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**BUSINESS TENANCIES:
RENEWAL AND
FORFEITURE**

**Wednesday 21st May
6.30pm to 7.30pm**

**PROPERTY LAW
GROUP**



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BUSINESS TENANCIES: TERMINATION AND RENEWAL

Landlord and Tenant Act 1954

The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (SI 2003/3096) made substantial changes to the business tenancies legal regime in the Landlord and Tenant Act 1954 ("the 1954 Act"). These changes came into effect on 1 June 2004. This lecture deals with the law pertaining after that date.

Under the previous provisions of the 1954 Act, upon a landlord giving notice under section 25 to terminate a business tenancy, the tenant had a period of two months in which to serve a counter-notice to the landlord's section 25 notice and a further period of two months in which to bring proceedings under section 24(1) claiming the grant of a new tenancy upon terms to be settled by the court. The effect of the 2003 Order was to remove the obligation on the tenant to serve a counter-notice and to bring any proceedings within such period of two months but to grant to the landlord the right to commence proceedings for a new tenancy, the commencement of which proceedings would preclude the tenant from launching proceedings of his own for the same purpose.

The legislative purpose of the amendment to section 24(1) , brought about by the 2003 Order, was to substitute for the strict time limits which previously governed the steps available to a tenant to obtain the grant of a new business tenancy, a right to landlords to commence such proceedings so that, by those proceedings, or the threat of them, landlords could compel tenants to make clear at an early stage their intentions as to whether they were seeking the grant of a new tenancy and, thereafter, to pursue negotiations to arrive at agreed terms for the grant of such a new tenancy, diligently. (see *Lay v Drexler* [2007] Bus. L.R. 1357 at [7] per Evans-Lombe J)

Checklist for determining if Part II of the 1954 Act applies

Part II (Security of tenure for business, professional and other tenants) of the 1954 Act applies, by means of s.23 of the 1954 Act, to

- 1 "any tenancy", ie. not a license;
- 2 "where the property comprised in the tenancy is or includes premises";
- 3 "which are occupied by the tenant", so tenants who have sub-let the premises and who are not occupying them personally are excluded from protection (although occupation by an agent or manager does give renewal rights); and
- 4 "are so occupied for the purposes of a business carried on by him or for those and other purposes." It includes any trade, profession or employment. It also includes any activity carried on by a company. So it will include shops, warehouses and factories; the offices of businesses, professional people and voluntary societies; doctors' and dentists' surgeries; and the premises of clubs, institutions, trade unions or other bodies. Normally, it also includes premises partly used for business purposes (for example, where the tenant lives at the premises as well as using them for a business). However, tenants using the premises for business without the landlord's agreement will not be protected.

Tenancies excluded from security of tenure

Pt II of the Act does not apply to several tenancies of a particular description. Some are unique, such as tenancies in Royal dockyards and Atomic Weapons Establishment, a tenancy of Greenwich Hospital, tenancies under concession leases, tenancies to which the Leasehold Reform, Housing and Urban Development Act 1993 applies and tenancies of a detention centre. Others are more common:

- 1 Tenancies of agricultural holdings;
- 2 Tenancies created by mining leases;
- 3 Residential tenancies;
- 4 Tenancies of on-licence premises;
- 5 Tenancies by reason of an “office, appointment or employment”, ie service tenancies;
- 6 Fixed-term tenancies of six months or less. But these tenants do have security of tenure once they have occupied the premises for more than 12 months, either on their own or with their predecessor. A 'periodic' tenant (with for example a monthly or weekly tenancy but without a fixed term) does enjoy security of tenure; and
- 7 Tenancies of a network or railway facility.

Contracting-out before a lease has been granted

A lease may exclude the protection of the Landlord and Tenant Act 1954. However, before a prospective tenant can accept a contracted-out tenancy, s.38A(3) of the 1954 Act requires the landlord to give the prospective tenant a warning notice about some of the dangers of agreeing to contract out. One of the following must happen:

- 1 The landlord must send the warning notice at least 14 days before the tenant takes on the lease. If the tenant enters into an earlier legally binding agreement to take on a lease, the notice period will be at least 14 days before the beginning of this agreement rather than the signing of the lease. The tenant must sign a simple declaration, in the form set out in paragraph 7 of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order, that he has read the notice and accepted its consequences; or
- 2 If the parties cannot wait for 14 days, or do not want to, the tenant must make a statutory declaration, in the form set out in paragraph 8 of Schedule 2 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, before an independent solicitor who is not acting for either party confirming that he or she has read the notice and accepted its consequences.

The lease must say that the parties have taken one of the two steps above. If the parties do not follow them correctly, the tenant will automatically keep the right to renew the lease.

Appendix 5 to these lecture notes contains the warning notice, set out in Schedule 1 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 referred to above.

Automatic continuation

By virtue of section 24 of the 1954 Act, tenancies to which Part II of the 1954 Act applies are continued automatically unless and until determined by a notice, which complies with the requirements of sections 25, 26 or 27 or by reason of certain other contingencies.

Termination

The possible methods of termination of a business tenancy are:

- 1 by notice given by the competent landlord to the tenant in accordance with section 25 of the 1954 Act (“section 25 notice”);
- 2 by the tenant making a request for a new tenancy in accordance with the provisions of section 26 of the 1954 Act (“section 26 request”)
- 3 by notice given by the tenant of a fixed term tenancy more than three months before the end of the tenancy, unless the tenant has only been in occupation for one month (see s.27);
- 4 that the tenancy has ceased to be one which the 1954 Act applies;
- 5 by surrender;
- 6 by agreement for a new tenancy under s.28 of the 1954 Act; or
- 7 by forfeiture of the tenant's own interest or the forfeiture of a superior tenancy.

Agreement for a new tenancy

By virtue of s.28 of the 1954 Act, the current tenancy will come to an end without the tenant having the right to apply for the grant of a new tenancy where the landlord and the tenant agree for the grant of a future tenancy of the holding, or of the holding together with other land, on terms and from a date specified in the agreement. The result will be that the current tenancy will continue until that date but no longer and the current tenancy ceases to be one to which Part II of the 1954 Act applies.

Surrender

The landlord and tenant may agree that the tenant can give up or surrender the lease. This would remove the tenant's right to renew. The law allows the immediate surrender of a lease, so landlords can release tenants who no longer want their lease. But s.38A(4) of the 1954 Act lays down special arrangements for agreements to surrender the lease at a future date, whether that is a specified date or a contingent one. Since it may not be immediately obvious to the tenant that agreements to surrender remove future renewal rights, there are certain safeguards. The landlord must give the tenant a notice explaining the implications of agreeing to surrender the tenancy. The process is similar to contracting-out before a business tenancy is granted. One of the following steps must be taken:

- 1 the landlord must send the notice at least 14 days before the agreement to surrender (not the surrender itself) comes into effect. The tenant must sign a simple declaration in the form set out in paragraph 6 of Schedule 4 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 that he or she has read and understood the notice and accepted its consequences; or
- 2 if the parties cannot wait for 14 days, or do not wish to, the tenant would have to sign a statutory declaration, in the form set out in paragraph 7 of Schedule 4 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, before an independent

solicitor confirming that he or she has read and understood the notice and accepted its consequences.

The lease must then include wording or be endorsed to say that the landlord has served the notice and that the parties have followed the correct steps.

The notice to the tenant must be in the form set out in Schedule 3 to the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003, which is provided in Appendix 6 to these lecture notes.

Section 25 and section 26 procedures are mutually exclusive

The landlord may not serve a section 25 notice if the tenant has made a request for a new tenancy by service of a notice pursuant to s.26 of the 1954 Act, see s.26(4). And conversely, if the landlord has already served a section 25 notice, the tenant cannot serve a section 26 request.

When to serve a section 25 notice or a section 26 request

A section 25 notice or a section 26 request may be served between six and 12 months before the date the landlord wants the tenancy to end or the tenant wants the new one to begin. However, the landlord cannot seek for the tenancy to end before the expiry date in the lease, nor can the tenant seek for the new tenancy to begin until after the lease expiry date.

