



PUMP COURT CHAMBERS

Commercial Lease Renewals

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- **LTA 1954 Part II** – security of tenure for business tenants

23.— Tenancies to which Part II applies.

(1) Subject to the provisions of this Act, this Part of this Act applies to **any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business** carried on by him or for those and other purposes

(1A) Occupation or the carrying on of a business—

(a) by a company in which the tenant has a controlling interest; or

(b) **where the tenant is a company, by a person with a controlling interest in the company,**

shall be treated for the purposes of this section as equivalent to occupation or, as the case may be, the carrying on of a business by the tenant.

[...]

Renewals

- Highly circumscribed process
- Procedurally technical
- Substantively technical

- “the landlord” is the owner of the interest which:
 - Is an interest which obtains when the tenancy ends *and*
 - Is *either* the freehold *or* a superior lease with >14 months to run & isn’t under a notice to terminate *and in either case*
 - Doesn’t sit above an interest which would meet the above conditions

S 44 LTA 1954

(1) Subject to subsections (1A) and (2) below, in this Part of this Act the expression “the landlord”, in relation to a tenancy (in this section referred to as “*the relevant tenancy*”), means the person (whether or not he is the immediate landlord) who is the owner of that interest in the property comprised in the relevant tenancy which for the time being fulfils the following conditions, that is to say—

(a) that it is an interest in reversion expectant (whether immediately or not) on the termination of the relevant tenancy, and

(b) that it is either the fee simple or a tenancy which will not come to an end within fourteen months by effluxion of time and, if it is such a tenancy, that no notice has been given by virtue of which it will come to an end within fourteen months or any further time by which it may be continued under [section 36\(2\)](#) or [section 64](#) of this Act,

and is not itself in reversion expectant (whether immediately or not) on an interest which fulfils those conditions.

Resolving uncertainty

- Statutory procedure for obtaining information about the relevant landlord: section 40 LTA 1954

Security of tenure

- Section 24 LTA 1954
- Essentially:
 - A Part II tenancy won't come to an end unless terminated in accordance with the 1954 Act, and
 - S 24 tells you who can apply for what (and in what circumstances)
 - To make sense of s 24, you need to look at s 29



Section 24

(1) A tenancy to which this Part of this Act applies shall not come to an end unless terminated in accordance with the provisions of this Part of this Act; and, subject to the following provisions of this Act either the tenant or the landlord under such a tenancy may apply to the court for an order for the grant of a new tenancy—

(a) if the landlord has given notice under [section 25](#) of this Act to terminate the tenancy, or

(b) if the tenant has made a request for a new tenancy in accordance with [section 26](#) of this Act.

[. . .]

(2A) Neither the tenant nor the landlord may make an application under subsection (1) above if the other has made such an application and the application has been served.

(2B) Neither the tenant nor the landlord may make such an application if the landlord has made an application under [section 29\(2\)](#) of this Act and the application has been served.

[. . .]

- A tenancy to which Part II applies won't end unless terminated in accordance with LTA 1954
- To terminate, LL must *either* give a s 25 notice, *or* if T has already made a request for a new tenancy under s 26, LL must give a counter-notice
- But LL can't apply to terminate if *either* LL *or* T has applied for the grant of a new tenancy
- NB LL can't withdraw its application without T consent
- In short, LL must make up its mind

Section 29 in full

29.— Order by court for grant of new tenancy or termination of current tenancy

- (1) Subject to the provisions of this Act, on an application under [section 24\(1\)](#) of this Act, the court shall make an order for the grant of a new tenancy and accordingly for the termination of the current tenancy immediately before the commencement of the new tenancy.
- (2) Subject to the following provisions of this Act, a landlord may apply to the court for an order for the termination of a tenancy to which this Part of this Act applies without the grant of a new tenancy—
 - (a) if he has given notice under [section 25](#) of this Act that he is opposed to the grant of a new tenancy to the tenant; or
 - (b) if the tenant has made a request for a new tenancy in accordance with [section 26](#) of this Act and the landlord has given notice under [subsection \(6\)](#) of that section.
- (3) The landlord may not make an application under subsection (2) above if either the tenant or the landlord has made an application under section 24(1) of this Act.
- (4) Subject to the provisions of this Act, where the landlord makes an application under subsection (2) above—
 - (a) if he establishes, to the satisfaction of the court, any of the grounds on which he is entitled to make the application in accordance with [section 30](#) of this Act, the court shall make an order for the termination of the current tenancy in accordance with [section 64](#) of this Act without the grant of a new tenancy; and
 - (b) if not, it shall make an order for the grant of a new tenancy and accordingly for the termination of the current tenancy immediately before the commencement of the new tenancy

The notices

- Section 25: notice for termination of tenancy by LL (*NB also includes renewals*)
- Section 26: tenant's request for new tenancy (*NB also says that if LL has served s 25 notice, T can't make a s 26 request & vice versa*)
- Both rather convoluted

25.— Termination of tenancy by the landlord.

(1) The landlord may terminate a tenancy to which this Part of this Act applies by a notice given to the tenant in the prescribed form specifying the date at which the tenancy is to come to an end (hereinafter referred to as “the date of termination”):

[. . .]

(2) Subject to the provisions of the next following subsection, **a notice under this section shall not have effect unless it is given not more than twelve nor less than six months before the date of termination specified therein.**

(3) In the case of a tenancy which apart from this Act could have been brought to an end by notice to quit given by the landlord—

(a) the date of termination specified in a notice under this section shall **not be earlier than the earliest date on which apart from this Part of this Act the tenancy could have been brought to an end by notice to quit** given by the landlord on the date of the giving of the notice under this section; and

(b) **where apart from this Part of this Act more than six months’ notice to quit would have been required** to bring the tenancy to an end, the last foregoing subsection shall have effect with the substitution for twelve months of **a period six months longer than the length of notice to quit which would have been required as aforesaid.**

(4) In the case of any other tenancy, a notice under this section shall not specify a date of termination earlier than the date on which apart from this Part of this Act the tenancy would have come to an end by effluxion of time.

