

SEMINAR 21st AUGUST 2017

- ❖ LANDLORD & TENANT ACT 1954 Part 2 - 50 mins
- ❖ OPEN QUESTION TIME - 10 mins

*SEMINAR BY DOUG STEVENS TO 1st & 2nd YEAR
GRADUATES*

DELIVERED AS A POWERPOINT PRESENTATION

LANDLORD & TENANT ACT 1954 business tenancies

- ❖ Post war legislation to protect businesses
- ❖ Security of tenure. Compensation.
- ❖ Is it still fit for purpose 63 years on?
- ❖ Landlords regard it as archaic - value destroying
- ❖ Tenants want the security it provides
- ❖ Unique to England (Wales & NI) - not in Scotland
- ❖ Only applies to leases not contracted out
- ❖ Costly and complicated - Court involvement
- ❖ Applies on renewal of the lease
- ❖ In spotlight because of shorter lease lengths
- ❖ Does the Act stand alone. NO

Changes made to L & T Act since 1954

- ▶ LAW OF PROPERTY ACT 1969 S.24a INTERIM RENT
- ▶ LANDLORD & TENANT COVENANTS ACT 1995 - Lease must comply
- ▶ WOOLF REFORMS - CIVIL PROCEDURES ACT 1999 Costs & case management & Part 36 offers. Intention to make litigation faster.
- ▶ REGULATORY REFORM ORDER (RRO) 2003 - Clearer notices. Easier to contract out
- ▶ JACKSON REPORT 1st April 2013 - Costs - Alternative Dispute Resolution (ADR) Arbitration (PACT) Mediation
- ❖ Statutory Instruments, ie, multiplier for statutory compensation 1 or 2 x RV
- ❖ Q. You are the L/L or T or the agent for either. The property is held on a lease expiring 24th June 2018. What is the most important thing to establish ?
- ▶ A. Is the property under-rented or over-rented. This will determine what action you take and when you take it.

Strategy as L/L or T

- ▶ There is a lot of strategy involved in dealing with lease expiries both on the L/L`s and the T`s side.
- ▶ Early decisions should be taken - especially if L/L wants vacant possession for redevelopment or T wants to know if they can afford to renew the lease.
- ▶ This will involve taking decisions as to whether to serve notices, when to serve them and what form they should take
- ▶ Q. If property is under-rented/reversionary what do you do as L/L - or T ?
- ▶ A. As L/L serve notice to terminate lease. As T do nothing (assuming trading viability)
- ▶ Q If property is over-rented what do you do as L/L - or T ?
- ▶ A. As L/L do nothing. As T serve notice to terminate lease
- ▶ Q. What happens if neither L/L nor T serves a notice ?
- ▶ A. S.24 comes in to play

L & T ACT - Important clauses

(Assume lease expires 24th June 2018)

- **Q.** When does this lease come to an end.
- **A.** NEVER unless one party serves a notice to bring it to an end or the T vacates on that date
- **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 (subject to S.24a)
- Where the Tenant is holding over after the expiry of the contractual term, the Tenant will have to give 3 months notice to terminate the tenancy, such notice expiring on ANY day (not now a quarter day only).
- 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.
- ▶ **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.
- Pre-2003 (and if T asks for new lease and then decides not to proceed) Interim Rent calculated as market rent less allowances for Tenancy from year to year (10%) + tempering the effect of an increase.
- Now generally same as new lease rent unless change in market conditions

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- ▶ **S.25 NOTICE L/L Notice** to terminate lease. Friendly (offering T new lease) or hostile (objecting to new lease on specified ground(s))
- ▶ Served not > 12 months before contractual lease expiry – so 25th June 2017
Nor < 6 months – so 26th December 2017
- ▶ Notice now contains warnings to T – Must specify terms for the new lease
- ▶ Can't be served if T has served S.26.
- ▶ **S.26 NOTICE – T Notice** to terminate lease requesting a new lease – Why ?
- ▶ Served not > 12 months and not < 6 months before contractual expiry and specifies terms on which T wishes to renew the lease (but is not bound by those terms). Can't be served if S.25 already served
- ▶ T must then also make an application to the Court for a new lease BEFORE the expiry date in the S.26 Notice (or loses rights) unless the matter is already before the Court.
- ▶ L/L has 2 months to respond to T's S.26 Notice – time of essence if he wants to go hostile – but not if he will offer a new lease
- ▶ **NB S.25 or S.26 Notices can be served to take effect post contractual expiry date** ie, if no S.25 served T can extend lease by serving S.26

