a wide and flexible array of letting arrangements to tenants – varying from serviced offices, to contracted out tenancies, to short term lettings and longer lettings with breaks. It is said that the 1954 Act is not necessary and simply distorts the proper working of the market.

Whilst there is no doubt some force to these arguments, no changes have been made as yet and the general feeling is the Act will remain for the foreseeable future.

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