



RENEWAL OF LEASES

THE LANDLORD AND TENANT ACT 1954

Overview:

Leases of land and/or buildings to sailing clubs generally fall within the provisions of Part 2 of the Landlord and Tenant Act 1954.

The Act broadly gives business tenants¹ security of tenure – that is a statutory right to remain in the premises when their lease ends and to seek a new tenancy. The landlord may oppose a renewal on specific grounds. If the parties cannot agree a new lease, the club as tenant can apply to the court for a determination of the new tenancy. Such a determination will reflect the terms of the existing tenancy but the rent will reflect the current open market rent for similar premises, therefore when a new tenancy is granted by order of the court, the club must expect that the rent will be re-assessed and usually increased, even in circumstances where no rent was previously paid.

AGREEMENT TO EXCLUDE SECURITY OF TENURE

The Act allows the parties to agree to a lease excluding the security of tenure provisions (known as contracting out). In order for such an agreement to be valid the parties must follow specified procedures laid down in the Act as amended by The Regulatory Reform (Business Tenancies) (England & Wales) Order 2003. Where the parties have followed the correct procedure the tenant has no statutory right to renew the tenancy and no entitlement to compensation at the end of the tenancy.

Advance Notice Procedure:

The landlord must serve the tenant Notice, at least 14 days before the tenant is committed to the lease. Before signing the lease the tenant must sign a simple declaration that he has received the Notice at least 14 days before entering into the lease. The tenant declares that he has received, read and understood the Notice and

¹ Although the tenant may be a non-profit- making unincorporated association (as is the case with the majority of clubs) it will still come within the protection of the Act as was confirmed in the case of *Addiscombe Garden Estate -v- Crabbe* [1958] 1QB (involving a tennis club) that a member sports club is protected by the Act.

has accepted the consequences of entering into a lease without the security of tenure provisions. The simple declaration does not need to be independently witnessed.

Statutory Declaration Procedure:

Alternatively to cater for emergencies, the parties may agree to contract out within the 14 day period but in such circumstances, as an additional safeguard, the tenant must sign a statutory declaration before a solicitor confirming that he has received and read the Notice and accepts its consequences.

The lease (or other instrument creating the tenancy) must contain or have endorsed on it the following:

- a reference to the warning Notice;
- a reference to the declaration; and
- agreement to exclude security of tenure.

RENEWAL AND TERMINATION OF A LEASE (not contracted out)

A tenancy may be terminated if the tenant is in breach of a covenant within that agreement. Otherwise, business tenancies under the Act continue automatically after the agreed term has expired, until brought to an end generally by statutory notice given by the landlord or the tenant. The current tenancy will also come to an end when the tenant requests a new tenancy in the prescribed form and the new tenancy will commence either by agreement between the parties or by an order of the court. The terms of the old tenancy will continue until the new tenancy comes into effect.

Tenant initiates renewal:

It is usual for a club to continue occupation of premises under the terms of the original tenancy until the landlord offers the club a new tenancy or serves a Notice to terminate the tenancy.

A club is best advised not to make a request for a new tenancy as it may not be in its best interests to bring its current tenancy to an end. It is often the case that the club's current rent is less than the present market rent and it is therefore in the club's interest to prolong the tenancy for as long as possible.

Generally a club will only seek a new tenancy where the market rent for the property has dropped from that negotiated in the original lease, in which case the club must make an application to the landlord in a prescribed form. A club may also seek a new tenancy where it has plans to improve the premises or is thinking of applying for funding to improve the premises (quite often grant-makers will require a minimum term under the Lease before it will award a grant).

A club wishing to renew its tenancy may issue a Notice under Section 26 of the Act. The Notice must say on what date the new tenancy is to begin. This date must be not more than twelve months and not less than six months after making the request and must not be before the end of the lease. In the Notice the club must set out its proposals for the property to be included in the new tenancy, the rent and other terms (eg. duration).

Provided the landlord does not oppose the renewal, it is open to the parties to attempt to agree terms.

A landlord wishing to oppose a renewal must serve a counternotice within two months of the club's request. The counternotice must set out the grounds of opposition. The club may apply to court for a new tenancy as soon as the landlord has served the counternotice, or once the deadline for serving the counternotice has passed.

