

Property Law Nuts & Bolts

Business Tenancy Renewals

Tuesday 18 November



Welcome and Introduction



Miriam Seitler



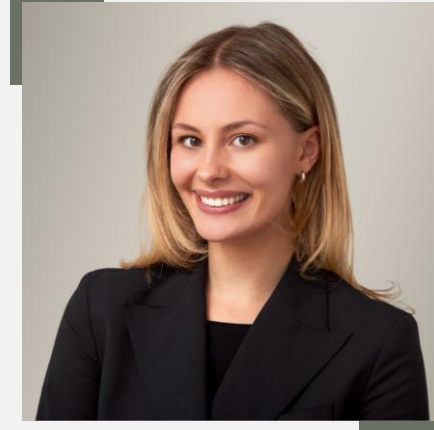
Your speakers for today



Miriam Seitler



Brooke Lyne



Poppy Kemp



An overview of notices and lease renewal procedure



Poppy Kemp



Who does the scheme apply to?

s.23(1) LTA 1954:

“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.”



What if you don't want to fall in the scheme?

- It is possible to “contract out” of the scheme (s.38A).
- Contracting out:
 - If there are 14 days or fewer before the lease is due to start → landlord will serve a warning notice highlighting the implications of contracting out, the tenant will reply with a statutory declaration (paragraph 4, schedule 2, RRO 2003).
 - If more 14 days or more before the lease is due to start → landlord will serve the warning notice and the tenant will reply with a simple declaration (paragraphs 2 and 3, schedule 3, RRO 2003).



What happens at the end of the contractual term of a lease falling under Part II, LTA 1954?

- The tenancy will continue on the same terms as before (section 24(1) LTA 1954).
- A tenant under a fixed-term tenancy has a statutory right to renew the lease at the end of the contractual term (“the right to renew”)
- Options? Terminate the continuation tenancy or terminate the continuation tenancy and renew.



L wishes to renew or terminate – Section 25

- Must be served not more than 12 months, nor less than 6 months before the termination date specified in the notice (s.25(2) LTA 1954).
- Once a valid s.25 notice has been served, it cannot be unilaterally withdrawn or amended by L (*Hutchinson v Lambeth* [1984] 1 EGLR 75).
- It must be in the prescribed form or in a form substantially to like effect (s.25(1) LTA 1954, LTA, Part 2 (Notices) Regulations 2004).
- Two forms: (1) where landlord wishes to renew, (2) where the landlord wishes to terminate.
- Where L wishes to renew → it must confirm the new property, rent and other terms (s. 25(6)) LTA but it cannot force T to enter into the tenancy (s.29(5)).
- Where L wishes to terminate → It must state the ground(s) it relies on (s. 25(7)).



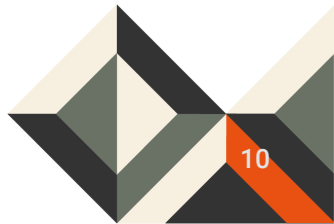
What happens next? Section 29

- Either L or T can apply to court
- T can apply for a new tenancy and challenge L's grounds of opposition
- L can apply to the court for an order terminating the tenancy without renewal
- If neither party applies to the court within the prescribed time limits, tenancy will come to an end on termination date given in s.25 notice and T will no longer have the right to occupy the property
- Neither L nor T can apply to the court if the other party has already done so **and served the application (s.24(2A), s.29(3)).**



T wishes to renew – Section 26

- T can request a new business tenancy by serving a valid s.26 request on the competent landlord.
- Must be served no fewer than 6 months before and no more than 12 months before the commencement date.
- Must be in the prescribed form (schedule 2, LTA 1954, Part 2 (Notices) Regulations 2004).
- Service of the s.26 request will not oblige the tenant to take the new lease, It is the trigger to initiate the renewal process.
- Cannot be unilaterally withdrawn, nor amended (*Polyviou v Seeley* [1980] 1 WLR 55).



