

INTRODUCTION

- ▶ THIS SEMINAR DEALS WITH BUSINESS LEASES WHICH FALL WITHIN THE PROVISIONS OF THE LANDLORD & TENANT ACT 1954 (Part 2)
- ▶ WE WILL FIRST LOOK AT THE BASIC PRINCIPLES OF THE ACT
- ▶ THEN WE WILL CONSIDER VARIOUS SCENARIOS AND WHAT TACTICS LANDLORDS OR TENANTS MIGHT EACH EMPLOY
- ▶ **BASIC PRINCIPLES OF THE LANDLORD & TENANT ACT 1954 (54 ACT)**
- ▶ **SECURITY OF TENURE**
- ▶ This means that a tenant has a legal right to renew their lease when it expires (unless the landlord has valid grounds for possession)
- ▶ The lease does not come to an end until either the landlord or tenant serves notice to terminate it.
- ▶ If the tenants has reserved its right to renew the lease in Court it can remain in occupation (hold over) after the lease expiry date until the new lease is in place.
- ▶ The landlord and the tenant can negotiate the terms of a new lease at renewal but if they can't the default position is that the terms of the new lease are decided by a Court - a County Court judge.
- ▶ **COMPENSATION**
- ▶ In the event that the landlord does has valid grounds for possession and the tenant can't renew the lease it has a statutory entitlement to compensation (1 x or 2 x rateable value - dependant on whether they have been in occupation for less than or more than 14 years)

L & T 54 ACT IS LIKE MARMITE - MANY L/L'S HATE IT - MOST T's LOVE IT

- ▶ LANDLORDS ARGUE THAT IT RESTRICTS THEIR ABILITY TO ACTIVELY ASSET MANAGE
- ▶ THEY MIGHT WISH TO REPLACE AN EXISTING T WITH A NEW T BUT CANNOT DO SO
- ▶ IT IS A LENGTHY & DIFFICULT FOR A L/L TO SECURE VACANT POSSESSION (V/P) FOR A DEVELOPMENT. THEY NEED TO PERSUADE THE COURT THAT THEY HAVE 'bona fide'
- ▶ DEVELOPMENT PROPOSALS AND THEN PAY STATUTORY COMPENSATION TO THE TENANT IF THEY ARE SUCCESSFUL IN SECURING V/P
- ▶ RENEWING LEASES IS ALSO A COSTLY EXERCISE (particularly if the case proceeds to court) AND AT THE END OF THE COURT CASE WHEN THE NEW LEASE TERMS ARE DECIDED BY THE JUDGE THE T IS PERMITTED TO DECIDE NOT TO TAKE THE NEW LEASE AND GIVE 3 MONTHS NOTICE TO VACATE
- ▶ TENANTS LIKE THE FACT THAT THEY HAVE SECURITY OF TENURE - SO THAT THEY CAN PLAN AND OPERATE A BUSINESS OVER A LONGER TIME FRAME AND BE SURE THAT THE MONEY THEY HAVE INVESTED IN A SHOP FIT IS NOT LOST AT LEASE EXPIRY
- ▶ UNLIKE RENT REVIEWS THE RENT AT LEASE RENEWALS IS UPWARDS & DOWNWARDS
- ▶ THEY ALSO LIKE THE FACT THAT (unless with their agreement) L/L's CANNOT UNILATERALLY MAKE ANY MATERIAL CHANGES OF THE LEASE TERMS IN A NEW LEASE - IT MUST BE IN A SIMILAR FORM TO THE EXISTING LEASE (save for modern updating).
- ▶ STATUTORY COMPENSATION (a multiplier of 1 x or 2 x rateable value) WHERE A L/L DOES PROVE GROUNDS FOR V/P IS ANOTHER VALUABLE BENEFIT OF THE 54 ACT FOR TENANTS

HOWEVER BOTH L/L & T FIND THE COURT PROCESS OF LEASE RENEWAL LENGTHY & COSTLY

▶ **Q. WHY IS A LEASE RENEWAL MORE COMPLICATED & POTENTIALLY MORE COSTLY THAN A RENT REVIEW?**

▶ A. YOU ARE NOT JUST AGREEING THE RENT

▶ A. YOU NEED TO AGREE THE LENGTH OF THE NEW LEASE

▶ A. WHETHER IT WILL HAVE TENANT BREAK CLAUSE & WHEN

▶ A. WHETHER OTHER LEASE TERMS COULD BE CHANGED

▶ A. WHEN NOTICES ARE SERVED UNDER THE 54 ACT SOLICITORS ARE INVOLVED

▶ A. WHEN A CLAIM FOR NEW LEASE IS REGISTERED IN A COURT THE COURT HAS DETAILED DIRECTIONS / PROCEDURES TO BE FOLLOWED

▶ A. IN A RENT REVIEW THE VALUATION DATE IS THE RENT REVIEW DATE - THIS DOES NOT CHANGE.

