

# Leases nuts and bolts – security of tenure under LTA 1954, re-negotiation, terms, breaches, remedies



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# Security of tenure

- Key legislation is Landlord and Tenant Act 1954
- Applies to leases where leaseholder is using the property for business purposes (s. 23)
- Why does it matter?
  - Where the Act does apply, the lease will not terminate at the end of the term
  - Either the landlord or the tenant may serve a notice terminating the tenancy and proposing a new tenancy on new terms
  - If the parties cannot agree, possible to apply to court to determine whether a new tenancy should be granted, and on what terms



# Key requirements for 1954 Act to apply (1)

- Starting point is to consider whether the operation of the Act been excluded by agreement of the parties.
- Possible for the parties to agree to exclude the Act where the lease is for a "term of years certain"
- Procedural requirements have to be followed for the landlord to exclude the operation of the Act: landlord's warning notice, tenant's declaration, endorsement
- If not followed properly then Act likely still applies.



# Key requirements for 1954 Act to apply (2)

- If not excluded by agreement, application of the Act turns on a number of issues
- 1. that there is a “tenancy”
- 2. Does the tenancy relate to “premises”?
- 3. Are the premises occupied for the purpose of a business?
- 4. Is the business carried on by the tenant?

It is possible to “fall in and out” of the Act – e.g. if business use ceases or tenant is no longer occupying, the Act will not apply during that time.



# What is the effect of the Act applying? (1)

- The lease will not come to an end “unless terminated in accordance with the provisions [of the Act]”: s. 24(1)
- What it does not do: Does not affect forfeiture, surrender etc. The Act will not protect against a forfeiture for non-payment of rent etc.
- Equally, does not prevent the parties surrendering a lease.



## What is the effect of the Act applying? (2)

- In general terms, it provides for the continuation of the lease at the end of the term
- If either party does nothing, the lease will simply continue on the same terms
- But provision for both the landlord and the tenant to terminate or seek a new lease



# Landlord can seek to terminate

- Under s. 25, the landlord can serve a notice terminating the tenancy, and either:
- Propose a new tenancy (usually on different terms)
- State that the landlord is opposed to the grant of a new tenancy, and specify a reason (“ground”) for termination
- Grounds for termination in s 30 (1): these include that the tenant has persistently delayed in paying rent, or because they have breached the tenancy
- If parties cannot agree, the tenant can apply to court for a new lease
- The lease will terminate on the date specified in the notice – therefore essential to make the application to court before termination date if no agreement on new lease.



# Tenant can seek new lease

- If the current tenancy was for more than a year, or for a year and then year to year, the tenant can request a new tenancy – s. 26.
- Tenant to specify proposals as to terms
- Current tenancy will end on date specified on notice – again, if no agreement, application to court before termination essential to protect tenant's position





# Reviewing/re-negotiating a lease

- Where the 1954 Act applies, generally the statutory scheme is used to review/renegotiate lease
- Where it does not apply, review/re-negotiation entirely a matter for the parties and no single formal process which must be followed
  - Not uncommon for tenants to “hold over” at the end of a lease. They generally then become a tenant at will or tenant on sufferance, and this can be terminated easily
  - Landlords more pro-active than others in ensuring that leases are renewed at the end of the term
- No formal process for how a trader might **change** their lease or ask for **amendments**



# Reviewing/re-negotiating a lease (1)

The important terms of a lease generally include:

- Rent (including rent review)
- Duration of the lease
- Repairing obligations – who is responsible, and what are they responsible for?
- Service charges – when, what for, how much
- Break clauses – ability to end tenancy earlier than expiry of the fixed term.



