



Landlord and Tenant Act 1954 – Will the Upcoming Review Bring About Much Needed Reform?

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On the 28th of March, the Law Commission of England and Wales announced that it had been commissioned by the Department for Levelling Up, Housing and Communities to review part of the Landlord and Tenant Act 1954 (“the Act”) as part of the Government’s new Anti-Social Behaviour Action Plan.

As things stand, it is not clear which part of the Act will be subject to review; however, Professor Nicholas Hopkins (the Law Commissioner for Property, Family and Trust Law) stated in remarks accompanying the announcement that “*Parts of the current legislation are overly complex and bureaucratic, which is holding back businesses and the high streets and town centres they operate in*”. These comments will give solicitors acting for both landlords and tenants hope that the cumbersome process for contracting leases out of the provision of the Act will be streamlined.

The purpose of the Landlord and Tenant Act 1954 was to give tenants entering into commercial leases an automatic right to a new lease at the end of the term. This is known as ‘security of tenure’. However, it is common for the parties to agree that a lease will not have this protection, and under section 38A(1) of the Act, the lease can be ‘contracted out’ if the lease is for ‘*a term of years certain*’ (so is granted for a fixed term), contains a clause stating that the parties have agreed that the lease is not to have the benefit of security of tenure under the Act and the correct procedure is followed.

The correct procedure for the purpose of contracting out is set out in the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 and requires the landlord to serve a warning notice on the tenant, the tenant to make either a simple declaration (if the warning notice is served more than 14 days before the lease is to be completed or an agreement for lease is exchanged) or a statutory declaration (if less than 14 days notice is given before the lease is completed or an agreement for lease is exchanged) and the details of the declaration to be completed in the lease by the solicitors at the point the lease is entered into.

The process for contracting leases out of the Act is poorly understood by non-property professionals and can cause delay to transactions. Where a tenant is required to swear a statutory declaration, this can only be done in person in front of a solicitor who is independent to the transaction. This requires the involvement of an

additional set of lawyers. Where parties proceed without the assistance of a solicitor's guidance, a landlord can unknowingly grant the security of tenure to a tenant without having any understanding of the grounds that need to be demonstrated should they not wish to grant a new lease to that tenant once the lease term has expired.

The law surrounding the security of tenure (and more particularly around the contracting out process) has not been looked at for 20 years and is ripe for reform. The Law Commission aims to publish a consultation paper by December 2023, and we can only hope that they recommend the removal of the archaic requirements on landlords and tenants and suggest a legal framework for the granting of commercial leases that reflects the needs of this century's more dynamic business landscape.

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