▶ **Q. WHAT IS THE VALUATION DATE FOR A LEASE RENEWAL?**

▶ A. EITHER THE LEASE EXPIRY DATE - or - ANY DATE AFTER THIS AGREED BY THE PARTIES - or - THE DATE OF THE COURT HEARING IF THE CASE HAS GONE TO COURT

▶ THIS MEANS THAT IN THE LATTER CASE RENTAL EVIDENCE (comparables) CAN BE CONSIDERED LONG PAST THE ORIGINAL LEASE EXPIRY DATE. IT MAY BE A RISING MARKET OR A FALLING MARKET

▶ SO EXPERT VALUATION REPORTS WILL NEED UPDATING - AT EXTRA COST

▶ **Q. IS THE TENANT ENTITLED TO A RENT FREE PERIOD AT RENEWAL?**

▶ A. THERE ARE ARGUMENTS AND CASE LAW FOR YES & NO

YOU ARE THE LANDLORD (or acting for the L/L) OF A LARGE RETAIL SHOP UNIT
WITH LEASE EXPIRING 24th MARCH 2020

▶ Q. WHAT DO YOU NEED TO DO?

▶ A. YOU NEED TO ESTABLISH THE FOLLOWING THINGS -;

▶ IS THE SHOP OVER-RENTED OR UNDER-RENTED AT TODAY'S RENTAL LEVELS?

▶ DO YOU WANT THE TENANT (T) TO RENEW THE LEASE OR DO YOU WANT VACANT POSSESSION
(V/P) FOR A DEVELOPMENT?

▶ IF YOU WANT THE T TO RENEW WOULD YOU PREFER TO NEGOTIATE A LEASE EXTENSION /
REVERSIONARY LEASE NOW TO TAKE THE LEASE RENEWAL OUT OF THE COURT SYSTEM?

▶ YOU SHOULD FORM A VIEW AS TO WHETHER THE T IS LIKELY TO RENEW AT A MARKET RENT OR IS
LIKELY TO VACATE AT EXPIRY

▶ SCENARIO 1 SHOP OVER-RENTED -YOU WANT T TO RENEW & DON'T WANT V/P FOR DEVELOPMENT

▶ Q. WHAT ARE YOUR 2 CHOICES AS L/L?

▶ A . DO NOTHING - COLLECT THE HIGH RENT HOPING T WILL RENEW AND DOESN'T SERVE A S.26
ON TIME - OR

▶ START NEGOTIATING A REVERSIONARY LEASE WITH T NOW SO YOU KNOW WHERE THE LAND LIES

SCENARIO 2 - SHOP IS UNDER-RENTED & YOU WANT T TO RENEW

- ▶ **Q. WHAT DO YOU DO AND WHEN?**
- ▶ **A. YOU WANT TO TERMINATE THE LEASE ON 24TH MARCH 2020 SO INSTRUCT SOLICITORS TO PREPARE A S.25 NOTICE (friendly, ie, not objecting to a new lease)**
- ▶ **Q. WHEN IS THE EARLIEST THAT S.25 COULD BE SERVED?**
- ▶ **A. NOT > 12 MONTHS BEFORE - SO 25TH MARCH 2019**
- ▶ **Q. WHEN IS THE LATEST SENSIBLE DATE TO SERVE THE S.25.**
- ▶ **A. 27th SEPTEMBER 2019 (ie, not < 6 months before expiry date)**
- ▶ **Q. HOW DO YOU KNOW IF THE NOTICE IS BEING SERVED ON THE CORRECT T (they may have changed their corporate identity)**
- ▶ **A. YOU FIRST SERVE A S.40 INFORMATION NOTICE ON THE T**
- ▶ **S.40 (L & T ACT 1954) Notice requesting information**
- ▶ **L/L or T** can serve a section 40 notice on the other at any time during the final two years of the term. L/L notice requires T to confirm whether it occupies the premises for business purposes and whether there are **sub-tenancies**.
T's notice requires landlord to confirm whether it owns the fee simple of the premises or is the mortgagee in possession of such an owner.
- ▶ The notice must be served in the prescribed statutory form and the recipient must reply within one month of service.
- ▶ Recipient has duty to amend any incorrect information if it becomes aware that the information is not or is no longer correct within a period of six months from the date of service of the notice.

