

Renewing a lease

It can be a worrying and uncertain time for business tenants when a lease comes near to expiry but it can also be a time of opportunity. You may be able to renew the lease on better terms or you may be able to move to more suitable premises.

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The end of a lease does not normally mean that you have to move out of your existing premises unless you want to, because the law generally gives security of tenure to business tenants (there are exceptions, however). If you want to exercise your right to a new lease there are vital steps you must take within prescribed time limits. As the procedures are complex, you need to enlist professional help well in advance. Delay can be serious – you might find you have lost your right.

What follows is based on the law and practice in England and Wales. Different procedures apply in Scotland and Northern Ireland.

When should I start thinking about the end of my lease?

It is never too early to plan, but you should begin at least 18 months before your existing lease ends.

What should I do first?

Think about the objectives of your business and prepare a plan of your property requirements, for the short and long-term. Ask yourself some key questions:

- Are your present premises too big or too small?
- Are they an asset to the business or a burden?
- Do you want the security of a long lease or the flexibility of a shorter one?
- Would it make sense to move to another building and would you face a big bill for dilapidations if you did so (see section 19 Dilapidations)?

Your chartered surveyor will be able to help you in working out your property strategy. If you decide on a move, see section 01 Finding the right premises. Otherwise, read on.

What are my rights as an existing tenant?

Most business tenancies in England and Wales are protected by the Landlord & Tenant Act 1954. The purpose of this Act is to provide businesses with security of tenure. So long as the business remains in occupation of the property and follows all the correct legal procedures, you have a right to apply to a court for a new tenancy if you are protected under the Act. The landlord is allowed to oppose your application in some circumstances. If you cannot agree with the landlord, the court will decide whether you should be offered a new lease and on what terms.

When may the landlord refuse to grant a new lease?

The usual justifications for refusing a new lease are:

- the tenant is not occupying the property for his or her business
- the tenant does not follow the correct legal procedures
- the court upholds the landlord's objection to a new lease, usually because the landlord wants the property for his or her own occupation or wishes to redevelop it (you might be entitled to compensation for disturbance in these cases), or perhaps the tenant has seriously breached the terms of the current lease
- a court order was obtained at the start of the lease agreeing there would be no security of tenure.

What are the formal legal procedures to get a new lease?

This is an area where mistakes or delay can be exceedingly costly. If you have security of tenure, and wish to protect it, there are certain formal notices that you must serve and respond to within stated time limits. Don't try to go it alone – consult your solicitor in good time and bring in a chartered surveyor when it comes to getting a new lease on terms that suit you.

The important point to grasp is that lease renewal involves three separate processes:

- service of a formal notice by either landlord or tenant bringing the existing lease to an end on or after its contractual end date
- negotiation with your landlord to secure a new lease
- application to the court to protect your legal right to security of tenure. The date by which this needs to be done can be difficult to understand. If you get this wrong, you lose the right to renew.

You need to apply to the court even if you think in practice that your landlord will not be happy to grant you a new lease on acceptable terms. This protects your legal position. If you then negotiate a lease that suits you with your landlord, the court does not need to become involved further. If things go wrong the court has the power to require the landlord to grant you a new lease and to set the terms. It may also set the terms where the landlord offers a new lease but the parties cannot agree the detail.

The notices to be served to protect your position – and their timing – will vary from case to case. So call in the professionals at the earliest possible stage.



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How are the terms of the new lease settled?

Usually by negotiation between the landlord and tenant or their respective chartered surveyors. **Sections 03 Taking a lease** and **10 Rent reviews** explain the main points at issue. A chartered surveyor can advise you on your choices and the terms that you might realistically achieve.

If any term cannot be agreed and you need to involve the court, its approach will usually be to reflect the terms of the old lease (apart from the figure for the rent payable) unless either party can show good reason to make a change.

In what circumstances should I agree to give up security of tenure?