There is no prescribed form for the landlord's counternotice, but it should be unequivocal and in writing. If the landlord fails to serve a counternotice within the two month time limit he will lose his right to raise any ground of opposition to the club's application to court for a new tenancy, although he will be allowed to raise issues relating to the terms of the new tenancy.

It will usually be the tenant that applies to the court, even where the landlord has stated that he is prepared to grant a new tenancy. Whilst it would be sensible for the club to try to negotiate with the landlord before applying to court, the club should be aware that it will lose its entitlement to a new tenancy if an application to the court is not made within the prescribed time limits. It is however open to the parties to enter into a legally binding contract for a new lease, without the need to apply to the court.

Time Limits

The prescribed time limits for applying to the court for a new tenancy are; 1) where the landlord has served a Section 25 Notice, the period ending on the date specified in his Notice; and 2) where

the tenant has made a Section 26 request, a period ending immediately before the date specified in the request. The parties may agree to extend the time limit for applying to the court.

Landlord initiates renewal:

Landlord must serve an appropriate Section 25 Notice on the tenant making it clear that he does not oppose renewal and setting out proposed terms of the new tenancy. This must specify the property to be included in the new tenancy, the rent payable and other terms. The landlord's proposals are not a legal offer capable of acceptance unless otherwise stated.

The landlord must serve the Notice not more than twelve months and not less than six months before the termination date specified in the Notice, which itself must not be before the end of the lease.

If the parties cannot agree terms, the landlord may apply to the court for a new tenancy at any time after serving the Notice, the application to the court must be made before the termination date specified in the Section 25 Notice unless the parties agree to an extension.

The club may wish to apply to the court in order to protect its entitlement to a new tenancy, (see above).

If the tenant does not wish to renew the lease they will no doubt wish to avoid the legal expense of renewal proceedings and so should respond to the landlord's 'letter before action' confirming that he does not wish to renew.

Landlord initiates termination:

A landlord can seek termination of the tenancy without renewal by serving the appropriate Section 25 Notice, setting out his grounds of opposition to a new tenancy, on the tenant, unless the tenant has made a Section 26 request. The landlord must serve the notice not more than twelve months and not less than six months before the termination date specified in the notice, which must not be before the end of the lease.

The landlord may apply to the court for termination without renewal at any time after serving the Section 25 Notice. Where a tenant has issued a Section 26 request the landlord may apply to the court any time after serving his counternotice to the request.

The tenant may, following receipt of a landlord's Section 25 Notice to opposing renewal, apply to the court for an order granting a new tenancy provided he does so within the deadline specified in the Section 25 Notice.

Where a case goes to court the court will first consider the landlord's case for opposing the grant of a new tenancy. If it upholds the landlord's case it will refuse to order the grant of a new tenancy. If it concludes that the landlord does not have valid grounds for opposition, it will order the grant of a new tenancy (without the need for a fresh application by the tenant). The court can proceed to determine the terms of the new tenancy.

Order for new tenancy

Where the court finds in favour of the club, as tenant, a new tenancy will be ordered on terms, at a rent, and for a duration to be determined by the court after hearing evidence from both parties (normally expert evidence of surveyors) as to what is considered reasonable and having regard to the terms of the original tenancy agreement. The maximum length of the new tenancy will be fifteen years. The rent to be ordered is that at which the premises might reasonably be expected to be let on the open market [Our Rent Review Guidance Note provides more detail].

If the parties are able to reach agreement on the terms, they may wish to withdraw the court application in order to save further legal expense.

Tenant initiates termination:

If a tenant wishes to terminate his fixed tenancy he can do so by:

- leaving the premises at the end of the lease; or
- giving at least three months Notice before the date the lease is to end.

The tenant would then no longer have to pay rent or fulfil obligations beyond the end of the lease.

If the tenant fails to take either of these steps, a continuation tenancy will arise and the tenant will have continuing obligations under the lease. If the tenant wishes to terminate the lease he will need to give a minimum of exactly three months Notice to terminate.