SCENARIO 3 - YOU WANT V/P BECAUSE IT IS A LARGE RETAIL UNIT WHICH COULD BE SPLIT IN TO 2 SMALLER UNITS FOR WHICH THE TOTAL RENT WOULD BE HIGHER

- ▶ Q. HOW CAN YOU GET V/P?
- ▶ A. SERVE A S.25 NOTICE (hostile, ie, objecting to the T renewing the lease)
- ▶ Q. WHAT GROUND OF OBJECTION WOULD THE S.25 NOTICE SPECIFY?
- ▶ A. S.30 (f) - DEVELOPMENT
- ▶ 30 (f) DEVELOPMENT “ 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”
- ▶ See previous SEMINAR 17th September 2018 regarding.30 (f)
- ▶ Note the recent case [S Franes Limited v The Cavendish Hotel \(London\) Ltd](#) where the L/L was unsuccessful in securing v/p as he did not have a `bona fide` intention to develop and didn`t actually need v/p of this property

SCENARIO 4 - YOU KNOW OR SUSPECT THAT T WILL NOT RENEW THE LEASE AT EXPIRY

▶ Q. WHAT DO YOU DO AS L/L?

▶ A. CONSIDER ALTERNATIVE TENANTS.

▶ CHECK LEASE TO ESTABLISH IF IT PERMITS A 'TO LET' BOARD TO BE PUT UP

▶ (generally in the last 3 or 6 months of the lease)

▶ CONSIDER POTENTIAL PLANNING APPLICATION FOR CHANGE OF USE perhaps A3

▶ PREPARE A TERMINAL SCHEDULE OF DILAPIDATIONS

▶ YOU ARE THE TENANT (T) (or act for the T) THE SAME LARGE RETAIL SHOP UNIT WITH A LEASE EXPIRY AT 24TH MARCH 2020

▶ Q. WHAT DO YOU DO TO PREPARE FOR THIS IMPENDING LEASE EXPIRY?

▶ A. DECIDE IF THIS A SHOP WHERE YOU DO WISH TO RENEW THE LEASE? - trading projections

▶ A. ESTABLISH THE RENTAL VALUE AT TODAY'S RATES - IS IT OVER-RENTED or UNDER-RENTED?

▶ A. ARE YOU AWARE IF THE L/L HAS DEVELOPMENT PROPOSALS?

SCENARIO 1 - T WISHES TO RENEW & SHOP IS UNDER-RENTED

▶ Q. WHAT DO YOU DO?

- ▶ A. IF YOU ARE SATISFIED THAT YOU COULD TRADE PROFITABLY AT THE LIKELY MARKET RENT AT LEASE RENEWAL YOU NEED TAKE NO ACTION AND HOPE NO NEW HIGHER EVIDENCE ARISES BEFORE THE LEASE EXPIRY DATE. YOU WOULD NOT SERVE A S.26 NOTICE AND HOPE L/L IS LATE SERVING A S.25 NOTICE SO YOU CAN HOLD OVER AT THE LOWER RENT
- ▶ A. YOU COULD OFFER TO AGREE TO A REVERSIONARY LEASE NOW (to commence on expiry of existing lease) ON SOFTER TERMS - THUS GIVING THE L/L CERTAINTY
- ▶ A. YOU NEED TO DECIDE WHAT LENGTH LEASE YOU WANT AND WHETHER YOU WANT A BREAK CLAUSE

▶ SCENARIO 2 - T WISHES TO RENEW LEASE WHICH IS OVER-RENTED?

▶ Q. WHAT DO YOU DO?

- ▶ A. INSTRUCT SOLICITORS TO PREPARE TO SERVE A S.26 NOTICE (requesting a new lease)

▶ Q. WHEN CAN THE S.26 NOTICE BE SERVED?

- ▶ A. NOT > 12 MONTHS BEFORE LEASE EXPIRY DATE - SO 25TH MARCH 2019

- ▶ A. NOT < 6 MONTHS BEFORE LEASE EXPIRY DATE - SO 27TH SEPTEMBER 2019

- ▶ NB THE T MUST BEFORE THE DATE FOR TERMINATING THE LEASE SPECIFIED IN THE S.26 NOTICE REGISTER A CLAIM IN COURT FOR A NEW LEASE. FAILURE TO DO SO WILL RESULT IN THE T LOSING THE RIGHT TO RENEW THE LEASE

NB A T CANNOT SERVE A S.26 NOTICE IF L/L HAS ALREADY SERVED A S.25 NOTICE
A L/L CANNOT SERVE A S.25 NOTICE IF T HAS ALREADY SERVED A S.26 NOTICE

▶ SCENARIO 3 - TENANT DOES NOT WISH TO RENEW LEASE (on any terms)

▶ Q. WHAT DO YOU NEED TO DO?

▶ A. YOU HAVE 2 OPTIONS.

▶ YOU CAN DO NOTHING A JUST VACATE AT LEASE EXPIRY

▶ (subject to any stripping out and/or reinstatement provisions , or dilapidations issues)

▶ YOU CAN SERVE AS.27 NOTICE ON THE L/L WHICH CONFIRMS YOU ARE VACATING AT EXPIRY

▶ **S.27 Section 27 of the 1954 Act provides the tenant that does not wish to renew its tenancy with a flexible right to end the tenancy on or after contractual expiry giving not < 3 months notice.**

▶ SCENARIO 4 L/L HAS SERVED A HOSTILE S.25 SEEKING V/P FOR DEVELOPMENT (S.30 f)

▶ Q. WHAT CAN THE T DO?

