

## Practical tips on issues commonly arising from the LTA 1954

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## Part 1: Commercial L&T

- Part II of the Landlord and Tenant Act 1954 entitles a tenant occupying premises for business or professional purposes, upon taking certain procedural steps within fixed time limits, to a new tenancy as of right unless the landlord can establish one or more specific grounds of opposition (Woodfall, 22.001)
- Section 23(1) of Part II:
  - ‘subject to the provisions of this Act, this Part of this Act applies to any tenancy where the property comprised in the tenancy is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes’
- Eight conditions need to be satisfied

## Does the 1954 Act apply?

- Initial questions:
  1. Is there an existing tenancy?
  2. Does the tenancy include 'premises' which are capable of being occupied?
  3. Are the premises occupied?
  4. Is the occupation that of the tenant?
  5. Is the occupation for the purposes (or partly for the purposes) of a 'business'?
  6. Is that business carried on by the tenant?
  7. Is the business use permitted under the subsisting terms of the tenancy?
  8. Does the tenancy fall outside the specific exceptions in section 43?
- Excluded pursuant to section 38A(1) of the Act?

## Automatic continuation of tenancies – section 24

- The effect of section 24(1) is that a tenancy to which the Act applies continues unless and until it is terminated in accordance with the provisions of the Act.
- How can the tenancy be terminated pursuant to the Act?
  - A notice is given by the competent LL (s.25 notice)
  - The T makes a request for a new tenancy (s.26 notice)
  - T gives a notice to terminate (s.27(2))
  - It is surrendered
  - It is forfeited
  - A notice to quit is given by the T

## Tenant's notice under section 27

- If a T wishes to prevent a continuation tenancy arising under s.24, it can either:
  - Serve a notice under s.27(1) giving not less than 3 months' notice to the immediate L (not the 'competent L', as to which see below) to terminate the tenancy on the term date; or
  - Vacate prior to the term date (s.27(1A)).
- If a continuation tenancy has arisen a T can give 3 months' notice to the immediate L to terminate the continuation tenancy at any time (s.27(2)), and by s.27(3) the rent will be apportioned where necessary.

# LANDLORD'S NOTICE UNDER SECTION 25



- A s.25 notice is used by the L either to end the T's occupation or to propose a new tenancy on new terms.
  - Numerous formalities for the notice
  - Prescribed form
  - Given in good faith
  - Termination date
  - Be given not more than 12 months nor less than 6 months before the termination date specified therein (s.25(2))
  - State whether the L is opposed to the grant of a new tenancy to the T and, if so, specify one or more of the grounds of opposition specified in section 30(1) of the 1954 Act. If not, the notice must set out the L's proposals as to the new tenancy.

## TENANT'S NOTICE UNDER SECTION 26

- The s.26 notice must:
  - Be in the prescribed form
  - Be given by all joint tenants
  - Specify a start date for the new tenancy (not more than 12 months or less than 6 months after the date of the request and must not be earlier than the date on which the current tenancy ends)
  - State the proposals for the new tenancy, including: (i) the extent of the demise (all or part of the property comprised in the current tenancy); (ii) rent; (iii) other terms proposed
- Does not have to be given in good faith
- If the L wishes to oppose a new tenancy then they must give written notice (a counter-notice) within 2 months and state the grounds on which the grant is opposed.

# LANDLORD'S GROUNDS OF OPPOSITION TO A NEW TENANCY



- Statutory grounds s.30(1)
  - Ground (a) failure to repair or maintain the premises
  - Ground (b) persistent delay in paying rent
  - Ground (c) substantial breaches of covenant
  - Ground (d) alternative accommodation has been offered
  - Ground (e) preferential to L to let/sell the premises as part of a bigger unit/parcel of land
  - Ground (f) intention to demolish or carry out substantial works
  - Ground (g) intention to occupy for L's own use



## Ground (f) - intention to demolish or carry out substantial works



- “ 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”
- At the date of the trial, the landlord must show a firm and settled intention to carry out the work at the termination of the tenancy. Such intention is both subjective and objective, that is, does the landlord have a realistic prospect of implementing the plans: Gregson v Cyril Lord [1963] 1 WLR 41 CA.
- Whilst motive and commercial viability are not relevant, demonstrating an objective intention includes showing that there are no insurmountable hurdles which prevent the landlord’s plans being realised, for example, that: (i) All necessary planning consents have been granted or that there is a reasonable prospect of them being so granted; (ii) The landlords can finance their plans; (iii) The works will start within a reasonably short time of the determination of the current tenancy.
- S Franes Ltd v The Cavendish Hotel (London) Ltd [2018] UKSC 62 - would the landlord still carry out the same works if the tenant left voluntarily?

## Ground (g) - intention to occupy for L's own use



- “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.”
- The intended occupation must be of all or substantially all of the holding: ***Method Developments Ltd v Jones*** [1971] 1 WLR 168.
- The same interpretation of intention as under ground (f) applies. The relevant time for proving the intention is the date of the hearing.
- ***Humber Oil Terminals Trustee Ltd v Associated British Ports*** [2012] EWCA Civ 596 provides a useful review of the approach the court should take when considering intention. It is to be evaluated on the assumption that the landlord will obtain vacant possession at the termination of the lease, but the court is not required to consider whether the redevelopment is commercially feasible.