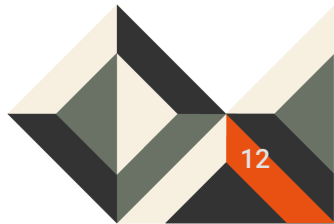
L wishes to oppose the tenant's request for a new tenancy - Counternotice

- L must serve a counter-notice within two months after the tenant's request.
- It must specify the ground(s) in s.30(1) on which it opposes the application for renewal (s.26(6) LTA 1954).
- No prescribed form but must be in writing and use the same wording for the grounds that is used in connection with s.30(1) LTA 1954.
- Failure to serve a counter-notice → cannot oppose tenant's renewal application and will have to grant the tenant a new lease.
- L can then apply for an order that the tenancy should be terminated (s.29(2)(b)).
- T will succeed unless L can rely on one of the grounds of opposition (s.31(1)).



T wishes to terminate – Section 27

- Tenant must serve a notice to quit
- Cannot be used in the first month of the tenancy
- Must give 3 months' notice
- If served at least three months prior to contractual termination → S.27(1).
- If served any time thereafter → s.27(2).
- No prescribed form.
- Does not apply to periodic tenancies.



If both parties agree to a new lease

- ... and they agree to the terms → s.28.
- ... but they cannot agree to the terms → s.32-35 applies. The court will decide the new terms but will give effect to any agreements made by the parties.



Some quirks in the law

- L cannot serve a section 25 notice if a tenant has already served a valid section 26 request and vice versa
- Periodic tenancies
- Competent landlords
- S.40 when unclear who is in occupation



Reform?

- The Law Commission is currently working on a business tenancies project.
- In November 2024, it published the first of two consultation papers. This paper was high level.
- Provisionally concluded that contracting out model should remain.
- The second consultation paper, which has not yet been published, is due to focus on the more technical aspects of 1954 Act.



Grounds of opposition



Brooke Lyne



What we will cover

- Overview of the grounds of opposition
- A focus on two recent ground (g) cases



Grounds of Opposition – what are they?

Section 30(1), LTA 1964

Ground (a)—breach of repairing obligations

Ground (b)—persistent delay in paying rent

Ground (c)—other substantial breaches of use or management of the property

Ground (d)—suitable alternative accommodation offered by the landlord

...



Grounds of Opposition – what are they?

...

Ground (e)—the landlord needs possession of the whole to re-let or sell as a whole

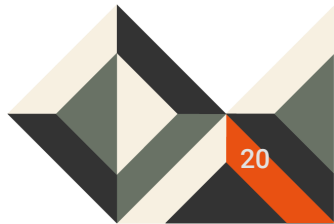
Ground (f)—the landlord wants to demolish or reconstruct the property

Ground (g)—the landlord wants to occupy the property



Ground (a) – breach of repairing obligations

“(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”



Ground (a) – breach of repairing obligations

- A two-stage approach (as per *Lyons v Central Commercial Properties London* [1958] 1 W.L.R. 869)
- First, the L needs to make out the ground
- Second, the court is required to consider whether the tenant ought not to be granted a new tenancy
- Exclusive focus on state of repair?
 - Yes: says CA in *Youssefi v Mussellwhite* [2014] EWCA Civ 885)
 - But inconsistent with earlier cases? (e.g. *Hutchinson v Lambeth* (1983) 270 E.G. 545)



Ground (a) – breach of repairing obligations

- “The neglect to repair...should be substantial” (*Lyons* and more recently *Kent v Guest* [2021] EWHC 51 (Ch))
- The breach are to be considered right up to the date of the hearing
- No statutory compensation is payable to T if L succeeds in opposing under this ground



Ground (b) – persistent delay in paying rent

“(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”



Ground (b) – persistent delay in paying rent

- The same two-staged approach
- The court will consider:
 - The number of times there has been delay in paying rent
 - The length of delayed payments
 - The steps L was obliged to take to secure payment
 - Reasons for the delay and late payment
 - Whether L can be adequately protected against future delays by inserting in the new tenancy a suitable proviso for re-entry and by requiring security for prompt payment to be given