▶ A. YOU CAN ARGUE THAT V/P SHOULD NOT BE GRANTED (if S.30 f proven) IMMEDIATELY

▶ AS YOU WILL REQUIRE A REASONABLE PERIOD OF TIME TO FIND NEW PREMISES

▶ A. YOU MAY BE ABLE TO SUCCESSFULLY ARGUE THAT YOU COULD CONTINUE IN OCCUPATION DURING AND POST- DEVELOPMENT UNDER S.31 L & T ACT

L & T ACT - IMPORTANT CLAUSES

- **S.24** CONTINUATION - THE LEASE CONTINUES INDEFINITELY UNTIL BROUGHT TO AN END BY L/L OR T OR BY T VACATING UPON CONTRACTUAL EXPIRY DATE, IE, NO NOTICES SERVED BY EITHER PARTY.
- ONCE CONTRACTUAL EXPIRY DATE PASSED T IS HOLDING OVER (WHETHER OR NOT NOTICES HAVE BEEN SERVED). EXISTING LEASE TERMS AND RENT APPLY
- WHERE THE TENANT IS HOLDING OVER AFTER THE EXPIRY OF THE CONTRACTUAL TERM, THE TENANT WILL HAVE TO GIVE 3 MONTHS NOTICE (S.27) TO TERMINATE THE TENANCY, SUCH NOTICE EXPIRING ON ANY DAY
- WHERE THE TENANT HAS VACATED THE PREMISES BY THE CONTRACTUAL TERMINATION DATE, THE TENANCY WILL COME TO AN END ON THAT DATE AND IS NOT CONTINUED BY THE ACT. NO REQUIREMENT ON T TO SERVE NOTICE BEFORE VACATING. UNCERTAINTY FOR L/L – WHO IF UNDECIDED ABOUT SERVING NOTICE SHOULD CHECK T`s POSITION.
- WHERE NEW LEASE COMMENCES AFTER ORIGINAL LEASE EXPIRY DATE THERE IS AN INTERIM PERIOD OF OCCUPATION.FOR THIS PERIOD AN INTERIM RENT NEEDS TO BE AGREED
- ▶ **S.24 A** INTERIM RENT NEW PROVISION INTRODUCED BY LPA 1969 - AMENDED IN RRO 2003
- L/L AND T HAVE RIGHT TO MAKE APPLICATION FOR INTERIM RENT. TIME LIMIT ON APPLICATIONS - CANNOT BE MADE MORE THAN **6 MONTHS** AFTER THE END OF THE OLD TENANCY
- THE START DATE FOR THE PAYMENT OF INTERIM RENT IS THE EARLIEST DATE WHICH COULD HAVE BEEN SPECIFIED BY THE LANDLORD FOR THE TERMINATION OF THE OLD LEASE IN THE L/L S.25 NOTICE OR THE EARLIEST DATE WHICH COULD HAVE BEEN SPECIFIED BY THE TENANT FOR THE START OF THE NEW TENANCY IN THE T S.26 REQUEST.
- IF T RENEWS LEASE INTERIM RENT S.24(A) IS NOW GENERALLY SAME AS NEW LEASE RENT UNLESS CHANGE IN MARKET CONDITIONS
- IF T ASKS FOR NEW LEASE AND THEN DECIDES NOT TO PROCEED INTERIM RENT S.24(D) CALCULATED AS MARKET RENT LESS ALLOWANCES FOR TENANCY FROM YEAR TO YEAR & TEMPERING THE EFFECT OF AN INCREASE.
- **A DISCOUNT OF PERHAPS 10% FOR TENANCY ON A YEAR TO YEAR BASIS AND A 10% DISCOUNT TO TEMPER THE EFFECT OF A RENT INCREASE MIGHT APPLY**

TERMS OF NEW LEASE - DEMISE & LEASE TERM

▶ **S.32 PROPERTY TO BE COMPRISED IN NEW TENANCY.**

- ▶ (1) AN ORDER UNDER SECTION 29 OF THIS ACT FOR THE GRANT OF A NEW TENANCY SHALL BE AN ORDER FOR THE GRANT OF A NEW TENANCY OF THE HOLDING (IN THE ABSENCE OF AGREEMENT BETWEEN THE LANDLORD AND THE TENANT) BY REFERENCE TO THE CIRCUMSTANCES EXISTING AT THE DATE OF THE ORDER.
- ▶ (1A) IF BY VIRTUE OF PARAGRAPH (B) OF SECTION 31A(1) THE TENANT IS WILLING TO ACCEPT A TENANCY OF PART OF THE HOLDING, THE ORDER SHALL BE AN ORDER FOR THE GRANT OF A NEW TENANCY OF THAT PART ONLY.
- ▶ (2) HOWEVER WHERE THE PROPERTY COMPRISED IN THE CURRENT TENANCY INCLUDES OTHER PROPERTY BESIDES THE HOLDING AND THE LANDLORD REQUIRES THE TENANCY OF THE WHOLE OF THE PROPERTY COMPRISED IN THE CURRENT TENANCY; BUT IN ANY SUCH CASE—
 - ▶ (A) ANY ORDER UNDER THE SAID SECTION 29 FOR THE GRANT OF A NEW TENANCY SHALL BE AN ORDER FOR THE GRANT OF A NEW TENANCY OF THE WHOLE OF THE PROPERTY COMPRISED IN THE CURRENT TENANCY

