

Lease contracted in or out of the Landlord and Tenant Act 1954

Lease contracted IN the Landlord and Tenant Act 1954

A commercial lease is often described as being a protected lease if the lease has the benefit of the security of tenure provisions under the Landlord and Tenant Act 1954 (“1954 Act”) meaning the tenant can remain in occupation of the property when the lease ends. This is of benefit to tenants as a landlord at the end of a lease term will be obligated to grant a new lease to the tenant.

However, in order to qualify the tenant will need to ensure it satisfies the relevant criteria in s23 of the 1954 Act to benefit from an automatic right to be granted a lease renewal:

- There must be a tenancy in place;
- The tenancy must relate to the property in question;
- The occupation of the property must be for the purpose of a business; and
- The business must be carried on by the tenant.

Providing the above criteria has been met, and on the basis that the tenancy does not fall within one of the specific exclusions listed in section 43 of the 1954 Act, then the tenant will have an automatic right to a lease renewal at the end of the lease term.

If on the other hand a landlord does not wish to grant a new lease to the tenant at the end of the lease term, the landlord will find it harder to evict the tenant. This is because the landlord at the end of a lease term will need to rely on one of the statutory grounds referred to in section 30(1) of the 1954 Act if it wishes to oppose a lease renewal. The statutory grounds include the following:-

1. The property is in disrepair;
2. There are arrears of rent;
3. Other breaches of covenant;
4. There is alternative accommodation available for the tenant;
5. The tenancy was created by way of a sub-let;
6. Landlord has an intention to redevelop;
7. Landlord has an intention to occupy;

Lease contracted OUT of the Landlord and Tenant Act 1954

If a lease has been contracted out of the security of tenure provisions in the 1954 Act, the tenant will have no right to remain in occupation of the property once the lease term ends. There is a procedure in which will need to be adhered to prior to the lease being granted should the landlord wish to grant a lease without security of tenure. This includes the landlord serving a notice on the tenant which lets the tenant know that the lease does not have security of tenure.

If the notice is served on the tenant at least 14 days prior to the date the lease is entered into, the tenant can sign a simple declaration which confirms that the tenant has received the notice and has accepted the consequences of the lease not having security of tenure, before signing the lease. If the notice is served less than 14 days of the date the lease is entered into, the tenant will be required to sign a statutory declaration in front of an independent solicitor (or someone else empowered to administer oaths) who is completely independent of the transaction.

A landlord is likely to prefer that a lease is granted without security of tenure as it will allow the landlord more choice and flexibility, and will be attractive to the landlord if they have other plans for the property or wish to let to another third party.

Please feel free to contact our commercial property team should you require further advice or guidance in relation to the security of tenure provisions in a business lease.

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