



Orme Associates

Property Advisers

BUSINESS SECURITY OF TENURE LANDLORD AND TENANT ACT 1954

- A tenant of business premises will qualify for statutory protection from rent increases and lease expiry under the Landlord and Tenant Act 1954.

- Fixed term tenancies of 6 months or more or where rent is merely paid weekly or monthly, will qualify for protection.

- Where a fixed term has expired, or rent is paid weekly or monthly, the Landlord is unable to increase the rent, or other terms of the tenancy without first serving legal notices on the tenant.

- Further in most cases the Landlord must offer the tenant a new lease at the same time, or prove statutory grounds for repossession.

- Orme Associates can provide free initial advice to business tenants.

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What We Do

Orme Associates Property Advisers can advise owners or occupiers of business premises on rent increases, lease renewals and compensation for lease termination under the Landlord and Tenant Act 1954.

Introduction

The Landlord and Tenant Act 1954 provides statutory protection to occupiers of business premises. Business tenants will have a right to renew at the end of their fixed term, and will be protected from rent increases where the lease has expired.

Most business premises are included within the 1954 Act. This includes premises where the tenant lives in part of the premises. A few types of business premises are excluded, for example farms and mines.

Also some business leases will have been "contracted out" of the provisions of the 1954 Act, any exclusion will appear in the terms of the lease (if the lease is in writing). The validity of any exclusion will depend on events prior to the grant of the lease.

For lease renewals the owner of the property may be able to validly refuse to renew where (i) the landlord wishes to occupy himself, or (ii) he intends to re-develop the property. There are some other statutory grounds for termination but these are the most common.

Qualification

Qualification for rights of lease renewal, protection from rent increases, and compensation where the landlord validly terminates the lease are where (i) the lease was granted for a fixed term of at least 6 months (if less the tenant must occupy for at least 12 months), or (ii) where a tenant pays rent weekly or monthly and holds a lease that is periodic (i.e. month to month), or does not have a written lease.

The tenant (or sub-tenant) must be in occupation to qualify either

personally or via his belongings, or any absence must be temporary.

Contracting Out

A business lease call fall outside of the protections afforded to it by the 1954 Act where the parties agree to this before the grant of the tenancy.

Any such agreement will only be valid where a prescribed notice has been given to the tenant setting out the implications of contracting out of the 1954 Act protection (i) at least 14 days before the start of the tenancy or (ii) if less, where a statutory declaration is made stating the tenant has read and understood the warning, and his solicitor has counter-signed this.

The Process of Renewal/Rent

Increase/Termination
Where a tenancy comes to an end through effluxion of time, providing the tenant does not vacate, the tenancy will continue under the 1954 Act on the same terms as before until the tenant serves a notice to quit on the landlord giving two months notice. This is known as a continuation tenancy.

A tenant who prefers a new fixed term can request one by serving a s.26 notice on the landlord (providing they had a fixed term tenancy for at least 12 months). Alternatively the landlord may propose a new tenancy (or seek termination of the existing tenancy) by service of a s.25 notice.

The parties are then required to agree the terms of a new tenancy. Where agreement is not reached an application to the County Court is made and the court will determine the terms.

Where a landlords s.25 notice is served seeking termination of the existing tenancy it is important to take action, as after its expiry (2 months) the tenancy will come to an end.

Stamp Duty Land Tax (SDLT)

Where a tenancy is renewed Stamp Duty may be payable (search for "SDLT Calculator" in your browser) to gain an estimate of SDLT payable.

Tenant not wanting to remain

If there is a fixed term or a periodic tenancy, the tenant may leave on the term date (end date) (for a fixed term tenancy) or on the day before the rent is due (for a periodic tenancy). Where a continuation tenancy has begun the tenant must give 3 months notice to end the tenancy.

Landlord seeking possession

A landlord wishing to end a tenancy, that was not contracted out, must provide genuine grounds for possession in the s.25 notice. These are:-

- (a) tenants failure to repair
- (b) persistent rent arrears
- (c) breach of lease terms
- (d) the landlord is able to offer suitable alternative premises
- (e) a sub-tenant seeking a new lease of part only of the property would reduce the value of the whole
- (f) the landlord wishes to re-develop
- (g) the landlord wishes to occupy itself

Tenants right to compensation

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

The level of compensation will be 1 x Rateable Value where occupation has been less than 14 years, and for over 14 years, 2 x Rateable Value.

Further Information / Appraisal

For further information and advice on Lease Extension contact:-

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