▶ **S.33 DURATION OF NEW TENANCY.**

- ▶ THE NEW TENANCY SHALL BE SUCH TENANCY AS AGREED BETWEEN THE LANDLORD AND THE TENANT, OR, IN DEFAULT OF SUCH AN AGREEMENT, SHALL BE SUCH A TENANCY AS MAY BE DETERMINED BY THE COURT TO BE REASONABLE IN ALL THE CIRCUMSTANCES, BEING, IF IT IS A TENANCY FOR A TERM OF YEARS CERTAIN, A TENANCY FOR A TERM NOT EXCEEDING **FIFTEEN** YEARS, AND SHALL BEGIN ON THE COMING TO AN END OF THE CURRENT TENANCY.

RENT & OTHER TERMS

▶ S.34 RENT UNDER NEW TENANCY.

- ▶ (1) SUCH RENT AS MAY BE AGREED BETWEEN THE LANDLORD AND THE TENANT OR MAY BE DETERMINED BY THE COURT TO BE THAT AT WHICH,
 - ▶ “ HAVING REGARD TO THE TERMS OF THE TENANCY (OTHER THAN THOSE RELATING TO RENT), THE HOLDING MIGHT REASONABLY BE EXPECTED TO BE LET IN THE OPEN MARKET BY A WILLING LESSOR”
 - ▶ THERE BEING DISREGARDED—
 - ▶ (A) ANY EFFECT ON RENT OF THE FACT THAT THE TENANT HAS OR HIS PREDECESSORS IN TITLE HAVE BEEN IN OCCUPATION OF THE HOLDING,
 - ▶ (B) ANY GOODWILL ATTACHED TO THE HOLDING BY REASON OF THE CARRYING ON THEREAT OF THE BUSINESS OF THE TENANT (WHETHER BY HIM OR BY A PREDECESSOR OF HIS IN THAT BUSINESS),
 - ▶ (C) ANY EFFECT ON RENT OF AN IMPROVEMENT - COMPLETED NOT MORE THAN TWENTY-ONE YEARS BEFORE THE APPLICATION FOR THE NEW TENANCY WAS MADE TO WHICH THIS PARAGRAPH APPLIES,
- ▶ (3) WHERE THE RENT IS DETERMINED BY THE COURT THE COURT MAY, IF IT THINKS FIT, FURTHER DETERMINE THAT THE TERMS OF THE TENANCY SHALL INCLUDE SUCH PROVISION FOR VARYING THE RENT AS MAY BE SPECIFIED IN THE DETERMINATION, IE RENT REVIEWS .

▶ S.35 OTHER TERMS OF NEW TENANCY.

- ▶ (1) THE TERMS OF TENANCY GRANTED BY COURT (OTHER THAN TERMS AS TO THE DURATION AND RENT) SHALL BE SUCH AS MAY BE AGREED BETWEEN THE LANDLORD AND THE TENANT OR AS, IN DEFAULT OF SUCH AGREEMENT, MAY BE DETERMINED BY THE COURT; AND IN DETERMINING THOSE TERMS THE COURT SHALL HAVE REGARD TO THE TERMS OF THE CURRENT TENANCY AND TO ALL RELEVANT CIRCUMSTANCES.
- ▶ O'MAY V CITY OF LONDON REAL PROPERTY CO LTD (1983). O'MAY PRINCIPLES OF FAIRNESS AND JUSTICE. RENT IS LAST MATTER TO BE AGREED AFTER ALL OTHER LEASE TERMS. MODERN UPDATING ALLOWED BUT NO PARTY CAN INSIST ON MATERIAL CHANGES TO THE LEASE TERMS UNLESS THEY ARE FAIR OR UNLESS THE OTHER PARTY IS PROPERLY COMPENSATED BY AN ADJUSTMENT TO THE RENT

T WISHES TO RENEW AND REGISTERS A CLAIM AT COURT.

