

GUIDANCE NOTE Lease Expiry - What Should a Tenant do?

Most businesses tend to remain in one geographic location to maintain and build on their established presence. However, there are times when it is necessary to relocate due to expansion, contraction, improved location or cost and the expiry of a Lease is a natural time to consider how the premises fits with the business needs.

The decision to remain in a business premises where the lease is due to expire is not often easy and can be influenced by the Landlord's strategy for the property. In any event, whether you decide to remain in occupation under new terms or choose to move to alternative premises, careful thought and plenty of time needs to be given to the matter. It would be sensible to begin reviewing the options at least 15 months before the expiry of the Lease.

With the option of staying or moving, more costs will be associated with one of these decisions than the other. Should you decide to move, consideration will have to be given to relocation costs, terminal dilapidations and agency fees in the event you need to find new premises.

GETTING YOUR AFFAIRS IN ORDER

Before any decision can be made, all Lease details need to be collated, understood and reviewed. Getting your affairs in order is important and an internal "Champion" should be appointed to handle the process. Initially, this thorough review of the Lease will help any Tenant appreciate their circumstances and to assist them in forming their understanding; asking questions to establish a plan may help. The type of questions that may help are:

1. Do I have "Security of Tenure" and consequently am I obliged to be offered a new tenancy by the Landlord?
2. Are there signs the buildings surrounding the property are in good order or are there indications refurbishment or redevelopment is being undertaken?
3. Is the current property in good order or does it need some redevelopment/refurbishment?
4. If I do not have "Security of Tenure" will the Landlord wish me to stay and should I approach him with an offer to remain in the premises?
5. Do I have any sub-tenants?

If a sub-tenant is in place, it is likely you will not want to renew your Lease and so you should:

- i. Begin the process of informing your Tenant that you are not renewing their lease. Hopefully, this Lease does not provide security of tenure provisions.
- ii. Prepare and serve on them a Terminal Schedule of Dilapidations (or utilise your Landlord's Schedule when received)
- iii. Speak to your Landlord to establish if they want to have your Tenant as their Tenant. Once thought has been given to these questions, then consideration can be made to a timetable of events and in relation to the renewal process. Notices can be served from as early as 12 months before the expiry of the Lease.

Where a Lease is excluded from the "Security of Tenure" provisions, then the process of renewal is easier and is detailed later in this Note.

Where Security of Tenure exists, the process to renew a lease is outlined in the Landlord and Tenant Act 1954 (Part II) which has been amended by The Regulatory Reform (Business Tenancies) (England & Wales) Order 2003 which came into effect on 1st June 2004. The process is very prescriptive and is outlined below.

WHAT IS THE LEASE RENEWAL PROCESS?

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It is important to understand the Notices involved in the process and for ease these are detailed below.

Section 25 Notice: This is a Landlord's Notice and is the first to be served on a Tenant identifying the Landlord's intention. There are 2 prescribed Section 25 Notices; the first is used when the Landlord is happy to show his intention to renew the Lease and the second is when a Landlord is objecting to a renewal and is identifying which reason (7 grounds for objecting the renewal of a Lease as prescribed in the 1954 Act) he is citing for not renewing the Lease. The Landlord must observe the need to identify the principal terms upon which he is prepared to renew the Lease.

Counter Notice: Within 2 months of the date of the S25 Notice a Tenant must formally respond informing the Landlord of his intention to renew and whether he would want to negotiate the terms of the new lease.

Section 26 Request: This is a Tenant's Notice requesting a new Tenancy and outlining the broad terms of the new lease. These terms must include, amongst other things, the area to be leased, for what period and at what rent. A Section 26 Request can not be made if the Landlord has already served a Section 25 Notice. Should a Landlord not wish to agree to a new lease he must serve a counter notice within 2 months of the date of the Section 26 Request detailing that he will oppose any application the Tenant may make to the Court to requesting the grant of a new lease. The Landlord must detail on what grounds he opposes the granting of a new lease.

Section 27 Notice: This is a Notice which the Tenant would serve confirming he does not wish to continue past the end of the Lease. In the absence of serving this Notice the Tenant has the ability to leave the premises before the end of the Lease term and notify the Landlord of that action.

The process allows for either the Landlord or the Tenant to serve a Notice detailing their intention. The Landlord will only serve a Section 25 Notice which will detail whether they are happy, or not, to renew the Lease. The Tenant has the option to serve a Section 26 Request to seek a renewal or a Section 27 Notice confirming they will not be seeking a renewal of the Lease. All these Notices can be served no earlier than 12 months and not later than 6 months before the expiry date of the Lease.

Accompanying a Section 25 Notice to renew and Section 26 Request will be the principal terms upon which either party would want to renew the Lease. Should a Landlord object to a renewal in their Section 25 Notice, they will have to identify on which ground they are relying on as set out in Section 30(1) of the Act.

Should a Tenant serve a Section 26 Request and the Landlord objects then, the Landlord must serve a Counter Notice within 2 months of the date of the Request, again indicating what ground they would rely upon.

Where both parties agree to renew a Lease but have yet to agree terms by the point of expiry then either the Landlord or the Tenant can apply to the Court for an interim rent which would be payable whilst negotiations are continuing.

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As a general guidance we would advocate appointing the right advisors early in the process the right advisors and in the case of the serving of the Notices would suggest using a solicitor and with regard to the negotiation of the lease terms, a Chartered Surveyor. Help on who to appoint can be obtained from the Law Society and Royal Institution of Chartered Surveyors respectively.

WHAT HAPPENS IF THE CURRENT LEASE EXPIRES BUT A NEW LEASE HAS YET TO BE AGREED?

Should the current lease have expired and the new lease terms have yet to be agreed then either the Landlord or the Tenant can apply to the Court to get an Interim Rent agreed. This is detailed in Section 24 of the Act and can not be made more than 6 months after the termination of the former lease.

WHERE A LEASE DOES NOT HAVE "SECURITY OF TENURE" PROTECTION, WHAT DO I HAVE TO DO?

Where a Lease does not afford Security of Tenure protection, there is no prescribed process. It will have been "contracted out" of the 1054 Act, when originally completed and you would have agreed to that. The decision to renew may be a desire of the Tenant but the Landlord is under no obligation to agree any terms. Effectively, when the Lease expires a Tenant should have vacated the premises unless the Landlord has agreed new terms and the new Lease contract been signed.

To avoid disappointment, secure a Lease renewal as early as possible and certainly discussion should be in a very advanced stage by 3 months before the Lease expiry. Should this not be the case then an alternative option would need to be found should discussions fail.

WHAT IS THE BEST OVERALL APPROACH?

The ability to renew a Lease which has "Security of Tenure" (protected) provisions is not easy and should a Tenant find themselves in such a situation then they should seek professional help. The process to renew any protected Lease is fraught with technicalities and the danger of an incorrectly served notice is easily done. To defend yourself against this it is worthwhile engaging the services of a solicitor who operates in the commercial property sector and is familiar with the Notices described above.

Seeking the best terms is not easy and again we would advocate the use of a professional surveyor who can act on your behalf.

Should you need to contact our advisers about anything contained in this note then please feel free to call us on 0800 865 44 50

This Guidance Note is not a substitute advice on specific matters and should not be seen as providing legal advice.