# Terms to look out for (1)

- Rent review – not uncommon for review to be calculated by a formula.
  - Formulas can contain errors which result in absurd levels of rent (e.g. error in RPI formula meant tenant would pay £76,000,000 per year after 25 years in *Monsolar IQ Ltd v Woden Park Ltd* [2021] EWCA Civ 961)
- Provisions requiring tenant to comply with regulations (including regulations as amended from time to time)
- Break clauses – flexibility versus uncertainty



## Terms to look out for (2)

- Repair and service charges– be wary of what you are signing up to.
- 1. A tenant’s obligation to “keep in good and substantial repair and condition” generally means that you will need to *put* the property in repair if it is *already* in disrepair
- 2. What are you paying for?
  - Repair to demised premises?
  - Common parts?
  - When does it need to be paid?
  - Common for interim payment and final balancing payment



# Reviewing/re-negotiating a lease

- Do your research – what is the property worth? How much are you paying versus what the landlord could likely obtain?
- What does your current lease say? Important to understand what both parties' strengths and weaknesses are under the current/former lease
- Important to properly document changes and give effect to any variations correctly (e.g. some amendments will need to take effect by deed, some amendments will have the effect of resulting in the creation of a new lease)
- Know what you are signing up for – once properly executed, generally not possible to “challenge” a lease



# Terms of the lease and breaches

- A lease is a contract contains express obligations on both parties
- Leases often contain “implied terms”
- Some implied terms arise in almost all leases: – e.g. that a landlord will not “derogate from grant”
- Implied terms can also arise in the particular circumstances of an agreement
- A “breach” of the lease occurs when one party fails to perform an obligation on their part.
- Often, arguments about whether a breach has *in fact* occurred, and whether the facts relied upon actually constitute a breach *in law*.



# Tenant's remedies for breach of covenant

- Damages (i.e. compensation) for loss caused by the breach.
  - General position is to put you in the position had the breach not occurred.
- Injunction – an order from the court requiring the landlord to do (or not do) something (e.g. restrain threatened unlawful eviction)
- “Specific performance” – an order by the court that the landlord do something under the lease which they are contractually obliged to do (e.g. carry out repairs).
- Declarations by the court as to the parties rights and liabilities – e.g. court could “declare” who is liable for repair where lease is unclear, or that the provisions of the 1954 Act apply



# Unfair terms in a business lease (1)

- Generally, very limited protection for terms in business tenancies which might arguably be unfair or unreasonable
- Some limited protection in Unfair Contract Terms Act 1977 relating to clauses which seek to limit liability for landlord's breach/negligence
- But a lease will often be subject to express or implied terms that the landlord gives the tenant "quiet enjoyment" of the premises, and that the landlord will not "derogate from grant"
- Possibly scope on a case-by-case basis to argue that a particular term infringes those implied terms





## Unfair terms in a business lease (2)

- Obligation not to “derogate from grant” means that landlord should not do anything which substantially interferes with the tenant’s enjoyment of the lease
- Embodies a common law rule of honesty
- No need to show physical interference with the demised premises
- Alterations by a landlord that resulted in fewer passers by was a derogation (*Platt v London Underground Ltd* [2001] 20 EG 227)
- Carrying out building works above tenant’s property in a way which caused high disruption and scaffolding obscured shop (*Timothy Taylor Ltd v Mayfair House Corporation and another* [2016] EWHC 1075 (Ch)).
- Lease of an advertising site – erecting a hoarding which obscured the site: *Johnston & Sons Ltd v Holland* [1988] EG 24



## Unfair terms in a business lease (3)

- Usually an express covenant by landlord to give the tenant quiet enjoyment, but if not usually an implied covenant
- Effect of covenant is that landlord must ensure that there is no interference with the tenant's possession and enjoyment of the property – e.g. trespass, re-entry onto tenant's property
- Generally about interferences with the tenant's possession - but can extend to other conduct e.g. cutting of gas/electricity to drive tenant out (*Perera v Vandiyar* [1953] 1 W.L.R. 672), obstructing right of way/use of common areas)
- Deliberate and persistent attempt to drive out the tenant from possession of the demised premises by persecution and intimidation: *Kenny v Preen* [1963] 1 Q.B. 499







# Q&A



# Thank you

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