- ▶ T HAS UNTIL EXPIRY DATE STATED IN THE L/L's S.25 NOTICE (24TH MARCH 2020) TO REPLY. TO MAINTAIN SECURITY OF TENURE T SERVES VIA A SOLICITOR TO THE LOCAL COUNTY COURT A **CLAIM FORM (CPR) PART 8** FOR THE GRANT OF A NEW TENANCY UNDER S.24 OF THE L & T ACT 1954 (CPR PART 56 AND PRACTICE DIRECTIONS PD 56:3.5)
- ▶ IT IS A FORMAL CLAIM SET OUT IN A PRESCRIBED FORM
- ▶ THIS LODGES WITH THE COURT THE TENANTS RIGHT TO A NEW LEASE.
- ▶ IT DETAILS THE L/L AND T - THE EXISTING LEASE TERM AND RENT AND CONFIRMS RECEIPT OF THE L/L S.25 NOTICE AND THE DATE THEREOF & CONFIRMS THAT THE TENANT DOES STILL OCCUPY PREMISES FOR BUSINESS PURPOSES.
- ▶ IT PROPOSES THE T's TERMS FOR A NEW LEASE - LEASE TERM - RENT - REVIEW PATTERN - USUALLY SAYS A NEW LEASE ON SAME TERMS (IE, SAME CLAUSES) AS EXISTING LEASE
- ▶ IT CAN PROPOSE A BREAK CLAUSE IF THE T WANTS ONE
- ▶ THE T IS NOT BOUND TO ACCEPT A NEW LEASE ON THE TERMS IT QUOTES
- ▶ THE CASE IS NOW IN THE COURT SYSTEM AND IS ALLOCATED A CLAIM NUMBER - LEGAL COSTS WILL START TO MOUNT - BUT THE L/L AND T CAN STILL AGREE TERMS AT ANY TIME

TENANT HAS

- ▶ THE T IS NOW THE CLAIMANT. THE L/L IS NOW THE DEFENDANT
- ▶ ON RECEIPT OF COPY OF T's CPR PART 8 CLAIM FOR A NEW LEASE THE L/L HAS ONLY 14 DAYS TO FILE WITH THE COURT AN ACKNOWLEDGEMENT OF SERVICE
- ▶ THIS AGAIN IS IN A PRESCRIBED FORM AND SERVED BY SOLICITORS TO THE COURT.
- ▶ IT CAN EITHER STATE THAT THE TERMS OFFERED BY THE T ARE NOT CONTESTED - or - MORE PROBABLY STATES THAT " I INTEND TO CONTEST THIS CLAIM"
- ▶ ON A CONTINUATION SHEET THE TERMS OFFERED BY THE T ARE REPEATED AND THE TERMS REQUIRED BY THE L/L ARE RE-STATED
- ▶ IN MAKING THIS ACKNOWLEDGEMENT THE L/L STATES THAT "THE DEFENDANT APPLIES TO THIS COURT ON A DATE TO BE FIXED FOR A DETERMINATION PURSUANT TO S.24 OF THE L & T ACT 1954 FOR A RENT WHICH THE CLAIMANT T's TO PAY FOR THE PREMISES WHILST ITS TENANCY CONTINUES UNDER S.24 (IE, AN INTERIM RENT).
- ▶ IF THE PARTIES ARE STILL NEGOTIATING THEY CAN ASK THE COURT FOR A "STAY " (POSTPONEMENT) OF PROCEEDINGS WHICH THE COURT WILL NORMALLY GRANT
- ▶ UNLESS THE PARTIES HAVE AGREED TO A STAY THE COURT WILL SET A DATE FOR A MEETING AT COURT TO SET THE DIRECTIONS FOR THE CASE TO PROCEED OR WILL ISSUE A CONSENT ORDER WITH DIRECTIONS IF THE PARTIES HAVE BEEN ABLE TO AGREE THE DIRECTIONS.

TYPICAL COURT DIRECTIONS - SET OUT IN A CONSENT ORDER

- ▶ WORKING FROM THE DATE OF THE CONSENT ORDER DEFENDANT HAS 8 WEEKS TO ISSUE A DRAFT LEASE TO CLAIMANT
- ▶ CLAIMANT HAS 2 WEEKS TO RESPOND WITH AMENDMENTS IN **RED**
- ▶ DEFENDANT HAS 2 WEEKS TO MAKE COUNTER-AMENDMENTS IN **GREEN**
- ▶ (AS SURVEYOR ADVISING L/L (OR T) YOU MAY BE ASKED FOR YOUR INPUT ON HOW AN AMENDED CLAUSE IMPACTS ON RENTAL VALUE)
- ▶ 1 WEEK LATER PARTIES ARE TO HAVE WITHOUT PREJUDICE MEETING TO NARROW THE ISSUES
- ▶ 1 WEEK LATER CLAIMANT TO PREPARE AND SERVE ON DEFENDANT LIST OF TERMS NOT AGREED TO WHICH DEFENDANT CAN ADD HIS COMMENT WITHIN ONE FURTHER WEEK
- ▶ DISCLOSURE - 1 WEEK LATER PARTIES TO LIST DOCUMENTS THEY WISH TO SEE AND ALL THE LISTED DOCUMENTS MUST BE EXCHANGED WITHIN 2 WEEKS THEREOF.
- ▶ (AS SURVEYOR ADVISING L/L (OR T) ALL YOUR CORRESPONDENCE WITH THE OTHER SIDE WILL BE DISCLOSED)
- ▶ WITNESS STATEMENTS WITHIN 3 WEEKS THE PARTIES SHALL EXCHANGE WRITTEN WITNESS STATEMENTS OF ALL WITNESSES OF FACT ON WHOM THEY INTEND TO RELY ON WITH ANY RELEVANT DOCUMENTATION. THESE WITNESSES ARE PERMITTED TO GIVE EVIDENCE AT TRIAL. THE WITNESSES MAY BE THE L/L AND THE T.

