

Lease termination and renewals

– “inside or outside the Act?”

We are often contacted by tenants of commercial premises asking what notice they need to give their landlord in order to be able to leave the premises at the end of the term of their lease. The answer to this depends on whether the lease is “inside or outside” of the Landlord and Tenant Act 1954. The question of whether a tenant has a “right” to renew its lease also depends on this.

Sections 24–28 of Part II of the Landlord and Tenant Act 1954 give tenants of commercial premises a statutory right to remain in occupation at the end of the fixed term of their lease (the “statutory continuation” or “holding over” of the tenancy) and a statutory right for the tenant to apply to Court for a new lease on substantially the same terms as their existing lease, subject to reasonable modernisation and at a new market rent. This is known as security of tenure. If a business lease is “inside the Act”, then the tenant will have the benefit of security of tenure. If a business lease is “outside the Act” or “contracted out” of the statutory protection of the LTA 1954, then the tenant will not have a legal right to a new lease at the end of the term or to hold over, and the tenant must vacate at the end of its lease term.

In order to determine what, if any, notice is required therefore you first need to determine whether or not the statutory provisions apply.

1. Does the Landlord and Tenant Act 1954 (“the LTA 1954”) apply?

If certain conditions are present, the LTA 1954 automatically provides commercial tenants with security of tenure. The lease must be (i) of business premises; (ii) for a term exceeding 6 months; and (iii) the tenant must be in occupation of the property.

By contrast the following interests and arrangements are excluded from the security of tenure protection afforded by the LTA 1954:

- Licences and tenancies at will.
- Leases that have been “contracted out” of the LTA 1954, which is the procedure the landlord will follow to disapply the effect of security of tenure.
- Leases granted for a term certain of six months or less. The tenancy must not contain provisions for extending or renewing the term beyond the initial six months and the tenant must not have been in occupation for more than 12 months prior.
- Mining leases, service tenancies, farm business tenancies, a home business tenancy and certain leases of agricultural holdings.
- Electronic Communications Code agreements granted after 28 December 2017, which have their own regime of protection.

It is worth noting that the statutory protection can fall away during the term. For example, if the tenant is not in occupation for business purposes at the end of the term, it will lose its statutory protection and so its renewal rights. This will only become an issue at the end of the contractual term of the tenancy when considering the procedure for renew or termination and will depend on the individual circumstances in question (which is outside of the scope of this article) so legal advice should be sought.

2. Termination or renewal of a business lease granted within the security of tenure provisions of the LTA 1954

If a business lease is granted with statutory protection under the LTA 1954 (“a protected lease”), the protected lease will not automatically end at the end of the fixed term and instead the tenant will have a legal right to remain in occupation. This is known as “hold over” or “holding over”. When the tenant is holding over it will remain in occupation of the premises on the same terms as its existing lease under the LTA 1954.

(a) Procedure to terminate a protected lease

The procedure differs depending on who is terminating the lease and when it is being terminated:

- (i) If the tenant does not want to remain in occupation and/or renew its lease beyond the end of the fixed term it must

ensure that it vacates the premises and returns the keys to the landlord on or before the end date. No formal notice has to be given to the landlord, but it would be sensible to let the landlord know in advance that you intend to leave both as a matter of courtesy and so as to arrange a handover.

- (ii) If the tenant remains in occupation for just one day beyond the end date the lease will automatically continue. In that situation the tenant will have to serve a statutory notice under section 27 of the LTA 1954 (a “s27 Notice”) giving at least 3 months written notice to the landlord to end the lease.
- (iii) Where a landlord wishes to bring a protected lease to an end, either at the end of the term or upon the landlord’s break date or during the holding over period, a landlord must serve a statutory notice under section 25 of the LTA 1954 (a “s25 Notice”) setting out the grounds on which it opposes the grant of a new lease. There are set statutory grounds for refusal. If the landlord cannot satisfy these it has to offer a new lease.

Termination of a protected lease without renewal by the tenant

The tenant can end a protected lease by leaving the premises on or before the end of the Term (but it will be liable up to the end date) without notice to the landlord. On a practical notice, there may be a need to communicate this to the landlord so that handover arrangements and reinstatement obligations can be discussed – please refer to our [article on dilapidations](#) for further information.

If the tenant has been holding over and wishes to leave the premises after the expiry of the fixed term, the tenant must serve a s27 Notice to bring the protected lease to an end upon 3 months’ notice to the landlord.

A tenant cannot serve a s27 Notice if it has already served a s26 Request (see below). It is likely that the tenant can serve a s27 Notice after the landlord has served a s25 Notice, but not if the tenant has made an application to court for a new tenancy.

Termination of a protected lease without renewal by the landlord

A landlord can only oppose the granting of a lease renewal of a protected lease based on set statutory grounds, which are set out in the LTA 1954 and are summarised as follows:

- (a) Premises are in disrepair
- (b) Arrears of rent
- (c) Other breaches of covenant
- (d) Suitable alternative accommodation
- (e) Tenancy was created by a sub-letting
- (f) Landlord’s intention to redevelop
- (g) Landlord’s intention to occupy

Grounds (a), (b), (c) and (e) above are discretionary grounds, so the court could still grant a new lease to the tenant even if the relevant ground of opposition is made out. The remaining grounds are mandatory but do require evidence to demonstrate that the ground of opposition claimed is genuinely made with good faith.

