



Security of Tenure for Business Tenants – what you need to know



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Part II of the Landlord and Tenant Act 1954 (the Act) sets out to protect business tenants by affording them a statutory right to a new lease at the end of their current term. However, parties can choose to 'contract out' of these provisions so that they do not apply. It is therefore important that both landlords and tenants understand the implications of entering into either a protected or 'contracted out' lease.

Is it a protected business tenancy?

To qualify for such protection, the tenancy must satisfy the qualifying criteria as set out in the Act. As a general rule, there must be a tenancy of a premises occupied by the tenant for business purposes.

Provided the criteria are satisfied and the tenancy is not otherwise excluded from the Act's provisions, the tenant will have a statutory right to a new lease at the end of the current lease term.

The 'contracting out' process

It is common for the landlords of commercial tenancies to include a clause within the lease which contracts it out of the Act. If that is the case, the tenant will not benefit from the security of tenure provisions. It is therefore important to check existing leases and any sub-leases as to whether the protection from the Act applies.

In addition to the lease clause itself, prior to entering into the lease, the landlord must have

served a notice on the tenant stating that the lease is to be 'contracted out' of the Act's security of tenure protections. This is followed by the prospective tenant providing a sworn statement to the landlord that they have received this notice and intend to enter into a tenancy without security of tenure.

Ending a protected tenancy

Where there is a protected business tenancy, the LTA 1954 provides for a set number of steps which are to be followed to end the tenancy.

Serving a s25 notice

The landlord is able to serve on the tenant a s25 notice in the prescribed form, between 6-12 months prior to the date of termination specified within the notice. The specified termination date can be any date on or after the contractual termination date within the lease. If the lease contains a landlord's option to break, this notice can be used to effect the break (but the notice cannot specify a termination date earlier than the break date).

The notice needs to state whether the landlord opposes a new tenancy, and if so, provide one of the statutory grounds for doing so.

If the landlord does not oppose a new tenancy, the parties can negotiate for the grant of a new lease following service of the s25 notice. Applications to the court may need to be made by one or both parties where it is unlikely a new lease will be agreed before the

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termination date specified in the s25 notice.

If the landlord does oppose a tenancy in his s25 notice, the next steps depend on the tenant. If the tenant does not wish to renew his tenancy, he will simply vacate the property on the termination date specified in the notice. However, the landlord or tenant will need to apply to the court before the expiry of the s25 notice if the tenant wants to renew the lease.

The court can decide if a new tenancy shall be granted, and on what terms.

Responding to a s26 notice

A tenant, assuming they are not a periodic tenant or have a fixed term of one year or less, can serve a s26 notice on the landlord requesting a new tenancy. The notice must be in the prescribed form, include proposed terms of the new tenancy, and be served on the landlord between 6-12 months prior to the start date specified within the notice.

As above, if the landlord does not oppose a new tenancy, the parties can negotiate for the grant of a new lease following service of the s26 notice. Either party may apply to the court if the negotiations mean that a new lease will not be agreed by the start date specified in the s26 notice.

If the landlord opposes a tenancy, he will need to serve on the tenant a s26 counter-notice within 2 months. Either party can then apply to the court before the expiry of the s26 notice

(or before expiry of an agreed extension). The court can then again determine whether a new tenancy is to be granted.

Compensation

If the tenant does not obtain a new lease, he may be entitled to compensation depending on the grounds on which a new tenancy was opposed.

Alternative methods of ending a business tenancy

Although the s25 method above is the most likely way of ending a protected tenancy, other methods include:

1. Surrender

This can occur expressly, such as by entering into a deed of surrender. It can also occur by operation of law, where the conduct of the landlord and tenant is such that it is inconsistent with the continuation of the tenancy. For example, the tenant and landlord may have entered into a new tenancy.

2. Tenant's notice to quit

A tenant can serve on the landlord a notice to quit providing they have been in occupation for a month.

3. Forfeiture

This involves the landlord being able to end the tenancy by peaceable re-entry of the property where the tenant has either breached a condition or covenant of the lease, or if one of the events specified in the lease has taken place (e.g. tenant bankruptcy).

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To utilise this method where there is a breach of covenant by the tenant, the lease must expressly state forfeiture due to a breach of covenant is allowed. However, a breach of condition by the tenant gives the landlord an implied right to forfeit the lease.

4. Forfeiture of a superior tenancy

If a superior tenancy is forfeited, then a subtenancy protected by the LTA 1954 will be terminated. In this situation, the subtenant could apply to the court for relief from forfeiture, which could result in the grant of a new lease or the subtenant taking over the superior tenant's lease. If the superior lease were contracted out of the LTA 1954 then the subtenant, on taking it over, would no longer have the protection of the LTA 1954.

5. Cessation of business occupation

If at the end of a fixed term, the tenant ceases to be in occupation for business purposes, then the tenancy will terminate.

Both as a tenant and a landlord, the security of tenure provisions of the LTA 1954 can have a big impact on your business. For assistance in getting to grips with existing leases, drafting new leases to include or exclude the security of tenure provisions, as well as ending tenancies you think may be protected by the LTA 1954, please contact our commercial property team.

The information contained in this document provides background information only. The document may be misleading if relied upon as an exhaustive list of the legal issues involved. If any matter referred to in this document is sought to be relied upon, further information should be sought.