

THE LANDLORD AND TENANT ACT 1954 – AN INTRODUCTION

This is published for general guidance only and not as specific legal advice; you should take legal advice on your situation before taking any action.

The Landlord and Tenant Act 1954 – An introduction

This leaflet outlines just some of the main provisions that may apply to your business lease. The Landlord and Tenant Act 1954 can play a vital role in protecting your business and in the current economic climate it is even more important than ever to make sure you are aware of your rights. At Carter Bells we specialise in assisting businesses with commercial lettings.

What is the Landlord & Tenant Act 1954?

The Landlord and Tenant Act 1954 (the Act) was created to provide security of tenure to Business Tenants. If the Act applies the relevant business tenancy will not automatically come to end upon the expiry of the contractual term of a lease provided the tenant remains in occupation for the purposes of a business. The tenancy can still be terminated by the completion of a surrender, or the landlord forfeiting the lease (i.e. bringing the tenancy to an end before the contractual term expires), but in the absence of this the tenancy will only come to an end if it is terminated in one of the methods specified by the Act. The Act also provides for compensation to be payable to the Tenant in certain circumstances where the landlord prevents renewal of the business lease in accordance with the Act.

When does the Act apply?

The Act applies to leases granted to tenants over business premises. The tenant must be in occupation of the relevant premises for business purposes to benefit from the Act. There are a number of exceptions where the Act will not apply as follows:

- Contracted out tenancies (see below)
- Tenancies with a term less than 6 months
- Agricultural tenancies
- Licences
- Tenancies at Will

Contracting out of the Act

It is possible to exclude the protection provided by the Act. To do this the landlord must give the tenant notice confirming that the proposed lease will not be protected by the Act and the tenant must then confirm their agreement to exclude the Act before the new lease is completed. If the landlord's notice is served less than 14 days before the lease is granted, the tenant's agreement must be in the form of a statutory declaration. The Act requires the notice and tenant's confirmation to be in a prescribed form. Finally, the lease must contain a statement that the relevant sections of the Act have been excluded.

How is a tenancy ended under the Act?

There are a number of methods for ending a business tenancy protected by the Act. These include:

- notice by the Landlord under section 25 of the Act;
- notice by the Tenant under section 26 of the Act;
- forfeiture (where the tenant has breached the terms of the lease);
- surrender by agreement of both parties;
- three months' notice from the Tenant under section 27 of the Act on, or after the expiry of the contractual term;
- by the tenant vacating the premises at the end of the contractual term of a lease.

Termination by Statutory Notice

The section 25 notice:

- must be in a prescribed form;
- must confirm whether or not the landlord intends to grant a new tenancy and if so the terms they propose;
- must give a minimum of six months', and a maximum of twelve months' notice

The landlord can only oppose the grant of a new lease on one of the grounds set out in the Act and refer to this in their notice. There are a number of grounds, but generally they can be divided into two main groups. Firstly, those grounds where the Landlord claims that the Tenant is either in default of the lease terms, or has persistently delayed in the compliance with the tenants obligations under the lease. Secondly, where the Landlord wishes to either occupy the premises themselves, or re-develop them.

If the tenant serves a section 26 notice requesting a new tenancy, the tenant's proposals on rent, duration and other terms must be stated in the notice. If the landlord is opposed to the granting of a new tenancy, upon receipt of the section 26 notice they must confirm the relevant ground of opposition to the tenant within 2 months of receiving the tenant's section 26 notice. If the landlord does not do this they will be required under the act to grant a new lease.

Both section 25 and section 26 notices must give a minimum of six months', and a maximum of twelve months' notice. Once the Landlord has served a section 25 notice the tenant cannot serve a section 26 notice and visa versa.

Once a notice has been served and no opposition has been raised by the landlord the parties will be free to enter into negotiations for a new tenancy and extensions to the termination date specified in the relevant notice can be agreed as appropriate. If the parties cannot agree terms either party can make an application to the court to ask it to decide the terms of the new tenancy provided that such application is made before any termination date expires, or any agreed extension.

In certain circumstances the landlord may have to pay the tenant compensation if the landlord opposes the grant of a new tenancy and the tenant has to vacate the premises.

Under the Act compensation is calculated by reference to the rateable value of the premises being let. For tenants who have been in business occupation (this includes occupation by predecessors in title) for under fourteen years, the compensation will be the rateable value of the property. For tenants who have been in occupation for over fourteen years, the compensation is doubled.

If you would like to discuss your transaction with our commercial Department please contact them on: 020-8939 4000.



L-R Andrew Thorne, Richard Norris and Justin Pinches