(AS SURVEYOR ADVISING L/L (OR T) YOU MAY BE ASKED TO CHECK THAT THE WITNESS STATEMENTS DON`T IN ANY WAY CONTRADICT WHAT YOU WILL SAY IN YOUR EXPERT REPORT)

- ▶ EXPERTS EACH PARTY CAN NOMINATE AN EXPERT VALUATION WITNESS TO GIVE ORAL EVIDENCE IN COURT AT THE TRIAL. THEY ARE DIRECTED TO PREPARE AND EXCHANGE EXPERT WRITTEN REPORTS SIMULTANEOUSLY WITHIN 3 WEEKS OF THE WITNESS STATEMENTS
- ▶ AS L/L OR T`S EXPERT WITNESS YOUR WRITTEN REPORT WILL BE THE KEY EVIDENCE AND IN COURT YOU WILL BE EXAMINED AND CROSS-EXAMINED ON THE REPORT AND THE EVIDENCE
- ▶ 1 WEEK LATER EXPERTS ARE DIRECTED TO MEET WITHOUT PREJUDICE TO AGREE AS MUCH AS POSSIBLE AND IDENTIFY WHICH ISSUES ARE STILL IN DISPUTE
- ▶ THE EXPERTS MUST THEN WITHIN 1 WEEK AGREE A JOINT WRITTEN STATEMENT OF THE ISSUES AGREED AND IN DISPUTE
- ▶ **LISTING** THE CONSENT ORDER THEN SETS OUT A DATE ON WHICH THE CASE (IF NOT THEN AGREED) WILL BE LISTED BEFORE A CIRCUIT JUDGE - THIS DATE WILL FALL WITHIN A CALENDAR WINDOW, PERHAPS A ONE MONTH WINDOW, WITH A PROVISIONAL ALLOCATION OF COURT TIME OF SAY 1 X DAY AS EXPERT WITNESS YOU MUST MAKE YOURSELF AVAILABLE FOR THE WINDOW
- ▶ **PREPARATION FOR TRIAL** - CONSENT ORDER PROVIDES THAT -
- ▶ CLAIMANT MUST LODGE FULL BUNDLE OF DOCUMENTS WITH THE COURT NOT MORE THAN 7 DAYS NOR LESS THAN 3 DAYS BEFORE THE START OF THE TRIAL. IT SHOULD CONTAIN ALL THE DOCUMENTS ON WHICH BOTH PARTIES INTEND TO RELY , IE - NO SURPRISES
- ▶ BUT CLAIMANT MUST AT LEAST 14 DAYS BEFORE THAT GIVE TO THE DEFENDANT AN OPPORTUNITY TO STATE WHICH DOCUMENTS IT REQUIRES IN THE BUNDLE.
- ▶ A CASE SUMMARY NOT EXCEEDING 250 WORDS SHALL BE AGREED BY THE PARTIES BUT IF NOT EACH PARTY MAY PREPARE IT`S OWN CASE SUMMARY NOT EXCEEDING 200 WORDS.

NB TO DATE THIS PROCESS HAS TAKEN PERHAPS 6 MONTHS SINCE T MADE THE CLAIM AND PERHAPS 6-12 MONTHS BEFORE THAT SINCE L/L SERVED THE S.25 NOTICE.

