

October 2010

BUSINESS TENANCIES

Introduction

1. The letting of 'business premises' is controlled by the Landlord and Tenant Act 1954 ("the Act") as amended by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 SI. 3096 and the Landlord and Tenant Act 1954 Part 2 (Notices) Regulations 2004 SI. 1005. The Order and Regulations make substantial alterations to the former law.
2. A business tenancy can be a very valuable asset as it gives tenants a number of rights including a right to compensation in certain circumstances (see paragraph 17). Consequently, local councils should be aware that many landowners prefer their occupiers to sign licenses as they are not protected by the Act. Councils should be wary of signing "licences" where exclusive possession is granted as it is likely that the agreement will, in fact, amount to a business tenancy with all the added protect that status affords.
3. Similarly, many landlords of existing business tenants ask them to agree a new lease which is to be excluded from the protection of the Act (see paragraph 15). Given the rights such business tenants enjoy, and given the rights they would forego if they agreed to exclude the protection of the Act, councils should have good reasons for agreeing to such requests.

Who is covered?

4. All landlords and tenants of 'business premises', including local councils.

What are 'business premises'?

5. A business includes any trade, profession or employment and any activity carried on by a body of persons, whether corporate or not.
6. 'Business premises' are any premises where a 'business' is carried on (section 23 (2) Landlord and Tenant Act 1954).
7. This is a very wide definition and will include *any* activity carried on by a local council. It also includes activities carried on by voluntary bodies such as charities, sports clubs or community associations.
8. Councils should assume that any premises which they occupy as tenant or which, as landlord they let, are subject to the Act unless they fall within an excluded category (see paragraph 9) or they have obtained specific advice to the contrary. Additionally councils should be aware that the courts have decided that councils occupying open spaces (e.g. playing fields in the case of *Wandsworth LBC v Singh* [1991]) can be business tenants falling within the protection of the Act.

What is excluded from the Act?

9. The following arrangements are excluded from the protection of the Act:
 - Tenancies at will (which are rare);
 - Service tenancies i.e. tenancies granted to occupiers for the purpose of their employment. (For example a house attached to a cemetery for a groundsman). To be excluded a service tenancy must be in writing and state the purpose for which it is granted;
 - Licences - a licence gives a right but not an exclusive right, to occupy premises. The right to use may be shared with the landlord or with other licensees or both. (For example a right for a club to hold its monthly committee meeting in council premises would be a licence);
 - Agricultural tenancies (see Legal Topic Notes 50 and 51);
 - A fixed term tenancy for 6 months or less. A succession of such tenancies will still be caught by the Act unless there is a substantial interval between the tenancies and the tenant actually leaves the premises;

- Where the landlord and tenant have agreed to exclude the right (see paragraph 15); and
- Various other grounds unlikely to affect local councils (e.g. mining leases and government certificates).

The right to a new tenancy

10. The occupier of business premises has the (qualified) right to a new tenancy when his lease expires. Until the new lease is granted he is entitled to remain in the premises on the same terms as the old lease. Either the landlord or the tenant can serve a notice on the other requesting a new tenancy and setting out the proposed terms. The landlord and tenant can agree the terms of the new tenancy. If the parties cannot reach an agreement, the court will make an order. The maximum term of a new lease made by a court order is 15 years.
11. If there is failure to agree the county court will make an order on the terms it thinks fit. Alternatively, the landlord may serve a notice that he is not prepared to grant a new tenancy. He may only do so by specifying one of the grounds set out in the Act (see paragraph 12). Any dispute must be settled by the court. **All** notices must be in the prescribed form and complex time limits apply.
12. The grounds on which a landlord can refuse a new tenancy are:
 - i. Failure by the tenant to carry out repairing obligations in the lease;
 - ii. Persistent delay in paying rent;
 - iii. Any substantial breach of the terms of the lease e.g. using the premises for a purpose prohibited by the lease;
 - iv. An offer by the landlord of suitable alternative accommodation;
 - v. Where the premises can produce a higher rent if let as a whole rather than in a series of sub-lettings;
 - vi. The landlord intends to demolish or re-construct the premises;
 - vii. The landlord wishes to use the whole or a major part, of the premises for the purpose of his own business and he has owned the premises for at least 5 years.
13. The grounds for refusal must be substantial:

- In the case of the first three grounds listed above, the court has a wide discretion whether to refuse to grant a new tenancy. It will take into account the nature and seriousness of the breach and the general conduct of both landlord and tenant.
- In the case of the fifth ground, the landlord would need to produce professional evidence from a valuer to substantiate his claim.
- In the case of grounds 6 and 7 the landlord must prove a genuine intention. A council should be able to show that it had obtained any necessary planning permission, had prepared feasible proposals and were able to finance its intentions. A mere 'wish list' or proposals 'in principle' would be unlikely to persuade the court to refuse a new tenancy.

Sub-tenancies

14. The law applies not only to tenants but also to sub-tenants i.e. where a tenant of premises grants a tenancy of part of those premises to another.

Exclusion of the right to a new tenancy

15. Landlord and tenant can agree, ***before the new lease is signed*** to exclude the right to a new tenancy on the expiry of the lease. The landlord must give the tenant notice (in the prescribed form). If served more than 14 days before the lease is signed the tenant then makes a simple declaration (also prescribed) of his agreement. If there is less than 14 days notice the tenant must make a statutory declaration. Notices given after the lease is signed have no effect.
16. A reference to the notice, the declaration and the agreement must be endorsed on the lease. If these requirements are not strictly complied with the attempt to exclude the right to a new tenancy will fail. The former system, under which rights were excluded by court order, has been abolished.

Compensation

17. If the tenant is refused a new tenancy then he is entitled to compensation unless the refusal was due to his own default i.e. points 1-3 in para 12. If the tenant has occupied the premises for more than 14 years compensation is 2 times rateable value, otherwise it is the rateable value.

Is professional advice/assistance necessary?

18. This legal topic note is intended to give a general picture of the effect of the Act and latest regulations and cannot be considered as a DIY manual. The use of prescribed forms and the strict adherence to the regulations, particularly the time limits, makes it inadvisable for the majority of councils to attempt to carry out this work 'in house'. NALC advice is that when a council is considering granting or taking a lease or when they know that a lease is coming to an end, whether they are landlord or tenant, their first step should be to seek professional advice (months rather than weeks, ahead). NALC is always available to give advice under the free legal advice service.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
46	Registered land	Sets out the benefit of registering leasehold ownership with the Land Registry. If business tenancy term is more than 7 years, this leasehold interest should be registered with the Land Registry.
48	The difference between leases and licences	Explores the nature and effect of licences.
50	The Agricultural Tenancies Act 1995	Explains farm business tenancies.
75	Lease Negotiations	Confirms that when a new lease (or sub-lease) is being considered, parties should agree early on whether the Landlord and Tenant Act 1954 will apply.

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