The landlord may object to the application for a new tenancy on grounds listed in section 30(1) of the Landlord and Tenant Act 1954, namely:

Breach of repairing covenant

This is a discretionary ground and mere proof of the tenant's failure to keep the premises in good repair does not itself entitle the landlord to have the tenant's application dismissed. The landlord seeks to show that the tenant 'ought not to be granted a new tenancy' in view of the state of repair of the premises. The court may take into account an offer by the tenant that the new tenancy should contain a covenant obliging the club, as tenant, forthwith to put the premises into repair in accordance with the repairing covenants in the previous lease.

Persistent delay in paying rent

This is a discretionary ground for which the landlord seeks to show that the club, as tenant, 'ought not to be granted a new tenancy' in view of its persistent failure to the rent at the time provided in the lease. The court will consider whether the landlord will in the future have security of payment at the appropriate time.

Substantial breaches of other obligations

This ground is discretionary. It will be a question of fact for the court to decide whether the breaches are such that the club, as tenant, 'ought' to be deprived of a new tenancy. Any kind of waiver of, or acquiescence in, a breach by the landlord will influence the court against the refusing of a new tenancy on the grounds of the breach. The court is entitled to consider all the circumstances in connection with the breach and the general conduct of the club, as a tenant, in the past.

Availability of alternative accommodation

If the landlord has offered suitable alternative accommodation for the club, as tenant, and the terms of the offer are reasonable having regard to the terms of the current tenancy, then the court has no discretion to order a new tenancy. If suitable alternative accommodation is offered, then the tenant may have to make a quick decision since the landlord does not have to hold the offer open for any specified length of time and the tenant's failure to accept an offer will virtually guarantee the failure of his application for a new tenancy. The club, as tenant, should ask the court to seek an undertaking from the landlord to provide or secure the

provision of suitable alternative accommodation prior to the making of an order refusing the grant of a tenancy on this ground.

Possession required for letting or otherwise disposing of property

A new tenancy may be successfully opposed by the landlord where the tenancy was formed by sub-letting part of the superior tenancy and the superior landlord is able to let the whole premises for more than the parts. To succeed on this ground the landlord must be able to show that the superior tenancy will have come to an end by the date on which the applicant's current tenancy is due to terminate.

Landlord's intention to demolish or reconstruct

The club, as tenant, will not be entitled to a new tenancy if the landlord demonstrates that he intends to either demolish or reconstruct the premises comprised in the holding or a substantial part of those premises, or to carry out a substantial work of reconstruction which he could not reasonably perform without obtaining possession of the premises. The intention of the landlord must be genuine, firm and settled and not likely to be changed. The court will more easily be satisfied of the landlord's intention if the premises are old and worn out and ripe for redevelopment.

Landlord's intention to occupy premises

This will apply where, on the termination of the tenancy, the landlord intends to occupy the premises for the purposes of his own business, or as his residence. This ground can only be relied upon by the landlord if he has been the owner of the premises for at least five years before the termination of the current tenancy.

NOTICES

Notices may be served personally on the club secretary at the club premises, or sent by recorded or registered post to the club secretary at the club premises

INTERIM RENT

Tenants as well as landlords may apply to the court to determine the rent payable pending renewal of the tenancy.

COMPENSATION

The Act enables the tenant to claim compensation if a new tenancy is successfully opposed by the landlord due to the landlord:

- requiring possession of the property for letting or disposing of the property as a whole; or,
- intending to demolish or undertake major reconstruction; or,
- intending to occupy the premises for his own business or residency.

The basic sum awarded to the tenant, as compensation, is based on a multiple of the rateable value of the premises. The appropriate multiplier changes from time to time. A high rate of compensation is payable where the tenant has occupied the premises continuously for business purposes for the previous 14 years.

CONTACTS:

Kindly contact the Legal Team for a copy of our Property Advisors contact list.

The Department for Communities and Local Government have produced a helpful guide to the new procedures for renewing / terminating business tenancies entitled Business tenancies: new procedures under the Landlord and Tenant Act 1954, Part 2. This publication is available free of charge from www.communities.gov.uk/index.asp?id=1163444. The forms of declaration and notices are contained within this publication.

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