



WHAT SHOULD THE LOCAL AUTHORITY LANDLORD DO AT THE END OF COMMERCIAL TENANCIES?

Most local authorities have at least some tenanted properties, either because they have an investment portfolio, have let property in the short term while it is surplus to needs or are procuring services from a provider who is occupying the authorities' premises as tenant in order to deliver those services.

Most of these tenancies will be 'business tenancies' for the purpose of the Landlord and Tenant Act 1954. The definition of a 'business' in the 1954 Act is wide and does not require profit by the tenant to be the motive for their taking on the premises.

SECURITY OF TENURE OR NO SECURITY?

Business leases will either:

- (a) bestow statutory security of tenure on the tenant under the 1954 Act (the default position), or
- (b) such security will have been contracted out by agreement at the commencement of the lease (as long as it is for a fixed term – periodic business tenancies (subject to some very specific exceptions) will always have security of tenure because the process for contracting out can only be applied to fixed-term leases).

By 'security of tenure' we mean that the tenant has a statutory right to remain in occupation and renew their lease subject to the detailed provisions of the 1954 Act.

Periodic business tenancies are uncommon, principally because of the security of tenure issues that they raise, and so most business leases are granted for a fixed period. What should the landlord be doing as these leases come up to the end of their term?

LEASES WHICH PROVIDE SECURITY OF TENURE

If the landlord is content for the lease to continue and does not want (for instance) to increase the rent, then they don't need to do anything immediately. Unless the tenant has vacated the property, a statutory continuation tenancy will arise at the end of a fixed term on, in most respects, the same terms as the existing lease. The landlord continues collecting the rent and things continue as before until one party or the other decides to seek a change to the relationship.

If the landlord wants the property back (or wants to renew on revised terms), they will need to serve a minimum of six-months prior notice on the tenant under Section 25 of the 1954 Act either indicating the terms of a proposed renewal or giving specific reasons



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why they object to a renewal (the permissible categories of objections are set out in the 1954 Act). If the landlord serves the notice less than six months before the end of the lease term, the lease will automatically continue on the statutory tenancy until the end of the notice period regardless of whether the lease term has already ended.

Assuming that the tenant wishes to renew, then they have the period of the landlord's notice within which to either complete the renewal (if offered) or to apply to the courts for a new lease.

If the tenant does not want to renew their lease, then they either vacate before the end of the fixed term (an action which they can, but are not obliged to, give the landlord notice of) or, if they have run past the end of the fixed term and the statutory continuation tenancy is in place, give the landlord three months' notice of their intention and then vacate (they will need to pay rent for this three months).

LEASES WHERE SECURITY OF TENURE HAS BEEN 'CONTRACTED OUT'

Leases which do not provide security of tenure will come to an end at the conclusion of the contractual term and, after that date, if the tenant hasn't vacated, they will be a trespasser. The landlord can seek possession in the courts.

It is important, if the landlord doesn't want a new lease to arise by implication (in which case a risk exists that security of tenure will be implied, because any new lease has not been expressly 'contracted out'), that they take steps to assert their position. This will generally comprise two actions:

1. Giving the tenant clear written notice that the landlord will or does (if the lease has already ended) regard them as a trespasser and demands possession; and
2. Stopping collecting rent.

If the landlord, in reality, wants to renew the lease, then the demand for possession can include, (on a 'without prejudice' basis) the offer of a renewal lease and an interim 'tenancy at will' while this is completed. This will allow the landlord to collect some rent while the renewal is resolved without creating a new, secure, tenancy (because tenancies at will are an exception to the 1954 Act security provisions).

The second step (ceasing collecting rent under the lease) is often harder than it appears. Much rent collection is now automatic, with rent demands being generated by IT systems and tenants paying their rent by direct debits. Ideally the landlord should ensure that they review the position with each of their tenants before the final quarter's rent (or other rental period) is demanded and make sure that they do not request any more rent than is due up to the end of the contractual term (possibly a part-quarter or part-month payment). If they haven't been able to do this, the correspondence demanding possession should also offer to return any rent over-payment, insofar as it isn't otherwise due to the landlord by way of either:

- (a) mesne profits (because, if the tenant remains in possession after lease-end, they can be required to pay for depriving the landlord of their property), or
- (b) An express agreement to off-set it against rent under the tenancy at will.

The key point for the landlord is that it is clearly documented that any rent which was demanded for a period after the end of the contractual term is not being accepted as evidence of a new lease.

REVIEW OF THE LANDLORD AND TENANT ACT 1954

The Law Commission issued a consultation on review of the Landlord and Tenant Act 1954 in November 2024. Amongst the issues which it wants to review is the security of tenure regime (on which it has given a number of options without having any expressed favourite). The last major change to the 1954 Act was in 2003 and so amendments to the rules explained above may be on the way.

This note only sets out some of the basics of what can happen at the end of a lease. A lot can depend on individual circumstances and the intention of both landlord and tenant. Pathfinder Legal Services has considerable experience in advising local authority clients on the detail of individual cases. As with so many legal matters, early consideration of the position and the options can be critical.

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