

Commercial Landlord and Tenant: Security of Tenure and Lease Renewal

Introduction

Before entering into any commercial tenancy, whether you are Landlord or Tenant, it is important to have an understanding of the provisions of Part II of the Landlord and Tenant Act 1954 and in particular, its affect upon the Landlord's ability to terminate the lease and regain possession at the end of the lease term, how the lease can be renewed and the terms upon which it will be renewed.

Business Tenancies

Part II of the Landlord and Tenant Act 1954 ("Part II") applies to business tenancies granted for a term exceeding six months. If there is no formal lease, but a Tenant has been occupying a property for the purpose of a business and paying rent to the Landlord for more than six months, then that arrangement falls under the provisions of Part 2.

Security of Tenure

A business tenancy shall not come to an end unless terminated in accordance with the provisions of Part II.

Ending a Business Tenancy

The landlord may terminate a business tenancy by serving a Notice on the Tenant in a prescribed form, specifying the date of termination, which must be not more than 12 nor less than 6 months after service of the Notice, not earlier than the date on which the lease would have expired by effluxion of time and not earlier than the earliest date on which the tenancy could have been brought to an end by Notice to Quit. The Landlord's Notice is known as a Section 25 Notice.

The Notice must indicate whether the Landlord is opposed to the grant of a new tenancy to the Tenant and if he is, the Notice must identify one or more of the grounds set out in Section 30(1) of Part II (further detail is set out below).

A Tenant wishing to terminate a business tenancy must give not less than three months' notice, expiring on or after the tenancy would have expired by effluxion of time.

A Tenant can also serve notice upon the Landlord requesting a new tenancy, beginning on a date as may be specified therein, provided that date is not more than 12, nor less than 6 months after the Notice has been served and not earlier than the date on which the Lease would otherwise have come an end by effluxion of time or by Notice to Quit given by the Tenant. The Notice must be in a prescribed form and set out the Tenant's proposals for the new tenancy. The Tenant's request for a new tenancy is known as a Section 26 Notice.

A Section 26 Notice cannot be made if the Landlord has already given a Section 25 Notice and vice versa.

Grant of a New Tenancy

The Landlord can indicate that it opposes the grant of a new tenancy, either in its Section 25 Notice or by counter notice within two months after receiving the Tenant's Section 26 Notice. The Landlord can only oppose the grant of a new tenancy on seven specific grounds set out in Section 30(1) of Part II. In summary, the seven grounds of opposition are as follows:

1. Tenant's failure to comply with repairing obligations which have resulted in the property falling into a poor state of repair;
2. Tenant's persistent delay in paying rent;
3. The Tenant's other substantial breaches of its obligations under the terms of the tenancy;
4. Provision of reasonable, suitable alternative accommodation;
5. The Landlord requires possession for the purpose of letting or otherwise disposing of the said property as a whole (in certain specific situations only);

6. The Landlord intends to demolish or reconstruct the premises;
7. The Landlord intends to occupy the holding for his own business purposes or residence (this ground only applies if the Landlord's interest in the property was purchased or created no less than five years before).

Applying to Court for Grant of New Tenancy or Termination of Current Tenancy

Once notice has been served either by Landlord or Tenant, if the parties cannot agree, then either party can make an application to Court. An application to Court should be made before the date specified in either the Section 25 or Section 26 Notice, although those deadlines can be extended by agreement in writing.

If the Landlord has already made an application to Court, the Tenant cannot subsequently make an application and vice versa. A Landlord cannot withdraw its application unless

the Tenant consents to its withdrawal.

A Landlord making an application to terminate the tenancy must establish to the satisfaction of the Court one of the grounds in Section 30(1).

If the grant of a new lease is not in dispute, the parties may still be unable to agree the terms of the new lease and accordingly, an application to Court may be necessary. Part II sets out default provisions in relation to the terms of the new tenancy. Broadly speaking, the terms will follow the old lease, except that the Court will not order a new lease for a term exceeding 15 years and the rent shall be the rent which having regard to the terms of the tenancy (other than those relating to rent) might reasonably be expected to be let in the open market by a willing Lessor, disregarding certain factors such as goodwill and in certain situations, improvement.

Compensation

If the tenancy is terminated on one of the grounds in Section 30(1) of Part II, either upon the Court precluding the grant of a new tenancy or the tenant failing to make an application to Court where the Landlord has served a Section 25 Notice opposing the grant of a new tenancy, then compensation shall be payable by the Landlord to the Tenant.

Our Commercial Property Litigation Department can offer advice on this subject, draft and serve appropriate Notices and represent you in relation to any application to Court. We can provide special advice in all commercial property and property litigation matters.

Please call Mark Dewey, Andrew Doinik or Darren Thorneycroft on 01233 625711, or email them at dct@hallettandco.co.uk.