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Security of Tenure
The Landlord and Tenant Act 1954

What is security of tenure under sections 24 -28 of the Landlord and Tenant Act 1954?

For a lease to qualify for security of tenure, the main requirements are:

- Business use: the property must be used for a business purpose (inapplicable for leases of residential property)
- Occupation: the tenant must be in occupation of the property
- The tenancy must exceed 6 months

Sections 24 to 28 of the Landlord and Tenant Act 1954 ("the Act") provide that a business tenancy will not automatically come to an end at the expiry of a fixed term. Instead, the tenant has an automatic right to remain in the property and renew the lease at the end of the term unless the landlord has grounds to oppose such a renewal. See below for an overview of the grounds a landlord can rely upon.

The Act was introduced to protect businesses from being evicted by having their tenancy ended by the landlord. This is commonly referred to as "inside the Act".

"Outside the Act" – no security of tenure

If the lease is granted "outside the Act", the lease automatically comes to an end at the expiry of the contractual term. The tenant will have no right to remain in the property and will have to negotiate a new lease with the landlord if they wish to stay.

The landlord does not have to agree to a new lease, meaning the tenant could be forced to move out. There is no action a tenant can take if the landlord does agree to grant a new lease, but the proposed terms are unfavourable. The tenant cannot apply to court to fix the rent or request better terms for the new lease, and the tenant will not be entitled to compensation for having to vacate.

"Inside the Act" – security of tenure

Generally, landlords are reluctant to grant leases inside the Act because they lose an element of control. The main benefit to the landlord of a lease outside of the Act is the freedom to do with the property as they please when the lease is over.

If the lease is inside the Act, and the landlord wants to regain possession of the property, there is a long procedure which starts with serving a section 25 notice.

If the landlord is able to recover possession of a lease inside the Act, the tenant would normally be entitled to compensation at 1 x the rateable value of the property or 2 x the rateable value if the tenant has been in occupation for 14 or more years.

For a tenant, having a commercial lease inside the Act will offer them protection as it means the landlord cannot require them to leave at the end of the term, and they can renew their lease.

Moving address can damage the goodwill and have a negative impact on the business. There will also be the obvious costs of moving location.

Landlord's grounds for opposing a renewal of a protected tenancy

There are, however, limited statutory grounds on which a landlord can refuse to grant a new lease, as explained below.

Under the Act, the landlord may notify the tenant that it wishes to grant a new lease on stipulated terms and at a proposed rent to the current tenant. However, a landlord can also notify the tenant that it wishes to end the lease and not grant a new lease to the tenant if it is able to prove one of the statutory grounds below.

The seven statutory grounds for a landlord to serve a section 25 notice to evict a commercial tenant holding a protected lease are:

- Breach of repairing covenant
- Persistent delay in paying rent
- Breaches of other obligations (this is at the court's discretion)
- Availability of alternative accommodation
- Sub-tenant - possession required for letting or disposing of the whole of the property
- Landlord intends to demolish or reconstruct
- Landlord intends to occupy the premises

Deadlines

A tenant can lose security of tenure by not responding to any notice, so it is important they seek legal advice as soon as possible.

If a tenant wishes to remain in occupation of the premises after the expiry of the term of their lease, they should serve a valid section 26 notice on the landlord.

Service of a section 26 notice will not oblige the tenant to take the lease. The section 26 request is simply the trigger to initiate the renewal process.

Procedure

To agree a lease outside the Act, prior to completion of the lease:

1. the landlord must first serve a notice on the tenant prior to completion of the lease; and
2. the tenant must sign a declaration to agree to taking a lease outside of the Act.

Even small technical errors in the giving of a notice can render it invalid; the consequences can be very serious. Specialist legal advice should always be sought when deciding whether a lease is to be inside or outside the Act and the procedures to be followed.