Section 25 notice

A tenancy to which Pt II of the 1954 Act applies can be brought to an end by the landlord by the service of a notice under s.25(1) of the Act. If the tenant does nothing, the tenancy will automatically end on the date set out in the landlord's section 25 notice.

The section 25 notice must contain — if any application by the tenant under s.24(1)(a) is to be opposed—a statement of grounds upon which such opposition would be founded: see s.25(6) and (7).

Of course, if the landlord does not oppose the grant of a new tenancy he must set out his proposals and they are merely an opening bid in the negotiations and do not bind either party. If the landlord is not opposed to the grant of a new tenancy, the notice will be invalid 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, see s.25(8) of the 1954 Act.

On service of a notice under s.25 the tenancy continues pending disposal of the application to the court which the tenant is then entitled to make, see the proviso to s.25(1), the provisions of Pt IV of the Act and, in particular, s.64(1)(a). If the tenant makes an application to the court within the specified time, the tenancy will continue pursuant to s 24 of the 1954 Act, as a continuation tenancy, until three months after the claim for a new lease has been finally disposed of, see ss.25(1) and 64.

Section 25 notices allowed despite prior service of forfeiture proceedings

A landlord is entitled to serve the section 25 notice after commencing forfeiture proceedings, since this is consistent with the intention to determine the lease, see *Baglarbasi v Deed Method* [1991] 2 E.G.L.R. 71.

Prescribed forms for section 25 notices

The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 prescribe, inter alia, two types of forms for section 25 notices:

- 1 Form 1 which is to be used where the landlord is not opposed to the grant of a new tenancy; and
- 2 Form 2 which is to be used where the landlord is opposed to the grant of a new tenancy.

The prescribed forms appear in schedule 1 of the 2004 Regulations, and in the Appendices 2 and 3 to these lecture notes. Although forms “substantially to the same effect” may be used according to regulation 2(2), the notes on the back of each form must be included. Differences can only be disregarded when the information given as to the particular recipient's rights and obligations under the Act is in substance as effective as that set out in the form, see *Sabella Ltd v Montgomery* (1999) 77 P. & C.R. 431. If the tenancy agreement contains provisions regulating the form of a notice, or the means of signature of a notice, they are superseded by the provisions of the Act, see *Trustees of Magdalen and Lasher Charity, Hastings v Shelover* (1968) 19 P. & C.R. 389.

Completing the section 25 notice

In *Pearson v Aylo* (1990) 60 P. & C.R. 56 Nourse LJ said at 60

“...it must be emphasised that the validity of a section 25 notice is to be judged, and judged objectively, at the date at which it is given. The question is not whether the inaccuracy actually prejudices the particular person to whom the notice is given, but whether it is capable of prejudicing a reasonable tenant in the position of that person.”

Accordingly, care should be exercised in completing the notice.

The competent landlord

The only person who may give a section 25 notice is the landlord which has a special statutory meaning under s.44 of the 1954 Act. Although the Act itself permits only the landlord to terminate a tenancy by section 25 notice, an agent, with authority, may sign the notice on his behalf. Where two or more persons together constitute the landlord “the landlord” means all those persons collectively, see s.44(1A) of the 1954 Act. This is so whether they all hold under separate or the same title. Where two or more persons hold the legal title to the landlord's interest, but on trust for one of them alone, a notice served by the beneficial owner alone is invalid.

The tenant

The section 25 notice must be given to the tenant. Although not defined, Woodfall considers that it means the person in whom the legal estate is vested (if the tenancy created one) or, in the case of a tenancy in equity, the person who would be entitled to call for the legal estate. So where a tenancy is held on trust, the tenant is the trustee not the beneficiary. Accordingly where the tenant becomes bankrupt, the notice should be served on his trustee in bankruptcy, see Leasehold Reform Act 1967, Sch. 3, para. 2. Where the tenancy is held by two or more persons, they together constitute the tenant, and consequently notice must be given to both or all. This does not apply, however, to certain tenancies held by partners, see s.41A of the 1954 Act. In such cases the landlord may give notice to those of the joint tenants who carry on the business, and a notice so given will be treated as a section 25 notice, see s.41A(4).

Responding to a section 25 notice

The tenant does not have to respond to a section 25 notice. On the other hand the best solution is obviously to try to negotiate an agreement for a new tenancy to avoid going to court.

Section 26 request

In order to expedite the renewal process contained in Part II of the 1954 Act, the tenant can steal a march on the landlord by serving a section 26 request for a new lease. If valid, the tenant's section 26 request terminates the current tenancy and activates the jurisdiction of the court to grant a lease renewal see s.24(1)(b).

Not all tenants are entitled to make a request for a new tenancy under section 26 of the Act. The tenants who can make a request for a new tenancy are those whose current tenancy: is (1) a tenancy granted for a term of years certain exceeding one year, whether or not continued by s.24; or is (2) a tenancy granted for a term of years certain and thereafter from year to year. S.26(1) only enables a tenant from year to year to apply for a new tenancy where the tenancy from year to year was provided for by the original grant in addition to a term of years certain, and not where, by implied agreement, it has been grafted upon the original term of years. Also the tenant under a tenancy granted for a term of exactly one year does not qualify for the purpose of s.26. On the other hand the tenant under a tenancy granted for a term of one year certain and thereafter from quarter to quarter probably does so qualify, since the tenancy endures as a tenancy for one year and a quarter at the least.

A tenant must state in his section 26 request:

- 1 the property to be comprised in the new tenancy, see s.26(3) of the 1954 Act;
- 2 the date on which the new tenancy is to begin, which must be not more than 12 nor less than six months after the making of the request and must not be earlier than the date on which the current tenancy would have expired by effluxion of time at common law, or could have been brought to an end by notice to quit given by the tenant, see s.26(2);
- 3 the duration of the tenancy requested;
- 4 the rent proposed by the tenant, see s.26(3); and
- 5 the other terms proposed by the tenant, see s.26(3).

If the request states that the new tenancy is to be on the same terms as the current tenancy, it is implicit that the duration should be the same, see *Sidney Bolsom Investment Trust v Karmios (E.) & Co. (London)* [1956] 1 Q.B. 529.

Prescribed form for section 26 notice

The Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 prescribes a form for the section 26 notice. A copy of that form can be found in Appendix 4 to these lecture notes.

Responding to a section 26 request

The landlord must respond to a tenant's section 26 request within two months of receiving it if he wishes to oppose the grant of a new lease.

Applications to Court for a new tenancy

Only where the termination of the tenancy is by section 25 notice or section 26 request, may the tenant apply to the court, under s.24, for the grant of a new tenancy or the landlord may apply to the court for the termination of the tenancy on one of the statutory grounds. By s.24 such a tenant can only be refused on specified grounds, some of which carry with them a right to compensation from the landlord.

Section 29 of the 1954 Act provides for the court to grant a new tenancy on the termination of a current business tenancy, or for the termination of such a tenancy where the landlord establishes one of a series of statutory reasons entitling him to oppose such grant. Subsection (5) of that section provides: "The court shall dismiss an application by the landlord under section 24(1) of this Act if the tenant informs the court that he does not want a new tenancy."

Time period for application to court after service of section 25 notice

On service of a notice under s.25 of the 1954 Act the tenant becomes entitled to apply to the court for an order that the landlords grant a new tenancy: see s.24(1)(a). Equally the landlord can apply to the court to terminate the tenancy after service of the section 25 notice.

The tenant's application to the court for a new tenancy must be made by the date specified as the termination date in the section 25 notice. The parties can agree to extend the deadline for applications to the court, but they must do so in writing before the original deadline expires. They can then agree to further extensions, as long as they do so before the current extension runs out. If the tenant fails to make the application in the specified time, the tenancy will come to an end on the date specified as the termination date in the notice (or agreed extension date) and the landlord will be entitled to possession.