(6) A notice under this section shall not have effect unless it states whether the landlord is opposed to the grant of a new tenancy to the tenant.

(7) A notice under this section which states that the landlord is opposed to the grant of a new tenancy to the tenant shall not have effect unless it also specifies one or more of the grounds specified in section 30(1) of this Act as the ground or grounds for his opposition.

(8) A notice under this section which states that the landlord is not opposed to the grant of a new tenancy to the tenant shall not have effect unless it sets out the landlord’s proposals as to—

(a) the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy);

(b) the rent to be payable under the new tenancy; and

(c) the other terms of the new tenancy

Section 25 (summary)

- You must give “not more than twelve nor less than six months’ notice”: s 25(2)
- If the tenancy could have been ended by a notice to quit (but for the LTA 1954) then the termination date can’t be earlier than the earliest date you could otherwise have ended it: s 25(3)(a), and . . .
- . . . If you’d have needed to give more than 6 months’ notice, then the notice period = “not more than (notice period + 6 months) nor less than 6 months before date of termination”: s 25(2)(b)

Section 25: worked example

- Suppose the notice period is 8 months
- The Section 25(2) notice period becomes (8 months + 6 months) = 14 months
- The required notice is: “not more than 14 months nor less than 6 months before the date of termination”
- NB notice won’t be effective unless:
 - States whether LL opposes grant of new tenancy
 - Specifies statutory grounds
 - . . . or if not opposing, sets out proposals for new tenancy

26.— Tenant’s request for a new tenancy.

(1) A tenant’s request for a new tenancy may be made where the current tenancy is a tenancy granted for a term of years certain exceeding one year, whether or not continued by section twenty-four of this Act, or granted for a term of years certain and thereafter from year to year.

[. . .]

(3) A tenant’s request for a new tenancy shall not have effect unless it is made by notice in the prescribed form given to the landlord and sets out the tenant’s proposals as to the property to be comprised in the new tenancy (being either the whole or part of the property comprised in the current tenancy), as to the rent to be payable under the new tenancy and as to the other terms of the new tenancy.

(4) A tenant’s request for a new tenancy shall not be made if the landlord has already given notice under the last foregoing section to terminate the current tenancy, or if the tenant has already given notice to quit or notice under the next following section; and no such notice shall be given by the landlord or the tenant after the making by the tenant of a request for a new tenancy.

[. . .]

(6) Within two months of the making of a tenant’s request for a new tenancy the landlord may give notice to the tenant that he will oppose an application to the court for the grant of a new tenancy, and any such notice shall state on which of the grounds mentioned in section thirty of this Act the landlord will oppose the application.

Section 26: in English

- T can request new tenancy if tenancy is for a term of years certain >1 year (**always worth checking**)
- T has to use “prescribed form”: see Landlord and Tenant Act 1954 Part 2 (Notices) Regulations 2004 (copy in handout)
- **Review the relevant form early in the process**
- LL has a very tight deadline for opposing renewals: only two months. **Beware!**

Grounds for opposition

- Section 30 LTA 1954.
- Unpleasantly detailed. In essence:
 - Breach of repairing and/or maintenance covenants: s 30(1)(a)
 - Delay in paying rent: s 30(1)(b)
 - Other breaches or reasons connected with use or management: s 30(1)(c)
 - LL “has offered and is willing to provide or secure” suitable alternative accommodation: s 30(1)(d)
 - Where the tenancy is part of a superior tenancy let by the LL and the LL can get a substantially better rent if it lets the whole of the superior tenancy, rather than letting in parts: s 30(1)(e)
 - Demolition or reconstruction of the whole or a substantial part or substantial work of construction and can’t reasonably do so without obtaining possession: s 30(1)(f)
 - LL intends to occupy the holding for the purposes of / partly for the purposes of / a business / as his residence: s 30(1)(g)

Grounds for opposition: key points

- You need to specify all the grounds you are relying on at front.
- There is a lot of potential nuance here (e.g. s 30(1)(f) talks about “a substantial part” – query what counts as a “substantial part”)
- There are “no-fault” grounds (Grounds (e)-(g)) and “fault” grounds (Grounds (a)-(d))
- There is a statutory entitlement to compensation for “no-fault” grounds, but not “fault” grounds
- Hence LL has incentive to rely on “fault” grounds

Key deadlines

- The application to Court must be made by the end of the “statutory period”: s 29A(1) LTA 1954, which ends on either:
 - The “termination date” in the LL’s s 25 notice, or
 - The day before the “commencement date” in the T’s s 26 notice
- NB if T doesn’t apply in time, it loses right to a new lease. Deadline can be extended only in writing and in advance.

- CPR Part 56 (& NB the Practice Direction)
- Two likely scenarios:
 - Grant of a new tenancy not opposed. Parties may need Ct to determine terms. Part 8 claim, CF in Form N208.
 - Grant of a new tenancy opposed. Parties will be looking for an order under Section 29. Likely to be a Part 7 claim.
- NB CeLo pilot scheme for unopposed lease renewals (to be determined by FTT).

Practical points

- If LL doesn't oppose grant of new tenancy, terms should be amenable to negotiation / substantially amenable to negotiation
- Counsel's advice may be warranted as to:
 - The applicability of the LTA 1954
 - The applicable Grounds
 - The proceedings at the point of issue

Questions?

