

Business Tenancies

In yesteryear, a Business Tenant could occupy Premises and, over a number of years, build up a goodwill and reputation there. At the end of the Lease, the Landlord could evict him or demand an exorbitant rent. The Business Tenant had little choice - he needed to stay and therefore had to agree.

This was deemed unfair. The Landlord and Tenant Act 1954 allows such a Tenant to stay in the Premises at a reasonable rent. The old terms of the Lease apply and the Business Tenant carries on paying the same rent.

The Landlord can bring that automatic arrangement to an end by serving 6-12 month notice under Section 25 of the Act. In the Section 25 Notice, the Landlord says if he wants the Premises back for redevelopment, for use for his own purposes, because the Business Tenant has been a bad tenant or on certain other grounds. If not the Landlord quotes terms for a new Lease at a new rent.

Similarly, the Tenant is given the right to serve 6-12 month Notice claiming a new Lease under Section 26 of the Act. If market rents are rising, the Landlord will wish to serve his Section 25 Notice as soon as possible. However if market rents are falling, the Landlord will do nothing and let the Business Tenant carry on paying rent at the old higher level.

Many Landlords forget to serve a Section 25 Notice. In this situation:

- Should the Business Tenant hang on as long as possible taking advantage of the lower contractual rent?
- Should he try to pre-empt the Landlord by serving a 12-month Section 26 Notice?
- If he does not, then he risks the Landlord "waking up" and serving a 6 month Section 25 Notice

At issue is 6 months or so worth of the difference in rental between the old contractual rate and the current market rent. This could be quite substantial in some cases.

The Act is thwarted to a certain extent by allowing the Parties to contract out of its terms so that if you are a Business Tenant outside the Act, you can be required to move out at the end of the Lease.

A Business Tenant's negotiating advantage is that, the Landlord will inevitably suffer a period when the Premises are empty but he will have to pay rates. He may need to refurbish them to attract new tenants.

Against that, the terms of the old Lease may require the Tenant to hand back the Premises in good and substantial condition, but that is another story!