Time period for application to court after service of section 26 request

Where the tenant sends the landlord a section 26 request, the tenant must wait until the landlord has responded or has had two months to do so before applying to the court for a new tenancy. The landlord can apply as soon as he has received the section 26 request. The tenant must make the application before the date proposed in the section 26 request for the beginning of the new tenancy or before any written agreed extension. If there is no application by this date or the agreed extension date, the tenant loses the right to renew the tenancy.

Landlord's grounds of objection

The circumstances in which the court is not to make an order for a new tenancy are those set out in s.30(1):

- (a) state of repair of the holding, being a state resulting from the tenant's failure to comply with his obligations under the tenancy;
- (b) persistent delay in paying rent which has become due;
- (c) substantial breaches by the tenant of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding;
- (d) landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, the terms of which are reasonable and suitable;
- (e) tenancy is a sub-letting, landlord is the owner of an interest in reversion of the superior tenancy, the aggregate of the rents of the separate lettings would be substantially less than the rent reasonably obtainable on a letting of that property as a whole and on the termination of the tenancy the landlord requires possession of the holding for the purpose of letting or otherwise disposing of the said property as a whole;
- (f) the landlord intends to demolish or reconstruct the premises or a substantial part thereof or to carry out substantial work of construction or part thereof and that he could not reasonably do so without obtaining possession of the holding;
- (g) the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

The provisions of ss.29 and 31 make it clear that there is no discretion to be exercised. Either the landlord makes out the grounds of opposition, in which case the court must not order the grant of a new tenancy; or the landlord fails to make out those grounds of opposition, in which case the court shall order the grant of a new tenancy. One exception is where the court would have been satisfied of any of the grounds specified in s. 30(1)(d) to (f) of the 1954 Act if the date of termination specified had been a later date, see s.31(2) of the 1954 Act.

Compensation

In certain circumstances, the tenant leaving the premises may claim compensation from the landlord. But the landlord only has to pay compensation if he has successfully opposed renewal *only* on certain grounds, namely grounds (e), (f) and (g) or “where no other ground is specified in the landlord's notice under section 25 of the 1954 Act or, as the case may be under section 26(6) thereof, than those specified in the said paragraphs (e) (f) and (g) and either no application under the said section 24 is made or such an application is withdrawn ...”, see s.37 of the 1954 Act.

Compensation is based on rateable value and depends on how long the tenant has been in business at the premises:

- (1) less than 14 years - the tenant receives a sum equal to the 'appropriate multiplier' times the rateable value of the premises occupied at the end of the tenancy; or
- (2) 14 years or more - the tenant receives twice this amount.

Negotiations on termination of a business tenancy

Often towards the end of a business tenancy, a landlord will seek to recover the costs of dilapidations from a leaving tenant. Whether or not the tenant intends to renew the lease, he may make a section 26 request, which would entitle him to compensation under s.37 of the 1954 Act if the landlord successfully opposes the grant on grounds (e), (f) or (g) or withdraws such opposition, see *Sun Life Assurance Plc v Thales Tracs Ltd and Another* [2002] 1 P. & C.R. 12.

An example might be where the tenant learns that his landlord intends to oppose the renewal of a tenancy on the grounds of intention to redevelop. He learns of this 18 months before the end of his current tenancy, *i.e.* before the earliest date on which he could serve a request under s.26. The tenant then finds an ideal alternative site which he takes. He would not have taken that site, and incurred all the expense and disruption to his business entailed in a move, if he had not been told of the landlord's intention to oppose the grant of a new tenancy. The tenant then serves his request under s.26. The landlord then withdraws its ground of opposition and the tenant moves out without making an application for a new tenancy. In such circumstances the tenant would still have a counterclaim to compensation under section 37 against the landlord's claim in respect of dilapidations.

The new tenancy

Unless the landlord successfully opposes on a ground relied on by him in his relevant notice, or succeeds in applying for termination without renewal, or the court finds the case to be one in which it should make a s.31(2) declaration, the court is required to order the grant of a new tenancy to the tenant and to make an order terminating the current tenancy immediately before the commencement of the new one. The statute provides that the court will define what is to be the property let, the duration, rent and other terms, in the absence of agreement between the landlord and the tenant. No special formality is prescribed by such agreement but it must be in writing and binding as a matter of the ordinary law of contract. Thus an agreement "subject to contract" or "subject to lease" is ineffective for this purpose.

Negotiating the terms of a new tenancy

The landlord and tenant can agree new terms in writing. If not, the court will settle any new terms they have been unable to agree. In negotiating the terms, it is useful to bear in mind the guidelines which a court would use to define the terms of the new tenancy:

- 1 Duration - if the tenancy is for a fixed term, the court can order the new tenancy to last up to 15 years;
- 2 Rent - the rent for the new tenancy will reflect the current market value of the property, bearing in mind the terms of the tenancy. But when setting the rent, the court will ignore certain points:

- a the fact that there is a sitting tenant;
 - b the tenant's business's goodwill; and
 - c improvements by the tenant or predecessors either during the current tenancy or during the last 21 years, other than those required by the tenancy agreement.
- 3 The court may decide that the tenancy agreement should provide for rent reviews; and
 - 4 Any other terms taking into account the terms of the current tenancy and all the relevant circumstances.

Premises covered by the new tenancy

The parties may agree on the extent of the new premises. Where the premises are used partly for business and partly as living accommodation, and if the legislation applies, then the tenant has a right to a tenancy of the whole premises. The landlord can insist that a new tenancy under the Act should cover the whole of the premises covered by the previous tenancy.

Start of the new tenancy

The new tenancy will normally begin on the date the landlord or tenant proposes in the section 25 form or section 26 request. Where there is an application to the court, the date will be (if later) three to four months after the court decides on the application.

New tenancy is binding save for agreements and revocation

The tenant must accept the terms of the new tenancy unless either the landlord and tenant agree other terms; or, within 14 days, the tenant asks the court to revoke the order. The court would then revoke it, but could extend the current tenancy long enough to give the landlord a reasonable chance of reletting the premises. Once the order is revoked, the tenant must leave the premises.

18 May 2008

Faisal Saifee

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APPENDICIES

APPENDIX 1: extracts from the Landlord and Tenant Act 1954

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”):

Provided that this subsection has effect subject to the provisions of section 29B(4) of this Act and the provisions of Part IV of this Act as to the interim continuation of tenancies pending the disposal of applications to the court.

(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.

] [s.25(6)-(8) substituted for s.25(6) by Regulatory Reform (Business Tenancies) (England and Wales) Order 2003/3096 art. 4(2)]

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.

(2) A tenant's request for a new tenancy shall be for a tenancy beginning with such date, not more than twelve nor less than six months after the making of the request, as may be specified therein:

Provided that the said date shall not be earlier than the date on which apart from this Act the current tenancy would come to an end by effluxion of time or could be brought to an end by notice to quit given by the tenant.

(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.

(5) Where the tenant makes a request for a new tenancy in accordance with the foregoing provisions of this section, the current tenancy shall, subject to the provisions of [sections 29B(4) and 36(2)]¹ of this Act and the provisions of Part IV of this Act as to the interim continuation of tenancies, terminate immediately before the date specified in the request for the beginning of the 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.

[1. words substituted by Regulatory Reform (Business Tenancies) (England and Wales) Order 2003/3096 art. 12]

APPENDIX 2: Form 1, Landlord's notice ending a business tenancy with proposals for a new one

LANDLORD'S NOTICE ENDING A BUSINESS TENANCY WITH PROPOSALS FOR A NEW ONE

Section 25 of the Landlord and Tenant Act 1954

IMPORTANT NOTE FOR THE LANDLORD: If you are willing to grant a new tenancy, complete this form and send it to the tenant. If you wish to oppose the grant of a new tenancy, use form 2 in Schedule 2 to the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 or, where the tenant may be entitled to acquire the freehold or an extended lease, form 7 in that Schedule, instead of this form.