- ▶ THE RENTAL VALUE 12-18 MONTHS AGO MAY BE DIFFERENT TO NOW AS NEW EVIDENCE HAS ARISEN. THIS MEANS THE VALUATION IN EXPERTS REPORTS NEEDS TO BE UPDATED/ CHANGED - THIS IS PERMITTED BUT ADDS EXTRA COSTS
- ▶ THE PROCEDURES ARE CUMBERSOME AND TIME CONSUMING AND COSTLY (PARTICULARLY THE LEGAL COSTS)
- ▶ **Q. HOW DO YOU PROTECT YOUR POSITION ON COSTS?**
- ▶ **A. MAKE A CPR PART 36 OFFER TO SETTLE (SIMILAR TO A CALDERBANK OFFER)**
- ▶ 1) A PART 36 OFFER MUST—
- ▶ (A) BE IN WRITING;
- ▶ (B) MAKE CLEAR THAT IT IS MADE PURSUANT TO PART 36;
- ▶ (C) SPECIFY A PERIOD OF NOT LESS THAN 21 DAYS WITHIN WHICH THE DEFENDANT WILL BE LIABLE FOR THE CLAIMANT'S COSTS IN ACCORDANCE WITH RULE 36.13 OR 36.20 IF THE OFFER IS ACCEPTED;
- ▶ (D) STATE WHETHER IT RELATES TO THE WHOLE OF THE CLAIM OR TO PART OF IT OR TO AN ISSUE THAT ARISES IN IT AND IF SO TO WHICH PART OR ISSUE; AND
- ▶ (E) STATE WHETHER IT TAKES INTO ACCOUNT ANY COUNTERCLAIM.
- ▶ **NOTWITHSTANDING THE RRO CHANGES TO THE 54 ACT THERE ARE STILL 'TIME TRAPS' IN THE NOTICE PROCEDURES**
- ▶ **MOST CASES ARE SETTLED BY NEGOTIATION BEFORE THE CASE GETS TO COURT OR AT THE DOORS OF THE COURT WHEN THE HIGH LEVEL OF POTENTIAL COSTS IS REALISED.**

▶ RESUME OF MAIN ISSUES

- ▶ REMEMBER THE PARTIES CAN BY NEGOTIATION AGREE TO ANY DATES AND ANY TERMS AND KEEP THE CASE OUT OF COURT OR WITHDRAW FROM THE COURT PROCESS.
- ▶ THERE ARE MORE AND MORE LEASE RENEWALS BECAUSE AVERAGE LEASE LENGTHS ARE SHORTER.
- ▶ THE GOVERNMENT HAVE CLOSED 1/3RD OF THE COUNTY COURTS - SO THE PRESSURE ON THE COURTS HAS INCREASED AND THE WAIT FOR COURT DATES WILL BECOME LONGER AND LONGER.
- ▶ THE RENT (AND OTHER TERMS) WILL BE SET AT TRIAL BY A CIRCUIT JUDGE WHO MAY HAVE NO PRIOR EXPERIENCE OF COMMERCIAL PROPERTY VALUATION.
- ▶ TO TAKE THE PRESSURE OFF THE COURTS COSTS OF CLAIMS HAVE BEEN INCREASED AND THE PARTIES ARE ENCOURAGED TO AVOID COURT AND SEEK SETTLEMENT BY ALTERNATIVE DISPUTE RESOLUTION (ADR - MEDIATION OR PACT ARBITRATION OR EXPERT) OR ELSE IF THEY GO TO COURT THE LOSING PARTY HAVING REJECTED ADR WILL BE PENALISED ON COSTS.
- ▶ (PACT PROFESSIONAL ARBITRATION ON COURT TERMS - ARBITRATOR OR EXPERT ACTS IN THE CAPACITY OF THE CIRCUIT JUDGE DECIDING THE RENT AND PERHAPS LEASE TERM, REVIEW PATTERN, BREAKS AND BREAK PENALTIES - BUT DOES NOT MAKE THE ORDER FOR A NEW LEASE TO BE GRANTED).

RESUME OF MAIN ISSUES - CONTINUED

- ▶ MOST CONTESTED LEASE RENEWALS ARE ABOUT THE LEVEL OF RENT AND/OR THE LENGTH OF LEASE AND/OR A BREAK CLAUSE AND IF SO IF THERE SHOULD BE A RENT PENALTY IF THE BREAK CLAUSE IS EXERCISED.
- ▶ COURTS GENERALLY WILL NOT DETERMINE A LENGTH OF LEASE LONGER THAN THE T WANTS - SO EVEN IF L/L HAS EVIDENCE OF TENANTS TAKING 10 YEAR LEASES BUT THIS TENANT ONLY WANTS A 5 YEAR LEASE ONLY THE T IS LIKELY TO PREVAIL.
- ▶ AN EXCEPTION IS **ICELAND FOODS LIMITED V CASTLEBROOK HOLDINGS LIMITED** – L/L WANTED 15 YRS – T WANTED 5 YRS – COURT GRANTED 10 YRS BUT THIS IS A FOODSTORE WHERE 10 YR TERMS AND ABOVE ARE COMMON
- ▶ VERY FEW CASES GO TO COURT OVER THE OTHER TERMS OF THE LEASE.
- ▶ IT IS THE FLUID VALUATION DATE WHICH GIVES RISE TO MUCH OF THE EXTRA DELAYS AND COSTS OF LEASE RENEWALS - IF THE CASE GOES TO COURT THE VALUATION DATE IS THE DATE OF THE HEARING WHICH MIGHT BE MONTHS OR A YEAR OR MORE AFTER THE ORIGINAL CONTRACTUAL EXPIRY DATE.