

LANDLORD & TENANT ACT REFORMS – BUSINESS TENANCIES

On 1st June 2004, new procedures were introduced which affected the way in which business leases are renewed, or terminated. Januarys' Professional department looks at the implications following the changes in this legislation.

Legislation which governs the rights of tenants at the contractual expiry of their lease was born over 50 years ago under the guise of the Landlord and Tenant Act 1954 Part II.

Following a review of the Act and consultations on its effects the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 was passed in December 2003.¹ The reforms sought to modernise and streamline the procedures carried out under the provision of the Act, remove the need to unnecessary litigation and promote a better working relationship between landlords and tenants of commercial property.

The main parts of the Act which changed as a result of this were; contracting out of Security of Tenure, Section 25 Notices (for Landlords seeking to renew leases), tenants vacation of a property, Court applications, interim rent and the maximum length of term granted by the Court. The Act also affected the following areas; group companies, severed reversions, Section 40 Notices (request for information), surrender agreements and compensation.

Excluding Security of Tenure

Contracting out of the Act's Security of Tenure Provisions has become easier and cheaper, given that there is no requirement for a Court Order. Instead, landlords are required to provide the tenant with a prescribed form to include a 'health warning' about the consequences of giving up security.

Notices (Section 25)

Notices provided by the landlords who would like to see their tenant take a new lease have changed radically under the reforms. The landlord is now required to state the amount of rent, the suggested terms and the property in the notice. Whilst tenants wishing to renew had to adhere to this requirement for some time under the old legislation, it has become increasingly important to seek advice as to what constitutes a realistic amount of rent, and what terms might be considered reasonable when sending a notice proposing new lease terms.

Interim Rent

Both landlords and tenants can apply for an interim rent during the continuation tenancy. In addition, a changed method of valuation provides that where renewal is unopposed by the landlord, it should result in a valuation closer to the open market rental value, if it can be shown that different lease terms have an effect on rental value.

¹ See <http://www.opsi.gov.uk/si/si2003/20033096.htm>

Code of Practice

It should also be noted, by landlords and tenants alike, that the Code of Practice for commercial leases encourages a 'rent menu' to be offered in the granting of new leases. It was originally thought that such an option would have been required to be given in these notices. Some years after implementation, this position is still not much clearer although it is still advisable to adhere to this code as good practice.

Vacation of Premises by the Tenant

Perhaps one of the most dramatic changes which the new legislation brought about followed the Court's decision in *Esselte AB v Pearl Assurance Plc* (1997) 1 WLR 891. This case held that a tenant who wished to give up his tenancy may do so by simply vacating the premises at the end of the term. Landlords are therefore well advised to put in place good management arrangements when approaching the end of a lease. The arrangements for a tenant wishing to vacate after a lease has passed the contractual expiry date also changed. The tenant is now required to give three months notice as opposed to three months notice expiring on a quarter date, as was previously the case.

There are a host of other amendments to the original 1954 Act affecting the way in which leases are renewed or terminated. I believe the changes have been largely welcomed. They have certainly brought about an overdue update to some of the long outdated provisions of the Act.

**For further information, please call Desmond Hirsch,
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