To: *(insert name and address of tenant)*

From: *(insert name and address of landlord)*

1. This notice applies to the following property: *(insert address or description of property)*.
2. I am giving you notice under section 25 of the Landlord and Tenant Act 1954 to end your tenancy on *(insert date)*.
3. I am not opposed to granting you a new tenancy. You will find my proposals for the new tenancy, which we can discuss, in the Schedule to this notice.
4. If we cannot agree on all the terms of a new tenancy, either you or I may ask the court to order the grant of a new tenancy and settle the terms on which we cannot agree.
5. If you wish to ask the court for a new tenancy you must do so by the date in paragraph 2, unless we agree in writing to a later date and do so before the date in paragraph 2.
6. Please send all correspondence about this notice to:

Name:

Address:

Signed: Date:

*[Landlord] *[On behalf of the landlord] *[Mortgagee] *[On behalf of the mortgagee]

**(delete if inapplicable)*

SCHEDULE

LANDLORD'S PROPOSALS FOR A NEW TENANCY

(attach or insert proposed terms of the new tenancy)

IMPORTANT NOTE FOR THE TENANT

This Notice is intended to bring your tenancy to an end. If you want to continue to occupy your property after the date specified in paragraph 2 you must act quickly. If you are in any doubt about the action that you should take, get advice immediately from a solicitor or a surveyor.

The landlord is prepared to offer you a new tenancy and has set out proposed terms in the Schedule to this notice. You are not bound to accept these terms. They are merely suggestions as a basis for negotiation. In the event of disagreement, ultimately the court would settle the terms of the new tenancy.

It would be wise to seek professional advice before agreeing to accept the landlord's terms or putting forward your own proposals.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003).

Ending of tenancy and grant of new tenancy

This notice is intended to bring your tenancy to an end on the date given in paragraph 2. Section 25 contains rules about the date that the landlord can put in that paragraph.

However, your landlord is prepared to offer you a new tenancy and has set out proposals for it in the Schedule to this notice (section 25(8)). You are not obliged to accept these proposals and may put forward your own.

If you and your landlord are unable to agree terms either one of you may apply to the court. You may not apply to the court if your landlord has already done so (section 24(2A)). If you wish to apply to the court you must do so by the date given in paragraph 2 of this notice, unless you and your landlord have agreed in writing to extend the deadline (sections 29A and 29B).

The court will settle the rent and other terms of the new tenancy or those on which you and your landlord cannot agree (sections 34 and 35). If you apply to the court your tenancy will continue after the date shown in paragraph 2 of this notice while your application is being considered (section 24).

If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

Negotiating a new tenancy

Most tenancies are renewed by negotiation. You and your landlord may agree in writing to extend the deadline for making an application to the court while negotiations continue. Either you or your landlord can ask the court to fix the rent that you will have to pay while the tenancy continues (sections 24A to 24D).

You may only stay in the property after the date in paragraph 2 (or if we have agreed in writing to a later date, that date), if by then you or the landlord has asked the court to order the grant of a new tenancy.

If you do try to agree a new tenancy with your landlord remember:

- that your present tenancy will not continue after the date in paragraph 2 of this notice without the agreement in writing mentioned above, unless you have applied to the court or your landlord has done so, and
- that you will lose your right to apply to the court once the deadline in paragraph 2 of this notice has passed, unless there is a written agreement extending the deadline.

Validity of this notice

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

APPENDIX 3: Form 2, Landlord's notice ending a business tenancy and reasons for refusing a new one

LANDLORD'S NOTICE ENDING A BUSINESS TENANCY AND REASONS FOR REFUSING A NEW ONE

Section 25 of the Landlord and Tenant Act 1954

IMPORTANT NOTE FOR THE LANDLORD: If you wish to oppose the grant of a new tenancy on any of the grounds in section 30(1) of the Landlord and Tenant Act 1954, complete this form and send it to the tenant. If the tenant may be entitled to acquire the freehold or an extended lease, use form 7 in Schedule 2 to the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 instead of this form.

To: *(insert name and address of tenant)*

From: *(insert name and address of landlord)*

1. This notice relates to the following property: *(insert address or description of property)*

2. I am giving you notice under section 25 of the Landlord and Tenant Act 1954 to end your tenancy on *(insert date)*.

3. I am opposed to the grant of a new tenancy.

4. You may ask the court to order the grant of a new tenancy. If you do, I will oppose your application on the ground(s) mentioned in paragraph(s)* of section 30(1) of that Act. I draw your attention to the Table in the Notes below, which sets out all the grounds of opposition.

**(insert letter(s) of the paragraph(s) relied on)*

5. If you wish to ask the court for a new tenancy you must do so before the date in paragraph 2 unless, before that date, we agree in writing to a later date.

6. I can ask the court to order the ending of your tenancy without granting you a new tenancy. I may have to pay you compensation if I have relied only on one or more of the grounds mentioned in paragraphs (e), (f) and (g) of section 30(1). If I ask the court to end your tenancy, you can challenge my application.

7. Please send all correspondence about this notice to:

Name:

Address:

Signed: Date:

*[Landlord] *[On behalf of the landlord] *[Mortgagee] *[On behalf of the mortgagee]

*(*delete if inapplicable)*

IMPORTANT NOTE FOR THE TENANT

This notice is intended to bring your tenancy to an end on the date specified in paragraph 2.

Your landlord is not prepared to offer you a new tenancy. You will not get a new tenancy unless you successfully challenge in court the grounds on which your landlord opposes the grant of a new tenancy.

If you want to continue to occupy your property you must act quickly. The notes below should help you to decide what action you now need to take. If you want to challenge your landlord's refusal to renew your tenancy, get advice immediately from a solicitor or a surveyor.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

Ending of your tenancy

This notice is intended to bring your tenancy to an end on the date given in paragraph 2. Section 25 contains rules about the date that the landlord can put in that paragraph.

Your landlord is not prepared to offer you a new tenancy. If you want a new tenancy you will need to apply to the court for a new tenancy and successfully challenge the landlord's grounds for opposition (see the section below headed "*Landlord's opposition to new tenancy*"). If you wish to apply to the court you must do so before the date given in paragraph 2 of this notice, unless you and your landlord have agreed in writing, before that date, to extend the deadline (sections 29A and 29B).

If you apply to the court your tenancy will continue after the date given in paragraph 2 of this notice while your application is being considered (section 24). You may not apply to the court if your landlord has already done so (section 24(2A) and (2B)).

You may only stay in the property after the date given in paragraph 2 (or such later date as you and the landlord may have agreed in writing) if before that date you have asked the court to order the grant of a new tenancy or the landlord has asked the court to order the ending of your tenancy without granting you a new one.

If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

Landlord's opposition to new tenancy

If you apply to the court for a new tenancy, the landlord can only oppose your application on one or more of the grounds set out in section 30(1). If you match the letter(s) specified in paragraph 4 of this notice with those in the first column in the Table below, you can see from the second column the ground(s) on which the landlord relies.

<i>Paragraph of section 30(1)</i>	<i>Grounds</i>
(a)	Where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations.
(b)	That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due.
(c)	That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding.
(d)	That the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding.
(e)	Where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purposes of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy.
(f)	That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding.
(g)	On the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

In this Table "the holding" means the property that is the subject of the tenancy.

In ground (e), "the landlord is the owner an interest in reversion expectant on the termination of that superior tenancy" means that the landlord has an interest in the property that will entitle him or her, when your immediate landlord's tenancy comes to an end, to exercise certain rights and

obligations in relation to the property that are currently exercisable by your immediate landlord.

If the landlord relies on ground (f), the court can sometimes still grant a new tenancy if certain conditions set out in section 31A are met.

If the landlord relies on ground (g), please note that "the landlord" may have an extended meaning. Where a landlord has a controlling interest in a company then either the landlord or the company can rely on ground (g). Where the landlord is a company and a person has a controlling interest in that company then either of them can rely on ground (g) (section 30(1A) and (1B)). A person has a "controlling interest" in a company if, had he been a company, the other company would have been its subsidiary (section 46(2)).

The landlord must normally have been the landlord for at least five years before he or she can rely on ground (g).