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- **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.**
- Serving notice is preferable as it prevents a continuation tenancy from arising. Where a tenant intends to rely on Section 27(1A), it should take great care to ensure it vacates fully and on time.
- Where the tenancy has continued beyond contractual expiry by virtue of Section 24 of the Act under Section 27(2), the tenant may serve not less than three months' notice to bring the tenancy to an end at any time.
- Once this notice has been served, it is irrevocable and the tenant has no right to remain in the property once the termination date passes
- If the tenant has previously served a S.26 Request, it cannot later serve a S.27 notice
- ▶ **S.28 Renewal of tenancies by agreement.**
- ▶ Where the landlord and tenant agree terms for a new lease, on terms and from a date specified in the agreement, (expiry date or a later date) the current tenancy shall continue until that date but no longer, and shall not be a tenancy to which this Part of this Act applies.
- ▶ **Sections 24 - 28** These are the sections of the Act which deal with the rights of the T to a new lease.
- ▶ It is these provisions which are excluded when a lease is contracted out of the L & T Act 1954 (by agreement of the parties)
- ▶ **S.29 Order by Court for grant of a new tenancy or termination if L/L has successfully**
- ▶ **opposed renewal**

S.30 Grounds of objection to new lease

▶ **BAD TENANT GROUNDS**

- ▶ (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;



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- ▶ (d) **ALTERNATIVE ACCOMMODATION** 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) **WHOLE v UNDERLETS** 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 purpose 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) **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;

- ▶ (g) **OWN OCCUPATION** subject as hereinafter provided, that 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. **5 YEAR RULE - Supermarkets**

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- ▶ **S.31 Dismissal of application for new tenancy where landlord successfully opposes on S.30 grounds**
- ▶ **S.31a Grant of new tenancy in some cases where s. 30 (1) (f) applies.**
- ▶ (1) the court shall not hold that the landlord could not reasonably carry out the demolition, reconstruction or work of construction intended without obtaining possession of the holding **IF**
- ▶ (a) the tenant agrees to the inclusion in the terms of the new tenancy of terms giving the landlord access and other facilities for carrying out the work intended and, given that access and those facilities, the landlord could reasonably carry out the work without obtaining possession of the holding and without interfering to a substantial extent or for a substantial time with the use of the holding for the purposes of the business carried on by the tenant; or
- ▶ (b) the tenant is willing to accept a tenancy of an economically separable part of the holding and either paragraph (a) of this section is satisfied with respect to that part or possession of the remainder of the holding would be reasonably sufficient to enable the landlord to carry out the intended work.
- ▶ (2) For the purposes of subsection (1)(b) of this section a part of a holding shall be deemed to be an economically separate part if, and only if, the aggregate of the rents which, after the completion of the intended work, would be reasonably obtainable on separate lettings of that part and the remainder of the premises affected by or resulting from the work would not be substantially less than the rent which would then be reasonably obtainable on a letting of those premises as a whole.]

TERMS OF NEW LEASE S.32-35

- ▶ **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.

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▶ 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

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- ▶ **S.37 Compensation where order for new tenancy precluded on certain grounds.**
- ▶ **NO COMPENSATION** if S.30 (a),(b),(c) or (d) alternative accommodation
- ▶ **COMPENSATION** if S.30 (e),(f),(g)
- ▶ **Current provisions (by statutory instrument) are 1 x Rateable Value (RV) for tenancy of < 14 years – 2 X RV for > 14 years**
- ▶ **NB** Apply Rateable Value at date of L/L S.25 or T S.26 Notice
- ▶ **S.38 (4) Contracting out – or effecting a surrender**
- ▶ **Previously to contract out a joint application to the Court by the parties was required.**
- ▶ **Now (since 2003/4) under new S.38a L/L can serve notice of not < 14 days for T to enter in to contracted out lease – notice has `health warning` T must sign a statutory declaration confirming understanding of the notice**
- ▶ **S.40 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.

L & T Act - other matters

- ▶ Re-gears - the creation of a reversionary lease to extend an existing term avoids the L & T Act processes
- ▶ Reversionary lease can be agreed without any notices or involvement of the Court.
- ▶ Q. Is a T at lease renewal entitled to a rent free period ?
- ▶ A. **Current case law (4 x County Court judgements) will allow the adjustment of the rent to reflect a rent free period if the market evidence demonstrates rent frees are the norm.** The sum of rent for the appropriate rent free period is amortised on a straight line basis over the length of the new term or until the first break clause
- ▶ PACT Professional Arbitration on Court Terms. The parties can agree that an Arbitrator (or Expert) decides the rent (and other terms) rather than a County Court judge. See previous Seminar May 2015