Only when you have no realistic choice, and only after taking professional advice. If your existing tenancy is not protected by the Act, you are in a weak position to argue for protection for the new tenancy. Landlords may also be reluctant to concede security of tenure in the case of a sub-lease or where the lease involves only part of a property.

How is the new rent set?

The rent will usually be agreed at the current open market level for properties of a similar type in your area. A chartered surveyor will be able to advise on the likely level that can be agreed. As a general rule your landlord is not allowed to take into account any improvements to the property that you have carried out during the term of the lease or any extra value that might arise from your trading from the property.

What happens if the new lease is not agreed before the old lease expires?

If your old lease is not protected by the Act (in other words, if you do not have security of tenure) then your landlord can require you to leave the property when the old lease expires, so it is vital to negotiate a new lease in good time.

If you have security of tenure under the Act, you retain that security of tenure following the end of your lease. This remains the position and would only be lost if a court decides your landlord has grounds for regaining possession.

How does the court procedure work?

If it becomes necessary to involve the court, then your solicitor may arrange for a court hearing to resolve the dispute. Both the landlord and tenant will usually appoint barristers to argue their case and expert witnesses to provide evidence of rental values. Your expert witness will usually be a chartered surveyor. Resolving the dispute in court can be a lengthy and expensive process and you should seek advice from your solicitor and chartered surveyor on the likely costs and the probable timescale.

What are the alternatives to the court for resolving disputes?

RICS operates a dispute resolution service under which disputes about the level of rent may be referred to an 'arbitrator', 'independent expert' or 'mediator'. The procedures are explained in **section 10 Rent reviews**.

In addition, if you and your landlord are agreed that a new lease is the way forward, but you cannot agree the lease terms or a new rent, then you may consider the PACT Scheme. This Scheme provides an opportunity to have lease terms and rent decided by an arbitrator or independent expert appointed by RICS or the Law Society, rather than a judge in court. Details of the PACT Scheme may be obtained from the RICS Dispute Resolution Service.

What happens when terms for the new lease are agreed?

The solicitors will draw up a new lease setting out all the details. Ask a chartered surveyor to read through the lease to make sure it properly reflects the agreement. Read the lease yourself as well and ask your solicitor or chartered surveyor to explain any terms you do not understand or are not happy with. Do not sign before you fully understand and accept the terms.



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At what stage can I still change my mind?

You are not committed to the terms of the new lease until you sign it. If you cannot agree terms that you are happy with, or if you simply change your mind, you can usually leave the property by asking your solicitor to give written notice to your landlord.

Scotland

The law in relation to renewal of leases in Scotland is very different.

- There are no statutory rights to renew a lease of business premises (subject to what we say below about shops).
- If the landlord or tenant serves notice of termination – usually at least 40 days notice – before the end of the lease, it will terminate with no right to renew. The parties are of course free to negotiate a new lease but that is purely a commercial negotiation which may or may not result in a deal.
- If notice of termination is not given, the lease continues for a year (or the original period of the lease if shorter) at the same rent etc. The lease can continue year on year on this basis until one party serves a 40 day notice of termination. That will bring the lease to an end at the anniversary of the original lease termination date. E.g. if the lease originally ran to 31 December 2013 but is running on because no notice has been served, but notice is then served on, say, 2 February 2015, the lease will terminate on 31 December 2015.

- The Tenancy of Shops (Scotland) Act do give shop tenants some limited rights of renewal. Basically, the tenant can apply to the court for a one year extension – which can be renewed year to year – but the court has a discretion whether to grant the application, and it won't do so, for instance, if the tenant is in breach of the lease or has refused a reasonable offer to buy the premises, or if renewal would be more unfair on the landlord than not renewing would be on the tenant. Application must be made within 21 days of receiving notice of termination from the landlord. 'Shops' for this purpose are defined widely and have in the past included hairdressers, post offices and garages etc.

Northern Ireland

- The Landlord & Tenant Act 1954 is largely replicated in Northern Ireland via the Business Tenancies (Northern Ireland) Order 1996. However significant differences pertain and again you should take specific legal advice.



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