Compensation

If you cannot get a new tenancy solely because one or more of grounds (e), (f) and (g) applies, you may be entitled to compensation under section 37. If your landlord has opposed your application on any of the other grounds as well as (e), (f) or (g) you can only get compensation if the court's refusal to grant a new tenancy is based solely on one or more of grounds (e), (f) and (g). In other words, you cannot get compensation under section 37 if the court has refused your tenancy on *other* grounds, even if one or more of grounds (e), (f) and (g) also applies.

If your landlord is an authority possessing compulsory purchase powers (such as a local authority) you may be entitled to a disturbance payment under Part 3 of the Land Compensation Act 1973.

Validity of this notice

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

APPENDIX 4: Form 3, Tenant's request for a new business tenancy

Form 3

TENANT'S REQUEST FOR A NEW BUSINESS TENANCY

Section 26 of the Landlord and Tenant Act 1954

To *(insert name and address of landlord)*:

From *(insert name and address of tenant)*:

1. This notice relates to the following property: *(insert address or description of property)*.
2. I am giving you notice under section 26 of the Landlord and Tenant Act 1954 that I request a new tenancy beginning on *(insert date)*.
3. You will find my proposals for the new tenancy, which we can discuss, in the Schedule to this notice.
4. If we cannot agree on all the terms of a new tenancy, either you or I may ask the court to order the grant of a new tenancy and settle the terms on which we cannot agree.
5. If you wish to ask the court to order the grant of a new tenancy you must do so by the date in paragraph 2, unless we agree in writing to a later date and do so before the date in paragraph 2.
6. You may oppose my request for a new tenancy only on one or more of the grounds set out in section 30(1) of the Landlord and Tenant Act 1954. You must tell me what your grounds are within two months of receiving this notice. If you miss this deadline you will not be able to oppose renewal of my tenancy and you will have to grant me a new tenancy.
7. Please send all correspondence about this notice to:

Name:

Address:

Signed: Date:

*[Tenant] *[On behalf of the tenant] *(*delete whichever is inapplicable)*

SCHEDULE

TENANT'S PROPOSALS FOR A NEW TENANCY

(attach or insert proposed terms of the new tenancy)

IMPORTANT NOTE FOR THE LANDLORD

This notice requests a new tenancy of your property or part of it. If you want to oppose this request you must act quickly.

Read the notice and all the Notes carefully. It would be wise to seek professional advice.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

Tenant's request for a new tenancy

This request by your tenant for a new tenancy brings his or her current tenancy to an end on the day before the date mentioned in paragraph 2 of this notice. Section 26 contains rules about the date that the tenant can put in paragraph 2 of this notice.

Your tenant can apply to the court under section 24 for a new tenancy. You may apply for a new tenancy yourself, under the same section, but not if your tenant has already served an application. Once an application has been made to the court, your tenant's current tenancy will continue after the date mentioned in paragraph 2 while the application is being considered by the court. Either you or your tenant can ask the court to fix the rent which your tenant will have to pay whilst the tenancy continues (sections 24A to 24D). The court will settle any terms of a new tenancy on which you and your tenant disagree (sections 34 and 35).

Time limit for opposing your tenant's request

If you do not want to grant a new tenancy, you have two months from the making of your tenant's request in which to notify him or her that you will oppose any application made to the court for a new tenancy. You do not need a special form to do this, but the notice must be in writing and it must state on which of the grounds set out in section 30(1) you will oppose the application. If you do not use the same wording of the ground (or grounds), as set out below, your notice may be ineffective.

If there has been any delay in your seeing this notice, you may need to act very quickly. If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

Grounds for opposing tenant's application

If you wish to oppose the renewal of the tenancy, you can do so by opposing your tenant's application to the court, or by making your own application to the court for termination without renewal. However, you can only oppose your tenant's application, or apply for termination without renewal, on one or more of the grounds set out in section 30(1). These grounds are set out below. You will only be able to rely on the ground(s) of opposition that you have mentioned in your written notice to your tenant.

In this Table "the holding" means the property that is the subject of the tenancy.

<i>Paragraph of section 30(1)</i>	<i>Grounds</i>
(a)	Where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations.
(b)	That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due.
(c)	That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding.
(d)	That the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding.
(e)	Where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purposes of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy.
(f)	That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding.
(g)	On the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

Compensation

If your tenant cannot get a new tenancy solely because one or more of grounds (e), (f) and (g) applies, he or she is entitled to compensation under section 37. If you have opposed your tenant's application on any of the other grounds mentioned in section 30(1), as well as on one or more of grounds (e), (f) and (g), your tenant can only get compensation if the court's refusal to grant a new tenancy is based solely on ground (e), (f) or (g). In other words, your tenant cannot get compensation under section 37 if the court has refused the tenancy on *other* grounds, even if one or more of grounds (e), (f) and (g) also applies.

If you are an authority possessing compulsory purchase powers (such as a local authority), your tenant may be entitled to a disturbance payment under Part 3 of the Land Compensation Act 1973.

Negotiating a new tenancy

Most tenancies are renewed by negotiation and your tenant has set out proposals for the new tenancy in paragraph 3 of this notice. You are not obliged to accept these proposals and may put forward your own. You and your tenant may agree in writing to extend the deadline for making an application to the court while negotiations continue. Your tenant may not apply to the court for a new tenancy until two months have passed from the date of the making of the request contained in this notice, unless you have already given notice opposing your tenant's request as mentioned in paragraph 6 of this notice (section 29A(3)).

If you try to agree a new tenancy with your tenant, remember:

- that one of you will need to apply to the court before the date in paragraph 2 of this notice, unless you both agree to extend the period for making an application.
- that any such agreement must be in writing and must be made before the date in paragraph 2 (sections 29A and 29B).

Validity of this notice

The tenant who has given you this notice may not be the person from whom you receive rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

APPENDIX 5: Warning notice about the implications of giving up the right to renew

Warning notice about the implications of giving up the right to renew

Important Notice

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

Business tenants normally have security of tenure - the right to stay in their business premises when the lease ends.

If you commit yourself to the lease you will be giving up these important legal rights.

- You will have no right to stay in the premises when the lease ends.
- Unless the landlord chooses to offer you another lease, you will need to leave the premises.
- You will be unable to claim compensation for the loss of your business premises, unless the lease specifically gives you this right.
- If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice - from a qualified surveyor, lawyer or accountant - before agreeing to give up these rights.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

But if you do not receive at least 14 days' notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

APPENDIX 6: Warning notice for agreements to surrender

Warning notice for agreements to surrender

Important Notice

Do not commit yourself to any agreement to surrender your lease unless you have read this message carefully and discussed it with a professional adviser.

Normally, you have the right to renew your lease when it expires. By committing yourself to an agreement to surrender, **you will be giving up this important statutory right.**

- You will **not** be able to continue occupying the premises beyond the date provided for under the agreement for surrender, **unless** the landlord chooses to offer you a further term (in which case you would lose the right to ask the court to determine the new rent). You will need to leave the premises.
- You will be unable to claim compensation for the loss of your premises, unless the lease or agreement for surrender gives you this right.

A qualified surveyor, lawyer or accountant would be able to offer you professional advice on your options.