Ground (b) – persistent delay in paying rent

- Once L shows that there has been persistent delay in payment of rent by T, the burden shifts to T to satisfy the court that the L's fears of a recurrence are unlikely to recur, as to justify the court in ordering the grant of a new lease.
- L's acquiescence in T's persistent late payments is likely to be a relevant consideration (*Hazel v Akhtar* [2001] EWCA Civ 1883)
- If this ground is established, then T will not be entitled to compensation



Ground (c) – other ‘substantial’ breaches of use or management of the property

“(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”



Ground (c) – other ‘substantial’ breaches of use or management of the property

- Again, a two-staged approach
- It is a question of fact as to whether the breaches are “substantial”
- For example, failure to insure will probably meet this requirement (see *Kent v Guest* [2021] EWHC 51 (Ch))
- The court will consider gravity of the breaches and whole of the relationship between L and T



Ground (c) – other ‘substantial’ breaches of use or management of the property

- Waiver or acquiescence on the part of L will militate against the refusal of a new tenancy on the ground of that breach
- If this ground is established, then T will not be entitled to compensation



Ground (d) – suitable alternative accommodation offered by the landlord

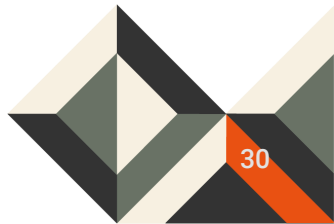
“(d) that the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, 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”



Ground (d) – suitable alternative accommodation offered by the landlord

- Not a discretionary ground
- L must show:
 - That it has made a firm offer of alternative accommodation to T. L need not herself provide the accommodation, for she may *secure* that it will be provided to T.
 - L is willing to provide or secure the provision of that alternative accommodation to the T. So, it must be available when the L comes before the court, and she must then be in a position to express willingness to provide it or secure it

...



Ground (d)—suitable alternative accommodation offered by the landlord

AND L must show:

- The alternative accommodation is available on terms which are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances
- That the accommodation is and will be suitable for the T's requirements



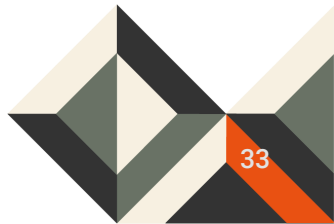
Ground (e) – the landlord needs possession of the whole to re-let or sell as a whole

“(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 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”



Ground (e) – the landlord needs possession of the whole to re-let or sell as a whole

- Discretionary ground
- Where premises are uneconomically sublet



Ground (f) – the landlord wants to demolish or reconstruct the property

“(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”



Ground (f) – the landlord wants to demolish or reconstruct the property

- L needs to identify the totality of the works to the *holding*
- L needs to show that the nature of the proposed works fall within ground (f):
 - Demolition of whole or a substantial part;
 - Reconstruction of whole or substantial part; or
 - Substantial work of construction of whole or part



Ground (f) – the landlord wants to demolish or reconstruct the property

- L must prove that it has the requisite “intention” to demolish or reconstruct the property
- This has a subjective and objective element and is to be judged at the date of the trial (*Betty's Cafes Ltd v Phillips* [1959] AC 20)
- L must also show that they could not reasonably perform the works without obtaining possession
- Gives rise to payment of compensation



Ground (f) – the landlord wants to demolish or reconstruct the property

- Subjective intention
- It must be genuine and not colourable; it must be firm and settled, not likely to be changed.
- It must have moved out of the zone of contemplation – the sphere of the tentative, the provisional and the exploratory – and have moved into the valley of decision
- The work must be intended even if the tenant were to voluntarily vacate (*S Franses Ltd v Cavendish Hotel* [2018] UKSC 62)



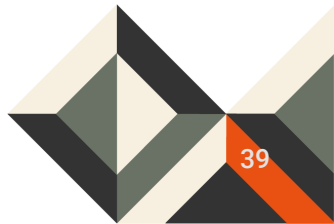
Ground (f) – the landlord wants to demolish or reconstruct the property

