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Renewing a Lease

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

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

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

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

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

What should I do first?

Think about the objectives of your business and prepare a plan of your property requirements, short term and long term. Ask yourself some key questions. Are your present premises too big or too small? Are they an asset to the business or an encumbrance? Do you want the security of a long lease or the flexibility of a shorter one? Would it make sense to move to another building and would you face a big bill for dilapidations if you did

What are my rights as an existing tenant?

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

When may the landlord refuse to grant a new lease?

The usual justifications for refusing a new lease are:

- The tenant is not occupying the premises for the purposes of his or her business.
- The tenant does not follow the correct legal procedures.
- The court upholds the landlord's objection to a new lease, usually because the landlord wants the property for his or her own occupation or wishes to redevelop it



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- (you might be entitled to compensation for disturbance in these cases). Or perhaps the tenant has seriously breached the terms of the current lease.
- Either a court order was obtained or from the 1st June 2004 the tenant confirmed at the start of the lease that there would be no security of tenure.

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

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

The important point to grasp is that lease renewal involves two separate processes which operate in tandem:

- Application to the court to protect your legal right to security of tenure.
- Application to (and negotiation with) your landlord to secure a new lease.

If as a tenant you fail to make a correct notice to the court whether or not you think in practice that your landlord will be happy to grant you a new lease on acceptable terms you could lose your right to a lease renewal. This protects your legal position. If you then negotiate a lease that suits you with your landlord, the court does not need to become involved further. But if things go wrong the court has the power to require the landlord to grant you a new lease and to set the terms. It may also set the terms where the landlord offers a new lease but the parties cannot agree the detail.

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

How are the terms of the new lease settled?

Usually by negotiation between the landlord and tenant or their respective chartered surveyors. For more information please visit the link provided at the bottom of the page.

How is the new rent set?

The rent will usually be agreed at the current open market level for properties of a similar type in your area. A chartered surveyor will be able to advise on the likely level that can be agreed.

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

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



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

How does the court procedure work?

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

What are the alternatives to the court for resolving disputes?

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

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

What happens when terms for the new lease are agreed?

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

At what stage can I still change my mind?

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



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Further Information

For more information on taking a commercial lease please visit www.leasingbusinesspremises.co.uk. A chartered surveyor can advise you on your options and the terms that you might realistically achieve.

For a list of property related matters please visit the Business Property Advice page www.rics.org/bpa

Find an RICS member

If you want to find independent, impartial advice from a qualified professional with good local knowledge, contact us.

To find a chartered surveyor in your area visit www.ricsfirms.com

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