

The Landlord & Tenant Act 1954 - an introduction

What is the Landlord & Tenant Act 1954?

The Landlord and Tenant Act 1954 (the Act) provides that a qualifying business tenancy will not automatically come to end upon the expiry of the fixed term of a lease if the tenant remains in occupation for the purposes of a business. Assuming the tenancy is not brought to an end by agreement between the parties (i.e. a surrender) or forfeiture, the tenancy will only come to an end if it is terminated in one of the limited ways specified by the Act. In certain circumstances, compensation is payable by the landlord to the tenant as a result.

When does the Act apply?

The Act applies to tenancies of premises occupied by a tenant for the purposes of the tenant's business. The tenant must be in occupation for business purposes to benefit from the Act. This means if there is a qualifying sub-tenant in occupation, it is the sub-tenant, not the head-tenant, who will be protected by the Act.

There are a number of exemptions. For example, tenancies which can be terminated at the will of either party, fixed term tenancies not exceeding 6 months, and "contracted out" tenancies will not be business tenancies for the purposes of the Act.

Can I prevent the Act from applying?

It is possible to 'contract out' of the Act, however strict procedures must be followed. Before the lease is granted, the landlord must give the tenant notice confirming that the proposed lease will not be protected by the Act. The tenant must then declare his agreement to the lease being excluded from protection under the Act.

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 sworn before an independent solicitor. The landlord's notice and the tenant's declaration (whether statutory or otherwise) must be in a prescribed form and the lease should record 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:

- the service of a landlord's notice under section 25 of the Act (a section 25 notice);
- the service of a tenant's notice under section 26 of the Act (a section 26 notice);
- forfeiture (if the tenant has breached the terms of the lease);

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The Landlord & Tenant Act 1954 - an introduction

Continued...

- surrender (where both landlord and tenant agree to end the tenancy);
- by the tenant giving three months notice under section 27 of the Act (assuming the fixed term has expired);
- by the tenant leaving the premises at the end of the fixed term of a lease.

The section 25 notice must be in a prescribed form and must state whether or not the landlord opposes the grant of a new tenancy. The landlord can only oppose on one of the grounds set out in section 30 of the Act. If the landlord is not opposed, the section 25 notice must state the landlord's proposals for the new lease to include the proposed new rent, duration, and other terms.

If the landlord is opposed to the grant of a new tenancy, the ground(s) of opposition set out in section 30 of the Act must be stated in the Notice.

Either party can ask the court to decide whether the landlord can demonstrate that one or more of the grounds has been met. If none of the grounds can be demonstrated, the landlord will not be able to oppose the grant of a new tenancy.

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 but has not served a section 25 notice, he must serve notice of his opposition indicating the relevant ground of opposition within 2 months of receiving the tenant's section 26 notice.

Both section 25 and section 26 notices must give a minimum of six months', and a maximum of twelve months' notice. The termination date specified in the relevant notice cannot pre-date the contractual expiry date in the lease (unless a break clause is being exercised). It is not possible to serve a section 25 notice once a section 26 notice has been served and vice versa.

Once a section 25 or 26 notice has been served (assuming the landlord is not opposed to the granting of a new tenancy) the parties will usually enter into negotiations for a new tenancy and the parties can agree to extend the termination date specified in the section 25 or 26 notice (as appropriate). If negotiations fail, 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.

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. Compensation is calculated taking account of the rateable value of the property. For tenants who have been in business occupation (including predecessors in title) for under fourteen years, the compensation is 1 x the rateable value of the property. For tenants who have been in occupation for over fourteen years, the compensation is 2 x the rateable value.

This information sheet has been prepared to highlight some of the key

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Continued...

issues concerning the Landlord & Tenant Act 1954. It is intended to be for general guidance only and is not a substitute for specific advice. For further information please contact Mark Steggles on 01892 510000 or by email (mark.steggles@ts-p.co.uk)