- Objective intention
- L must show that it has a reasonable prospect of being able to bring about the demolition or reconstruction envisaged
- There will need to be concrete evidence of finance and planning permission (either that it is not required or that it will be obtained)



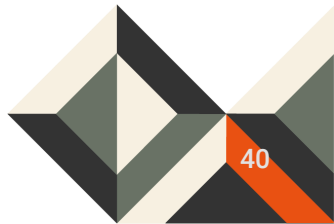
Ground (g) – the landlord wants to occupy the property

“(g) 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”



Ground (g) – the landlord wants to occupy the property

- L need not show that it intends to make physical use of the whole of the premises comprised in the holding
- L need not have an intention personally to occupy the premises – proposed occupation to carry on his business through an agent, manager or sub-contractor is sufficient
- Same subjective and objective elements of intention must be established
- 5-year rule



Ground (g) and Human Rights

MVL Properties (2017) Ltd v Leadmill Ltd [2025] EWHC 349 (Ch)

- T had built the premises into a successful music venue
- L opposed grant of new lease on the basis that it proposed to occupy the venue for itself as a music venue
- T argued that even if ground (g) was made out, then it would be a breach of its A1P1 rights to allow its 'goodwill' to be appropriated by L



Ground (g) and Human Rights

MVL Properties (2017) Ltd v Leadmill Ltd [2025] EWHC 349
(Ch)

...

- T was unsuccessful
- Ground (g) made out by L
- AND there had been no breach of T's A1P1 rights because the statutory grounds struck a fair balance between the right to renewal and the right to repossession



Ground (g) – A Cautionary Tale

McDonald's Restaurants Ltd v Shirayama Shokusan Co Ltd
[2024] EWHC 1133 (Ch)

- L had successfully opposed a new lease under ground (g)
- L had claimed that it intended to occupy the premises itself for a specific restaurant a trial, but then opened a different restaurant after its success at trial
- T said that L had deliberately misrepresented its intentions at trial and sought compensation under s.37A



Ground (g) – A Cautionary Tale

McDonald's Restaurants Ltd v Shirayama Shokusan Co Ltd
[2024] EWHC 1133 (Ch)

- The claim succeeded
- The controlling mind of L had made false, deliberate representations at trial about his intentions
- The termination order had been obtained as a result of those misrepresentations and compensation was due under s.37A.



Practice and Procedure



Miriam Seitler



1. Errors in notices

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Prescribed form – ‘substantially to the like effect’

Thomas v Turner [2023] CA



2. Extending the statutory period

s.29B

4-month period for service

Use of a stay



3. CPR PD 56

Part 7 or Part 8

Contents of CF and PoC and AckofS



4. When is a claim 'made'?

Court drop boxes

Court offices

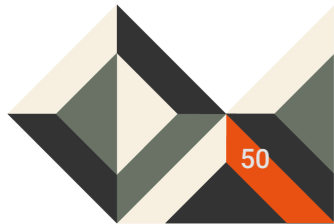
Court fees



5. Errors in name of Defendant in proceedings

Misdescription v. misidentification

Limitation, CPR r.17.4 and 19.6



6. Changing the grounds of opposition

Dropping grounds

New grounds



7. Changes after serving notice

Parties - CPR r.19

Does Act still apply?



8. Directions

Track

Summary judgment

Preliminary issue

Expert evidence

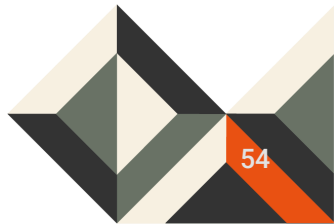


9. Importance of evidence

Voluntary disclosure at early stage

Sequential service, where renewal opposed

Practice Direction 57AC



10. Consent orders/Tomlin orders

s.64

s.2 of 1989 Act

s.28

Agreement to surrender, s.38A

Possession order



Q&A



Thank you

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