

The Landlord and Tenant Relationship

Is the Lease inside or outside the Landlord and Tenant Act 1954?

It is important to review a commercial lease well in advance. The business needs to know whether they will be asked to move out, or whether they have any legal rights to stay at the premises. If a lease is outside of the scope of the Landlord and Tenant Act 1954 (in this handout we call this "the Act" for short), then the business will have no automatic right to renew the lease. When the lease ends, the tenant is trespassing and landlord can lawfully simply change the locks.

If the lease is protected by The Act, businesses have a right to stay at the premises on the same, or similar, terms – although the landlord can fight this on one of a set number of legal grounds. This is a very important piece of legislation that you should know about if you are signing a lease. It is probably the most important law for commercial tenants. Leases that are protected by the Act are described in a number of ways. Sometimes they are called "inside the Act", or "protected" leases, or "renewable leases", or leases with "security of tenure."

If you have a protected lease, you may also be entitled to compensation if you have to give it up. This area of law is complicated, and so we have prepared this guide to tell you about it. This guide is not a substitute for specific legal advice.

Does the Act apply to your lease?

The Act applies to business (commercial) leases where:

- There is a tenancy of the property. This can include a verbal tenancy but not a tenancy for less than six months, a tenancy at will, or a licence
- The property is occupied by the tenant for the purpose of a business. If the property is sub-let, then it is the sub-tenant who will have the protection of the Act
- The definition of business is very wide and can include ancillary uses ie storage.

However:

- The tenancy must not come within any exceptions.
- The main exception that is important here is if the lease is "Contracted Out" of the Act: see below for further details and an explanation.

If the Act applies, the tenant will have a right to a lease renewal at the end of the contractual term. What does that mean?

Lease renewal: landlord not opposing grant of a new lease

To bring the existing lease to an end, and have a new one granted, either the landlord needs to serve a Notice (a Section 25 Notice) or the tenant needs to serve a Notice (a Section 26 Notice).

The Notice will have an expiry date. To get a new lease, the tenant MUST:

- Sign up to a new lease (a verbal agreement is not good enough)
- Agree an extension of time **IN WRITING** with the landlord, and sign up to a new lease in writing

Or, if you can't get it signed

- Apply to Court for a new lease by the deadline

If the deadline is missed, the tenant will LOSE all of their rights and will be a trespasser. Tenants should not be afraid of applying to Court and should seek appropriate advice. The vast majority of applications to Court end in a new lease being agreed.

If the landlord and tenant cannot agree the terms of a new lease, then eventually the Court will decide what the rent, the length of the lease, and the other terms should be.

In London these cases are now dealt with by the First-Tier (Property) Tribunal, which (in normal times) will try to decide them in a maximum of three months.

When deciding the new rent, the Court or Tribunal uses a special set of rules, and not the rent review clause in the lease, to find out the market rent. The new rent might be higher or lower than the existing rent.

Lease renewal: landlord opposing the grant of a new lease

Where the landlord does NOT want to grant a new lease or is "opposing" the grant of a new lease, the procedure is different. The landlord will serve a Notice (a Section 25 Notice) which says that the landlord is OPPOSING renewal. The landlord can only do this for a number of specific reasons set out in the Act, and not for any other reasons. The reasons allowed in the Act are called "Grounds" and these are:

- Ground A: breach of repairing obligations;
- Ground B: persistent late payment of rent;
- Ground C: other breaches of lease.

These are the "fault grounds".

- Ground D: the landlord is able to provide suitable alternative accommodation;
- Ground E: the tenancy was created by a sub-letting of part and the landlord wants to let or dispose of the whole property;
- Ground F: the landlord intends to redevelop the property;
- Ground G: the landlord intends to use the property themselves as a business or residence. The landlord can only use this where it has owned the property or a minimum of five years.

These are the "no fault" grounds.

The most commonly used ground by far is Ground F, redevelopment.

If the tenant serves a Section 26 notice, the landlord has two months to serve a "counter notice" seeking possession on one of these Grounds A to G.

Just the same as with an unopposed renewal, if the tenant does not apply to Court by the deadline, they will LOSE their rights.

With both opposed and unopposed lease renewals, the landlord has the option of starting the Court process themselves.

In opposed lease renewals, the landlord and tenant will put forward their evidence. If the parties cannot agree, the Court will decide if the landlord should get possession of the property or not.

If the landlord loses, then there is another hearing to decide the terms of the lease (rent, length of lease, and so on).

If the landlord wins on a "fault" ground, they do not have to pay any compensation to the tenant.

If the landlord wins but on a "no fault" ground, then they have to pay compensation to the tenant. Compensation is equivalent to the rateable value of the property. If the tenant (or a previous business of the same kind) has occupied the property for more than fourteen years, the compensation is doubled.

If the landlord serves a "no fault" notice and the tenant simply leaves the property, then the tenant is entitled to be paid their compensation immediately. In that situation it is safest to get an agreement in writing with the landlord first!

“Contracting Out” of the Act

It is possible to “contract out” of the Act by following a very simple procedure. The process is so simple that it may seem unimportant. But it is very important. Before signing a commercial lease that is to be “contracted out”, the tenant will receive a formal notice from the person who is going to be their landlord, or more likely from their solicitor. This notice will contain a long “health warning” about what the tenant will be signing. The tenant must then sign a statutory declaration to agree to have a lease outside the Act. This will usually be done at an independent solicitor’s office. However, that solicitor will not be advising you: they are just there to see that you have completed the declaration (the forms) properly.

It is the tenant’s responsibility to be aware that if the contracted out lease expires, and a new lease has not been agreed and concluded in writing, then the tenant must leave the premises. You should always take independent legal advice before entering into one of these agreements.

What it means if your lease is outside the Act or “contracted out”

From a landlord’s perspective, a commercial lease that is outside the scope of the Act gives them total freedom to do whatever they like once the lease has expired. If no new lease is agreed, then the tenant is a trespasser and has no rights. The landlord can simply change the locks.

CASE STUDY: a tenant in South London entered into a three year contracted out lease. They did not take advice on what that meant. The tenant spent over £100,000 fitting out the property as a bar/restaurant. At the end of the three years the landlord told them that if they wanted to stay, they would have to pay a rent increase of over 50 per cent. There is no legal basis to challenge this rent increase or, if they left the premises, to recover any of the fit out costs. A very expensive mistake.

Conclusion

If you are a tenant or a landlord negotiating terms for a new business lease, you must understand the implications and consequences of whether the lease will be inside or outside the Act. It will have a direct impact on what both of you can do when the tenancy agreement expires

If you receive a Section 25 Notice from your landlord, take action and advice immediately. Do not miss your deadline

We strongly recommend that you seek independent professional legal advice on this issue

Further support

The London Growth Hub has published this series of ‘how-to’ guides to help commercial tenants understand their legal responsibilities. [This flowchart](#) will help you identify the most relevant ‘how-to’ guides for your business.



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