

Commercial Property Factsheets

Security of tenure for business tenants

Leases covered by security of tenure

Most leases offer the tenant security of tenure. You may need professional advice on your circumstances and the terms of your lease to confirm whether security of tenure applies.

- Security of tenure generally applies to any lease for more than a year, but some long leases are excluded. Security of tenure also generally applies to tenancies of no fixed term, or where the tenant has occupied the premises for at least 12 months.
- The tenant must occupy the premises primarily for business purposes. A few sectors (eg agricultural leases) are excluded, as are tenants who are using the premises for business without the landlord's consent.
- A tenant qualifies as occupying the premises if it is occupied by their agent, manager or employee, or where the lease is in an individual's name and the premises are occupied by a company owned by that individual. A tenant does not qualify as occupying premises they have sublet to someone else.
- Rental agreements that have been drafted as licences are excluded from security of tenure.
- A tenant can agree to exclude security of tenure from a lease when the lease is created, or can later agree to give up this security by surrendering the lease (see below).

Excluding security of tenure

Security of tenure normally applies automatically unless the tenant agrees to "contract out".

- For leases created before 1 June 2004, security of tenure could only be excluded with a court order.
- From 1 June 2004, the landlord can serve a notice in a specified form on a prospective tenant at least 14 days before the tenant agrees the lease (or any earlier agreement committing to the lease). If the tenant then signs a declaration of acceptance, security of tenure is excluded from the new lease.
- A fast track procedure can be used to contract out less than 14 days in advance.
- The tenant is not obliged to accept - but the landlord may then decide not to agree the lease. This is a matter for negotiation; in a strong lease market, a tenant may find it difficult to resist.
- Once a lease is in effect, security of tenure cannot be excluded. But the tenant can agree to surrender the lease and give up the right to renew. Again, specified forms of notice and declaration are required.

End of lease procedures

If your lease is covered by security of tenure, you automatically have the right to a new lease unless the landlord follows specified procedures.

- The landlord must send you a "section 25" notice between 12 and 6 months before the end of the lease, stating why the tenancy should not be renewed. If you do nothing, you lose the right to renew.
- You can apply to the court for a new tenancy, in which case the landlord will have to show the court why the lease should not be renewed. Or the landlord can go directly to the court before you do, to ask that the lease not be renewed.
- Rather than waiting to receive a "section 25" notice, the tenant can send the landlord a "section 26" notice stating his intention of renewing the lease (which the landlord may then choose to accept or oppose). You should take advice on the best approach in your circumstances.
- The landlord can only oppose renewal on specified grounds:
 - You have failed to meet your obligations (eg by paying rent late or not keeping the premises in good repair).

- The landlord will provide suitable alternative premises on reasonable terms.
- The premises are part of a larger property owned by the landlord that he wants to sell or let as a single unit.
- The landlord wants to demolish or redevelop the premises and cannot do so while you occupy them.
- The landlord intends to occupy the premises himself.
- If the landlord successfully opposes the renewal of the tenancy, you will normally be entitled to some compensation - unless the grounds for non-renewal were your failure to meet your obligations or the landlord is providing alternative premises. You are also entitled to compensation if the landlord has claimed that he will redevelop the premises or use them himself - but then does not.
- If the landlord does not oppose the new lease, or is unsuccessful, then a new lease is normally negotiated between you and the landlord (through your advisers). If you cannot reach agreement, the court can fix a new lease.
- A new lease is typically on similar terms, at a fair market rent but generally ignoring improvements the tenant has made to the premises (unless these were required under the terms of the previous lease). The new lease will qualify for security of tenure.