



- Tenants of business premises have a right to renew their lease upon termination of the tenancy on terms to be agreed between the landlord and tenant or in the absence of agreement determined by a court
- To qualify the tenant must carry on a business at the premises
- Fixed term tenancies of less than 6 months are excluded from protection unless the tenant can demonstrate 12 months continuous occupation.
- However month to month (or week to week) periodic tenancies automatically qualify for protection regardless of the time in occupation
- A landlord can refuse to grant a new lease in certain circumstances, however compensation may be payable to the tenant following a valid refusal.

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## TENANTS RIGHT TO LEASE RENEWAL UNDER THE LANDLORD AND TENANT ACT 1954

### What we do

Orme Associates Property Advisers can advise landlords and tenants of commercial premises on lease renewal and compensation under the Landlord and Tenant Act 1954 (LTA 1954).

### Introduction

The Landlord and Tenant Act 1954 provides tenants of business premises with a statutory right to a new tenancy when the tenancy expires or is determined by a break clause or a notice to quit. The terms of a new tenancy are agreed between the landlord and the tenant, or in the absence of agreement are determined by a court.

Business premises will include, offices, shops, doctors surgeries, factories, club premises, and buildings where the tenant lives in part and works in part. However tenancies of farms or mines and tenancies granted as part of employment by the landlord are excluded.

In certain circumstances the landlord may be able to resist the tenants right to a new tenancy, such as where the landlord seeks to have the premises for his own occupation or where the landlord wishes to re-develop the property.

In some circumstances where the landlord resists the tenants right to a new tenancy then compensation may be payable to the tenant.

### Qualification

The tenants right to a new tenancy under the LTA 1954 (or to compensation following a valid refusal) is provided to any tenant of premises occupied by him for the purposes of a business carried on by the tenant subject to the paragraph below.

All fixed term tenancies will qualify providing the tenancy was granted for more than 6 months (or if less the tenant

months or more by holding over). Tenancies where the tenant takes occupation and pays month to month (or weekly or yearly etc) termed periodic tenancies will automatically qualify regardless of the time the tenant has been in occupation.

The term "tenancy" also extends to sub-tenancies.

The tenant must be in occupation to qualify, the tenants belongings at the premises can count as occupation, or a temporary absence i.e. following a fire or because a business is seasonal is permitted.

### Contracting out

Before the commencement of the tenancy the landlord and tenant may agree to contract out of the 1954 Act.

Contacting out is only possible with a fixed term tenancy and in order to do so for tenancies from 2004 the landlord must give a notice in the form of a warning to the tenant setting out the implications of contracting out:-

- 14 days before the tenancy is signed, or;
- if less than 14 days notice the tenant must make a statutory declaration that he has read and understood the warning and have it countersigned by a solicitor or notary.

Tenancies before 2004 required a court order to contact out of the 1954 Act. A copy should be attached to the tenancy.

### Renewing a business tenancy

Where a business tenancy comes to an end through the passage of time, or by way of a notice to quit or break notice (and the tenancy is not contracted out), providing the tenant chooses not to vacate, the tenancy will continue under the LTA 1954 on the same terms as before ( a continuation tenancy). The tenant may determine a continuation ten-

-ancy subject to 3 months notice to the landlord.

Alternatively a tenant who's tenancy is coming to an end or where he remains in occupation at the end of a tenancy and prefers a new fixed term tenancy he can request one by serving a s.26 notice on the landlord specifying a start date for a new tenancy not less than 6 months and not more than 12 months from the date of the notice.

The landlord and the tenant are then required to agree the terms of the new tenancy between themselves. Where no agreement is forthcoming either party may apply to the court for determination of the terms. In the absence of agreement a court application must be made before the start date of the new tenancy stated in the s.26 notice or there must be an agreement on an extension to the start date. If no action is taken the s.26 notice will expire.

The s.26 route is only available to tenants who have a tenancy that was granted for a fixed term of 12 months or more.

Also the landlord may propose a new tenancy by serving a s.25 notice upon the tenant proposing terms for a new tenancy. Similarly the start date must be not less than 6 months and not more than 12 months from the date in the s.25 notice. The start date cannot be earlier than the expiry of the original lease. The proposed start date maybe postponed by agreement. Where the terms cannot be agreed either party can apply to the court for determination of the terms. The s.25 proposal will expire if no action is taken before the proposed start date.

