

We're regularly asked by clients what the terms 'protected lease', 'security of tenure' and 'contracted out' actually mean so Amy Husk from our Commercial Property team explains the jargon here:

Right to renew

As a starting point, tenants of business leases have the right to renew the lease at the end of the fixed term under the Landlord and Tenant Act 1954 ("LTA 1954"). This right is often referred to as the lease being '**protected**' or having '**security of tenure**'. It is also sometimes referred to as being '**inside the Act**'.

Landlord's ability to oppose renewal

Although the default position is that the tenant has a right to renew the lease, the landlord is entitled to oppose the grant of a new lease on specific grounds. For example, certain serious breaches of the lease by the tenant or if the landlord intends to redevelop or occupy the property.

The landlord has to act in good faith and compensation can be awarded to a tenant if a landlord is shown to have misrepresented the position or concealed information.

When it comes to renewing the lease (or opposing a renewal) it is important that certain procedures are observed. Landlords and tenants should take legal advice well before the lease is due to come to an end.

Removing the right to renew altogether

The tenant's right to renew the lease can only be removed by certain procedures being followed prior to the lease or an agreement for lease (ie a contract for a lease to be entered into at a later date) being entered into. This procedure is often referred to as '**contracting out**' or the lease may be referred to as an '**unprotected**' or '**excluded lease**' or as being '**outside the Act**'.

The landlord must serve a warning notice on the tenant explaining that the statutory protection is being removed and:

- The tenant must enter into a declaration stating that the warning notice has been received and that the tenant accepts the consequences; or
- The tenant must enter into a statutory declaration (signed in front of a solicitor or commissioner for oaths). This confirms the same information as the declaration but if the landlord has served the warning notice less than 14 days before completion a statutory declaration is required.

The contracting out procedures must be strictly observed and it is important for landlords in particular to have legal advice in managing the process correctly.

So should the lease be inside or outside the LTA 1954?

Whether the lease is inside or outside the statutory protection of the LTA 1954 is a matter for negotiation between the parties when lease terms are being agreed. If the lease is outside the LTA 1954 the landlord may still choose to grant a lease renewal at the end of the lease term but this will be at the landlord's discretion and up for commercial negotiation.

Contracting the lease out of the LTA 1954 will give the landlord greater flexibility in the future but keeping it inside the LTA 1954 is likely to be more attractive to tenants as it will provide the tenant with greater long term security for its business.

If you would like any advice regarding a lease, get in touch for a friendly and informal chat today.

Call **01622 759 900** or email enquiries@outsetuk.com