

RIGHTS OF RENEWAL

Contracting Out

English Landlord & Tenant law has simplified the procedure for a tenant to "contract out" of Landlord & Tenant Act rights of renewal. In Ireland a tenant will qualify for Landlord & Tenant Act rights of renewal where the property has been let for five continuous years and used for business purposes unless the tenant signs this right away under the new 2008 legislation. In England, the rights to a new lease can apply after six months other than where "contracted out" or signed away by the tenant.

Prior to 1st June 2004 it was necessary to make a Court application as part of the contracting out procedure. As part of a move to ease the burden of regulation, the procedures were changed very substantially so as not to require a Court Order any longer.

The commercial investor will need to consider the position of existing leases which he purchases as well as new leases from the perspective of whether Landlord and Tenant Act rights of renewal apply. Where the rights apply, it is the tenant's exclusive right. The landlord has no right to make the tenant stay.

A lease or tenancy which has not been "contracted out", will qualify for a renewal where the property is occupied by the tenant for the purpose of a business carried by him. As in Ireland, it is only the tenant who is in actual occupation who is entitled to the renewal. "Business" is defined very widely to include any trade profession or employment.

"Contracting out" is the procedure which must be undertaken prior to a lease to ensure that the business tenant has no right of renewal. The procedures for dis-applying the tenant's right to renew must be strictly adhered to. Since 2004, an application to Court is not necessary. Both landlord and tenant sign a declaration that they have received certain notices removing the renewal right and have received independent advice. The

tenant must make a declaration before an independent solicitor that he accepts and understands the signing away of the rights.

Right of Renewal

In the case of lettings which have not been “contracted out”, the business tenant will have a right of renewal of his lease notwithstanding the expiry of the original lease term. A lease can always be terminated for breach of its terms and conditions by the tenant. The tenants rights of renewal, if they exist, are dependent upon the tenant being substantially compliant with the terms of the lease.

A landlord seeking to terminate a lease must give notice, not less than six months or more than twelve months, before the date of termination. The specific format must be used. A notice must specify the date the landlord wants the tenancy to end. It must state whether the landlord will oppose an application to the Court for the grant of a new lease and if so, on what particular grounds. The landlord must state the grounds on which he relies.

A landlord may initiate this procedure in order to force a tenant to enter a new lease so that the tenant is committed to the property for the term of the new lease. In these circumstances, new rent and other terms of the lease will normally be negotiated. As an alternative to the landlord commencing the process, the tenant may commence the procedure. The tenant must specify the date on which he proposes the new tenancy begins, the proposed rent and the other terms e.g. duration.

Where the tenant serves a notice, the landlord must serve a counter notice within two months if he wishes to oppose the tenant's application. This must specify the limited grounds of opposition the landlord intends to rely on. If the landlord does not serve a counter notice within two months, he will lose any right to raise a ground of opposition.

After the service of the notice it will be apparent whether the landlord is willing to grant a new tenancy. Either landlord or tenant can apply to Court for the fixing of a new lease.

It is possible to have interim rents fixed while the application is pending before the Court for determination.

If the tenant follows the relevant procedures, the Court will make an Order for a new lease, unless the lease is successfully opposed on the below grounds. The duration of the new lease will be as determined by the Court but cannot exceed 15 years. It is often less than this. The Court takes into account a variety of circumstances such as length of the current tenancy, length requested by the tenant, current market practice and the landlord's future proposals.

The rent is based on open market rent discounted for tenant's improvements and goodwill. The Court has power to insert a rent review provision. The Court will only determine the lease where the parties do not agree. In practice the parties will normally agree the terms of a new lease having regard to the above legal options.

Exceptions to the Right of Renewal

There are limited grounds upon which a landlord can oppose a tenant's application for a new lease. They are as follows:-

1. Failure to repair. This is discretionary and the seriousness and duration of the repairing default would be considered.
2. Persistent delays in paying rent.
3. Substantial breaches of other lease obligations.
4. Landlord offering alternative accommodation
5. Sub-letting of part only of a property

6. Landlord intends to demolish and re-construct the property for which he requires possession.
7. The landlord's intention to occupy the premises for the purpose of its own business. The landlord cannot rely on this ground if he purchased within five years of the end of the current tenancy.

On termination of the lease, a tenant may be entitled to compensation for improvements in the case of certain no fault "grounds" of refusal of a new lease. The amount of compensation is the rateable valuation of the holding multiplied by the appropriate multiplier as published by the Secretary of State. Sometimes the amount is doubled where the tenant and his predecessors have been in occupation for at least 14 years.

In some situations, the tenant's right to compensation can be excluded by agreement. It is not possible to contract out of right to compensation where a tenant or his predecessors have been in occupation for five years or more.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.