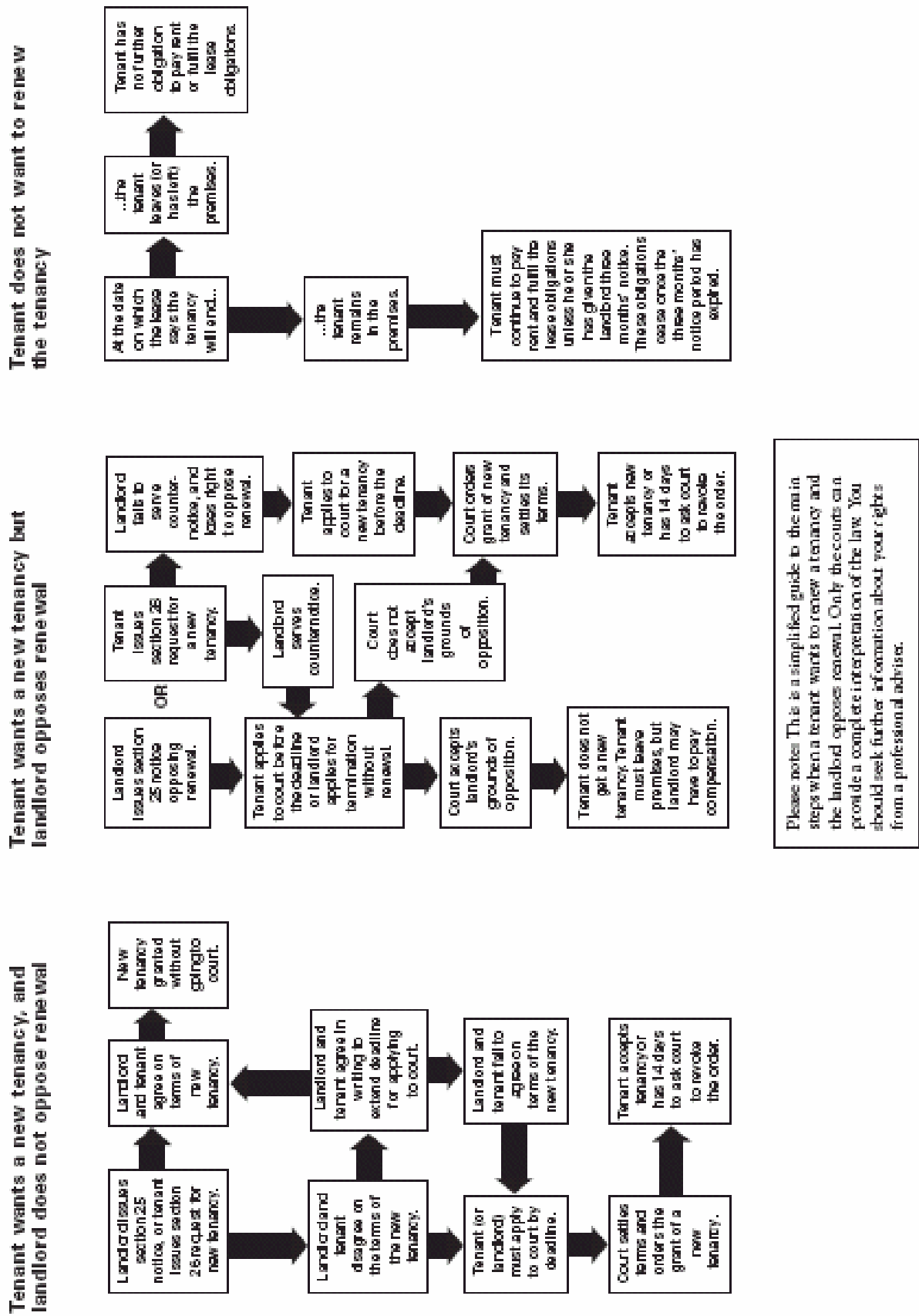
You do not have to commit yourself to the agreement to surrender your lease unless you want to.

If you receive this notice at least 14 days before committing yourself to the agreement to surrender, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the agreement to surrender.

But if you do not receive at least 14 days' notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the agreement to surrender sooner, you may want to ask the landlord to let you have at least 14 days to consider whether you wish to give up your statutory rights. If you then decided to go ahead with the agreement to end your lease, you would only need to make a simple declaration, and so you would not need to make a separate visit to an independent solicitor.

APPENDIX 7: An outline guide to renewing or ending a business tenancy



Please note! This is a simplified guide to the main steps when a tenant wants to renew a tenancy and the landlord opposes renewal. Only the courts can provide a complete interpretation of the law. You should seek further information about your rights from a professional adviser.

Reproduced under the terms of the Click-Use Licence; "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk

FORFEITURE OF BUSINESS TENANCIES

AN OVERVIEW

BUSINESS TENANCIES

No Special Regime for Forfeiture

1. Section 24(1) of the Landlord and Tenant Act 1954 does not interfere with the usual operation of the rules of forfeiture, except to a very limited extent. In the case of forfeiture of a tenancy to which Part II applies, or of an interest superior to that tenancy, the tenant has his ordinary rights of relief from forfeiture, whether or not his tenancy has been continued under section 24(1). All security of tenure will be lost unless he can avoid the forfeiture under the ordinary law.
2. The position of a Part II protected tenant is different in two respects:
 1. The court retains the power to grant relief against forfeiture even after the term would have expired by effluxion of time (section 28).
 2. For as long as the claim for forfeiture and any counterclaim for relief have against forfeiture have not been finally disposed of, the tenant remains entitled to apply to the court for the grant of a new tenancy (*Meadows v Clerical Medical and General Life Assurance Society* [1981] Ch, 70).
3. Those exceptions aside, the usual rules of forfeiture will apply to business tenancies.

FORFEITURE

4. Forfeiture is a unilateral remedy available to the reversioner or reservor of the right to forfeit only. Fox LJ defined forfeiture in the following terms:

“a right to determine a lease by a landlord if (a) when exercised, it operates to bring the lease to an end earlier than it would “naturally” terminate; and (b) it is exerciseable in the event of some default by the tenant” (Clays Lane Housing Cooperative Ltd v Patrick (1985) 49 P. & C.R.. 72).

“Some default by tenant”

5. In relation to the type of default by the tenant different considerations apply to default that involves failure to pay rent due and other types of default (for example, breach of covenant not to sub-let, or breach of covenant to keep in good repair).

Failure to pay rents

6. Forfeiture for failure to pay rent does not require service of a Section 146 notice.

Breach of some other covenant

7. Section 146 of the Law of Property Act 1925 requires the landlord to serve a formal warning notice on the tenant before exercising his right to forfeit. As to the requirements of section 146 see paragraph 26 below.

CHECKLIST BEFORE FORFEITURE ARISES

a. GLOBAL CONSIDERATIONS

I. Breach of covenant with proviso for re-entry or condition

8. A lease may usually be determined by forfeiture for:

- (1) Breach of any covenant in the lease if the lease contains a proviso for re-entry or forfeiture for breach of such covenant.
- (2) Breach of condition of the lease.

Proviso for re-entry

9. Every properly drafted modern lease should contain a proviso for re-entry, if the lease or tenancy agreement contains no forfeiture clause the landlord has no right to forfeit other than for breach of condition.

Express Condition

10. A condition is usually created by the use of the word “condition”, or similar express words in a lease agreement. A, “stipulation” has been held to constitute a condition. A “proviso” has been held to constitute both a condition and a covenant. In the case of a weekly tenancy with terms in a rent book listing “*terms of tenancy*” the court was “*not precluded*” from holding those terms to be conditions if the circumstances of the case dictated that was the right construction (*Maley v Fearn* [1947] L.J.R. 276). In general a mere agreement by the tenant will not amount to an agreement, the words, “*it is hereby agreed and clearly understood*” have been held not to amount to a condition (*Doe Wilson v Phillips* (1824) 2 Bing. 13).

Implied condition

11. A forfeiture may also be incurred by the breach of an implied condition which goes fundamentally to the relation of a landlord and tenant. A breach of such a condition is a repudiation which the landlord may accept by forfeiting the lease. It is an implied condition that the tenant will acknowledge the landlord’s title, a denial of title, even an oral denial may amount to a breach of implied condition (there must be no doubt the tenant’s conduct is intended as a denial of title and an allegation of denial will be

treated by the court's with caution (*Abidogun v Frolan Health Care* [2002] L.&T.R. 275). Where payment of rent is not an express condition it is unlikely to be an implied condition.

2. Landlord entitled to forfeit

12. No one can forfeit except the person then legally entitled to the reversion. By statute the benefit of every condition of re-entry is annexed and incidental to and goes with the reversionary estate in the land immediately expectant upon the term (section 141(1) Law of Property Act 1925).

13. However, a lessor who has demised his whole interest, subject to a right of re-entry on breach of a condition may re-enter on that condition being broken, though he has no right of reversion. A right of re-entry may also be reserved on the assignment of a lease with the result that an assignor may re-enter for breach of condition.