### Stamp Duty Land Tax

Where a tenancy is renewed then stamp duty land tax (SDLT) may be payable on the new tenancy (to calculate SDLT see [www.hmrc.gov.uk/so/new-sdlr-calculators.htm#21](http://www.hmrc.gov.uk/so/new-sdlr-calculators.htm#21))



The Copy Stop were approaching the end of their tenancy and the landlord offered a payment if the tenant would agree to vacate. The parties failed to agree a payment. Orme Associates served a s.26 request on the Landlord seeking a new tenancy and applied to court to determine the new terms. The tenant received a new tenancy.



Liverpool Cat Welfare were given a rent demand by their landlord increasing the rent on their shop. Orme Associates were able to resist the rent increase as the tenant was holding over. The landlord would need to serve a s.25 notice and grant a new tenancy. The tenant remained in occupation on the same terms as before.



The tenant wished to renew its tenancy of the Masque Venue a popular night time venue. The landlord did not oppose renewal. Orme Associates agreed the new rent and the terms of the new tenancy on behalf of the landlord.

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Where the tenant holds over (i.e. remains in occupation paying a rent at the end of the tenancy) the Inland Revenue assume a lease of 1 more year which may incur a stamp duty charge, and following 1 year SDLT for a further year becomes payable and so on.

Tenant not wanting a new tenancy

If the tenant does not want a new tenancy it can vacate the premises on the expiry date,

Where a continuation tenancy has commenced (i.e. tenant holds over) the tenant will need to give 3 months notice to the landlord to end the tenancy.

Also a tenant having a fixed term tenancy with 3 months still to run can serve a notice under s.27 stating that the tenancy shall not continue beyond the term expiry date. This removes the risk of a continuation tenancy commencing and having to pay rent for another 3 months.

Landlord wishing to end a business tenancy

A landlord wishing to end a business tenancy that was not contracted out at the outset must serve a s.25 notice opposing renewal and specify a termination date not less than 6 months before and not more than 12 months after the date of the notice.

The landlord must specify at least one of the grounds appearing in the Act to end the tenancy. The grounds for refusal are:-

- a. tenants failure to repair
- b. persistent rent arrears
- c. other defaults under the tenancy
- d. landlord is able to offer the tenant suitable alternative accommodation
- e. a sub-tenant seeking a new tenancy of part only of the property would reduce the value of

Useful Links

ODPM Guidance Booklet (including flowchart) - <http://www.communities.gov.uk/documents/citiesandregions/pdf/131179.pdf>  
Valuation Office Agency— [www.voa.gov.uk](http://www.voa.gov.uk)  
HMRC Stamp Duty Calculator—[www.hmrc.gov.uk/so/new-sdlc-calculators.htm#2](http://www.hmrc.gov.uk/so/new-sdlc-calculators.htm#2)

the property as a whole  
f. landlord wishes to demolish or re-develop the property

g. landlord intends to occupy the property himself

The most commonly used is f above. In this instance the landlord will need to have provable plans for re-development to resist a new tenancy.

Tenants right to compensation

Where the landlord is able to oppose the grant of a new tenancy on grounds e, f or g above the tenant may be entitled to compensation.

This right will not be available where the lease is contracted out of the Act. Also it will not apply where the lease states that it is not to apply and the tenant has been in occupation for less than 5 years.

The level of compensation will be 1 x the Rateable Value (RV), and where the tenant has been in occupation for 14 years compensation is doubled to 2 x RV. Rateable Values are available at [www.voa.gov.uk](http://www.voa.gov.uk).

Compensation for improvements

At the termination of a lease where the tenant quits the premises or the landlord obtains possession of the premises, compensation for authorized tenants improvements may be payable under the Landlord and Tenant Act 1927.

For a claim to be valid the tenant or a predecessor must have served on the landlord a letter of his intention to make an improvement accompanied by a specification and a plan before the improvement was made.

If the Landlord objects within 3 months and does not offer to carry out the improvement himself for an increase in rent, the improvement will be deemed to be authorised.

Where the landlord objects then a court order may be possible giving authority to the tenant to undertake the works.

Where the works consist of a statutory obligation, a letter, specification and plan are still required to be served on the landlord, but the landlord cannot object to the improvement.

The level of compensation is the lesser of (i) a sum equal to the rise in value of the property as a result of the improvement or (ii) a sum equal to the cost of carrying out the works at the end of the tenancy less any cost to put the improvement into repair.

There are time limits to making a claim being 3 months following the date of service of a tenants notice to quit, or where the tenancy expires by effluxion of time a minimum 3 months (and a maximum of 6 months) before the end of the tenancy.

Further information

For further information and advice on the Landlord and Tenant Act 1954 or the Landlord and Tenant Act 1927 contact:-

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