A landlord can specify more than one ground of opposition at the time of initial claim. However, once a ground of opposition has been claimed, this cannot be changed nor further additional opposition grounds raised at a later date (*Hutchinson v Lamberth* [1984] 1 EGLR 75 CA).

If a landlord opposes the tenant's right to renew based on a non-fault ground (i.e., grounds (e), (f) and (g) above), the tenant may be entitled to compensation.

If a tenant has served a s26 Notice as detailed below, and the landlord wishes to oppose the tenant's request for a new tenancy, it must serve a counter-notice within two months detailing the statutory ground for opposing the renewal.

(b) Procedure to renew a protected lease

Similarly, the process depends on who is seeking the renewal.

- (i) A tenant can remain in occupation by holding over under the terms of the current lease or it can serve a statutory notice under the section 26 of the LTA 1954 seeking a renewal ("a s26 Request").
- (ii) If a landlord is willing to allow the tenant to remain in occupation it can either let the tenant "hold over" or it can serve a s25 Notice to bring the protected lease to an end but at the same time offer terms for a new lease.

Renewal of a protected lease

The s25 Notice and the s26 Request procedure must take place between the "competent" landlord and the tenant. The competent landlord will be the first in the chain of superior interests, starting with the immediate landlord, who owns the current reversionary interest in relation to the tenancy.

Both a s25 Notice and s26 Request must be in prescribed forms and comply with the statutory requirements. A s25 Notice must not be served more than 12 months, nor less than six months before the termination date specified in the notice. A s26 Notice must not be served more than 12 months, nor less than six months before the proposed commencement date specified in the request. In addition, the termination date/commencement date specified in the request cannot be before the contractual expiry date of the current lease.

The landlord cannot serve a valid s25 Notice if a tenant has already served a valid s26 Request. A tenant cannot serve a valid s26 Request, if any of the following conditions apply:

- the tenancy was granted for a fixed term of a year or less or the tenant has a period tenancy;
- the LTA 1954 does not apply to the tenancy at the time when the s26 Request is served;
- the landlord has already served a valid s25 Notice;
- the tenant has already given notice to quit or served a s27 Notice under the LTA 1954 to terminate the tenancy.

Once the landlord has served a s25 Notice, there is no requirement for the tenant to serve a counter-notice stating whether it is willing to give up possession of the property or if it agrees to the terms of the notice, but it does not have to accept the renewal terms offered by the landlord. However, if the landlord wants to oppose the tenant's s26 Request, then the landlord must serve a counter-notice within two months after the tenant's request has been made.

Once the relevant notices have been validly served offering new terms, either party may seek to negotiate the terms of the new tenancy. If the landlord and tenant cannot agree on a new tenancy or on the terms of the new lease, either party can apply to court to determine the terms of the new tenancy. The court application must be made before the end of the statutory period, being either the day specified as the termination date in the landlord's s25 Notice or the day before the commencement date specified in the tenant's s26 Request. If the court application is not made within the requisite period, the tenant will lose its right to a new lease. The statutory period can be extended but this must be done in writing, for a set period (cannot be open-ended), before the expiry of the current deadline and with the agreement of both parties.

In most cases a lease renewal will be negotiated directly between the landlord and the tenant without resorting to court determination and often without any formal s25 Notice or s26 Request having been served. Once the terms of the new lease are agreed, it will need to be detailed in writing either by way of any agreement for lease or by entering into the final lease. In most cases, the parties will just enter into the new lease. Where a s25 Notice or s26 Request has been served, the new lease must be in place before expiry of the statutory period.

The specifics of the court application procedure for a new tenancy and formalities in serving a S25 Notice/S26 Request are complex and this level of detail is outside the scope of this article. If you require assistance in this respect, please contact us directly for guidance.

3. Termination or renewal of a lease if the LTA 1954 does not apply

If the lease is outside of the security of tenure provisions of the LTA 1954 and the tenant does not have a legal right to a new lease at the end of the term, the tenant must vacate the premises by the expiry date of its lease. If the tenant does not vacate at the end of the term, the landlord can seek remedies for trespass against its tenant. There is no requirement to give notice of the intention to vacate at the end of the Term but as above, as a matter of courtesy and practicality, it is good practice to let the landlord know you will be leaving, so that handover arrangements and dilapidations can be discussed.

If the tenant wishes to remain or renew the lease, it must negotiate new terms and enter into a new lease with the landlord on or before the expiry of its current lease. The landlord is under no obligation to grant the tenant a new lease nor for that lease to be on substantially the same terms as the existing lease. The terms of the new lease will be a matter of commercial negotiation between the tenant and the landlord at that time.

Many landlords will be more than willing to agree to a new lease with their tenant, provided that the tenant has a good covenant, even if there is no automatic right to this. If a tenant is wanting to remain in its business premises, it should look to approach the landlord or its agent at least 12-9 months before expiry of the lease, as negotiating new terms and entering into a new lease can be a lengthy process. If new terms cannot be agreed, then starting the process within a suitable time frame before the expiry of the existing lease will also enable the tenant to look for alternative premises.

The above is just intended as a summary of the termination and renewal rights and obligations in respect of commercial leases. The procedure for termination and renewal of a protected lease is complicated and must be strictly adhered to so the parties should seek legal advice based on the particular circumstances.