CONSIDERATIONS IN REPECT OF FORFEITURE FOR NON PAYMENT OF RENT

3. New landlord

Notice to tenant of new landlord

14. A new landlord must ensure that a tenant is given formal notice of the conveyance to him. There is no right to forfeit for non payment of rent before proper notice is given.

15. Section 151 of the Law of Property Act 1925 provides as follows:

“151 Provision as to attornments by tenants

(1) Where land is subject to a lease -

(a) the conveyance of a reversion in the land expectant on the determination on the determination of the lease; or

(b) the creation or conveyance of a rentcharge to issue or issuing out of the land;

Shall be valid without any attornment of the leasee.

Nothing in this subsection-

(i) affects the validity of any payment of rent by the leasee to the person making the conveyance or grant before notice of the conveyance or making of the grant is given to him by the person entitled thereunder; or

(ii) renders the leasee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the leasee.

.....”

16. The language of the statute requires the leasee be given, “*notice of the conveyance...by the person entitled thereunder*”.

Section 196 Law of Property Act 1925

17. The only proviso attached to Section 151 is by Section 196, which provides as follows:

“196 Regulations respecting noticed

*(1) Any notice required or authorized to be served or given by this Act shall be in writing.
...*”

18. Section 196 goes on to deal with deemed service provisions. Service is deemed good service where:

- (1) Notice is left at the last known place or abode or business of the leasee.
- (2) Notice is affixed or left for the leasee on the land or any house or building on the comprised in the lease.
- (3) Notice is served if sent by post in a **registered** letter to at the last known place or abode or business of the leasee if not returned undelivered.

19. It is worth noting that service by first class post is **not** deemed service.

20. A failure to use deemed service does not mean service is not effective, but it puts the landlord in the undesirable position of having to prove actual receipt by the tenant (see Megaw LJ in *Chiswell v Griffon Land & Estates Limited* [1975] 1 WLR 1181, p.1188, “if the person who gives the notice sees fit not to use one of those primary methods, but to send the notice through the post...that will nevertheless be good notice, if in fact the letter **is received** by the person to whom the notice has been given”).

4. Proviso in lease making demand unnecessary

21. Although section 146 does not apply to forfeiture for non payment of rent, at common law a formal demand for rent must be made before a forfeiture may take place.

22. The need for formal demand may be dispensed with by:

- (1) **Agreement.** In other words, by a proviso in the lease, usually attached to the proviso for re-entry that the landlord may re-enter for non payment of rent, “without any demand”. Every well drafted modern lease ought to have such a proviso.
- (2) By virtue of **section 210 of the Common Law Procedure Act 1852** which applies in all cases between landlord and tenant where one half-years rent is in arrear and no sufficient distress may be found on the demised premises.

23. Otherwise the strict rules of the common law apply. These are:

- (1) The demand for rent must be made by the landlord or a properly authorised agent.
- (2) The demand must be made on the very last day to save the forfeiture. So if, for example the proviso for re-entry on non payment of rent is on 21 days after rent became due, the demand must be made on the twenty first day and not before or after.
- (3) The demand must be made at a convenient time and before sunset.
- (4) The demand must be made at the proper place. Therefore if the lease specifies a place the demand must be made there. If no place is specified, the demand must be made upon the land.
- (5) The demand must be for the precise sum payable and not a penny more or a penny less.

5. Are the arrears of rent sufficient?

24. Experience suggests that it is worth checking the landlord’s arithmetic when it comes to calculating the amount of arrears due!

FORFEITURE FOR OTHER BREACHES OF COVENANT

6. Service of section 146 notice

25. For all breaches of covenant that are not non payment of rent the service of a section 146 notice is necessary before the right to forfeit arises.

26. Section 146 Law of Property Act 1925 provides:

“146 Restrictions on and relief against forfeiture of leases and underleases

(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for breach of any covenant or condition in the lease shall not be enforceable by action or otherwise, unless and until the lessor serves on the lessee a notice -

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach;

And the lessee fails, within a reasonable time thereafter to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lessor for the breach”.

27. By section 146(11) the right to forfeit for non payment of rent is excluded.

Service of the notice

28. The section 146 notice must be served upon the lessee in possession or whoever has a subsisting lease at the time the notice comes to be served. Where the original tenant has assigned, notice must therefore be served on the assignee. This is so even where the assignment itself is unlawful and constitutes the ground of forfeiture (*Fuller v Judy Properties* [1992] 1 E.G.L.R. 75).

29. Where there are joint leasees, all must be served with a notice.

30. The deemed service provisions of section 196 also apply to section 146 notices so beware service by first class post!

Contents of Good Notice

1. Specify the breach

31. The particular breaches complained of must be specified. Although the remedial action required need not be specified, (the remedy is a matter for the leasee and not the lessor) the particulars must enable the leasee to understand with reasonable certainty what it is that he is required to do.

2. Require remedy

32. Some breaches will not be remediable, nonetheless it is good practice to require the remedy of all breaches insofar as they may be practicable. To do otherwise risks invalidating the notice.

33. In general, the breach of a positive covenant to take some action will be capable of remedy, for example, to carry out repairs within a certain time. By contrast, the breach of a negative once and for all covenant may not be capable of remedy, for example, assigning the lease without the landlord's consent, sub-letting the premises or part thereof. Where a breach of a restrictive use covenant in a lease has caused irretrievable harm to a landlord because of any 'stigma' attached to the property the breach will be incapable of remedy, even if the use ceases, so the running of a catering premises in breach of licensing laws, use of the premises as a brothel, to sell obscene material and for espionage, resulting in conviction under the Official Secrets Act were all incapable of remedy.

3. Require compensation

34. Despite the apparent use of mandatory language in section 146 it has been held that a failure to make compensation in money for the breach will not invalidate the notice, however, it may preclude the landlord from claiming damages for the breach.

Remedy in reasonable time

35. The landlord must allow reasonable time for remedy before proceeding to forfeiture.
36. What constitutes reasonable time will be fact specific on the evidence of the case. By way of illustration previous case law has held:
- (a) In the case of failure to insure premises, 4 weeks was a reasonable time to arrange cover.
 - (b) Where a tenant had carried out alterations without consent 13 days was sufficient to ask for consent or put forward proposals for remedy.
 - (c) Where there was a breach of covenant not to cause a nuisance to the lessor or adjoining occupiers, 4 days was insufficient to remedy the breach.
37. Where the breach is irremediable the time is for the tenant to decide whether to apply for relief against forfeiture. Two days to do so has been held insufficient. However, 5 days was adequate (*Fuller v Judy Properties* [1992] 1 E.G.L.R. 75), 13 days was ample (*Civil Service Co-operative Society v McGrigor's Trustee* [1923] 2 Ch.347).

Service of section 146 Notice in respect of dilapidations

Special rules for service

38. Section 18 of the Landlord and Tenant Act 1927 provides as follows:

“(1) Damages for a breach of covenant or agreement to keep or put premises in repair during the currency of a lease, or to put premises in repair at the termination of a lease...

(2) A right of re-entry or forfeiture for a breach of any such covenant or agreement as aforesaid shall not be enforceable, by action or otherwise, unless the lessor proves the fact that such a notice as is required by section 146 of the Law of Property Act 1925, had been served on the lessee was known either-

(a) to the lessee; or

(b) to an under-leasee holding under an under-lease which reserved a nominal reversion only to the leasee; or

(c) to the person who last paid the rent due under the lease either on his own behalf or as agent for the leasee or the under-leasee;

And that a time reasonably sufficient to enable the repairs to be executed had elapsed since the time when the fact of the service of the notice came to the knowledge of any such person”.

39. Service by registered post will be deemed give rise to knowledge of service unless the contrary is proved.

40. The service provisions are therefore strict. Actual knowledge is required and to that extent even deemed service may not suffice, if the leasee can prove a lack of knowledge of service, the notice will be invalid.

Special rules as to response

Leasehold Property (Repairs) Act 1938

41. The above Act applies to a wide range of leases and special rules apply to section 146 notices served under leases caught by its' provisions.

42. The Act applies to business leases where:

- (1) The tenancy was granted for a term certain of more than 7 years.
- (2) 3 years or more remain unexpired at the date of service of the notice of dilapidations under section 146.
- (3) The tenancy is not a farm business tenancy, nor a tenancy to which the Agricultural Holdings Act 1986 applies.

43. The section 146 notice must contain a statement to the effect that the leasee is entitled under the Act to serve on the lessor a counter notice claiming the benefit of

the Act and a statement specifying the time in which and the manner in which a counter notice may be served, specifying the address for service of the lessor. The words in the notice must be in characters, “not less conspicuous” than those used in any other parts of the notice.

44. If the lessee serves a valid counter notice, no proceedings may be taken by action or otherwise, for the enforcement of any right to forfeit, other than with the leave of the court.

Leave by the court

45. The court must not give leave unless:

- (1) Immediate remedying of the breach is required to prevent a substantial diminution in value of the reversion, or the value thereof has been substantially diminished by the breach.
- (2) That the immediate remedying of the breach is necessary for the giving effect to the purposes of an enactment, by law or court order.
- (3) Where the lessee is not in possession of the whole of the premises and the immediate remedying of the breach is required in the interests of another occupier(s) of those premises.
- (4) That the breach can be immediately remedied by an expense that is relatively small in comparison to much greater expense in the event of postponement.
- (5) Special circumstances render it just and equitable that leave be given.

METHODS OF EFFECTING FORFEITURE

46. Forfeiture or re-entry can be effected only by physical re-entry or by legal proceedings. In practice the question of which method of forfeiture to apply can be a difficult issue. Clients who are landlords, in particular, may be very keen on forfeiture by physical re-entry because they perceive it as a more effective and instant solution or remedy to a troublesome tenant than court proceedings. Plainly, there are advantages to forfeiture by physical re-entry, but these must be balanced against the disadvantages and potential liability for wrongful forfeiture.

Physical Re-entry

47. Advantages when compared to legal proceedings

1. Forfeiture by physical re-entry immediately terminates the lease, subject to any claim by the tenant for relief against forfeiture. The effect of issuing and serving proceedings is eventually the same as the effect of peaceful re-entry; in each case the lease is determined. However, when forfeiture is by legal proceedings against the tenant the lease is not terminated and its covenants are not extinguished until judgement is given for possession. Judgement for possession then relates back to the service of proceedings. In the time between service of proceedings and judgement there is a twilight period of “limbo” for the lease where the legal position is obscure. For the landlord, who has elected to treat the lease as being at an end, he is unable to recover damages for dilapidations which have accrued since the service of proceedings. But the landlord is not precluded from trying to terminate the tenancy in other ways (for example by serving a section 25 notice).
2. After forfeiture by peaceful re-entry tenant’s fixtures revert to the landlord and the tenant has no right to remove them (*Re Palmiero* [1999] 3 E.G.L.R. 27). By contrast there is no such reversion on the issuing of proceedings for forfeiture.
3. Forfeiture by physical re-entry is capable of being a much faster, cheaper method of removing a tenant and returning possession to the landlord where it is used effectively.

48. Potential Disadvantages of forfeiture by physical re-entry

1. The landlord faces a period of six months uncertainty where the tenant might apply for relief from forfeiture (Section 210 Common Law Procedure Act 1852 provides that there is to be no relief after 6 months. That Act only applies to cases of rent where a half-years rent is in arrears, but the six month period is a guide in other cases, *Di Palma v Victoria Square Property Co.* [1986] Ch. 150).
2. The landlord will be liable for any damages incurred by the businesses where forfeiture was wrongful. Liability may be extensive where there is a significant loss of trade and in a worse case scenario can include exemplary and aggravated damages.

Situations where particular caution should be exercised before physical re-entry

49. Sub tenants

Where the landlord intends an existing sub-tenant to remain in occupation under his existing sub-tenancy, no forfeiture will take place, since the continuation of an existing sub-tenancy is inconsistent with the forfeiture of the tenancy out of which it was created. Mere notice to sub-tenants to pay their rent to the landlord is not enough to amount to forfeiture. Physical re-entry must occur. This is usually done by changing the locks on the premises in question. Where there are no locks, the forfeiture must be manifested in some different way (e.g. stretching a chain across the land).

Situations where forfeiture by physical re-entry should not be considered

50. Section 2 of the Protection from Eviction Act 1977 (“*where any premises are let as a dwelling on a lease which is the subject to a right of re-entry or forfeiture it shall not be lawful to enforce that right otherwise than by proceedings in the court while any person is lawfully residing in the premises or part of them*”) applies to business tenancies where the premises are used for partly for business purposes and partly for residential purposes (*Patel v Pirabakan* [2206] 1 W.L.R. 3112). In such cases it is therefore

unlawful to enforce a right of re-entry or forfeiture otherwise than by proceedings in court.

WAIVER

51. A landlord will waive his right to forfeit where he landlord has knowledge of the facts upon which his right of re-entry arises and he thereafter does some unequivocal act which recognises the continued existence of the lease. The act in question must be communicated to the tenant otherwise the waiver is not effective. There are therefore three essential ingredients to waiver:

- i. The landlord's knowledge,
- ii. The unequivocal recognition of the continued existence of the lease,
- iii. Communication of that recognition to the tenant.

Landlord's Knowledge

52. The basis of waiver is that the landlord has elected to treat the lease as continuing. It follows that to be put to an election the landlord must know of the facts giving rise to the right to forfeit.

53. The burden of proving a landlord's knowledge is upon the tenant. However, knowledge must be distinguished from suspicion, so that where a landlord suspected a sub-letting, but was reassured by the tenant that no such sub-letting had taken place, the landlord did not have knowledge of the breach.

54. Knowledge may be imputed, so that knowledge on the part of an employee. So that in the case of the knowledge of a porter in a block of flats who was aware of a sub-letting, or of a landlord's solicitor having knowledge of a sub-letting, that knowledge was imputed to the landlord.

Unequivocal recognition of tenancy

55. The act amounting to waiver must amount to a recognition of the continued existence of the tenancy. Merely standing by and taking no objection will not amount to waiver, some positive action is usually required, however, a long continued acquiescence to repeated breaches might amount to a waiver (*Kelsey v Dodd* (1881) 52 L.J. Ch. 34).
56. It is not necessary for a landlord to intend to waive his right to forfeit. Thus receipt of rent by clerical error, or under protest, or receipt “without prejudice” may amount to waiver.

Waiver by demand or acceptance of rent

57. The landlord will waive the right to forfeit where he accepts rent that accrued **after** the date that the right to forfeit fell due and had become aware of his right to forfeit.
58. Acceptance of rent that fell due before the right to forfeit accrued will not amount to waiver. Nor will acceptance of rent before the right to forfeit has arisen constitute waiver. So where the time under a section 146 notice has not expired and the notice is still in currency acceptance of rent is not waiver. Until the notice expires the right to forfeit does not accrue.
59. A landlord’s agent may waive by accepting rent, even where he has specific instructions not to receive such sums.
60. It is not entirely clear whether an unqualified demand for rent will have the same effect as the acceptance of rent. However, the Court of Appeal have assumed that a first instance decision holding that an unqualified demand was a waiver was correct (*Expert Clothing Service and Sales v Hillgate House* [1986] Ch.340). There is no question that best practice must be not to make demands for rent after the right to forfeit has accrued.

61. The making of an offer, subject to contract, by the landlord to buy the tenant's interest, amounts to waiver, since the offer could not be made, except on the basis of the continued existence of the lease (*Bader Properties v Linley Property Investments* (1968) 19 P.&C.R. 620).

62. If the landlord permits the tenant to expend money in improvements, it is prima facie evidence of his consent to the alteration of the premises and continuance of the term (*Doe d. Shepard v Allen* (1810) 3 Taunt. 78).

Communication of Waiver

63. The election to waive will not bind the landlord unless communicated to the tenant. So that where a communication is by the sending of a document, the waiver is not effective until the document is received.

21st May 2008

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