

# Business tenancies protection

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In the current economic climate, it may be timely for landlords and tenants of commercial property to consider the provisions of the Business Tenancies (Northern Ireland) Order 1996 ('the 1996 Order').

CITY BUSINESS



This provides some measure of security of tenure for business tenants and, in certain circumstances, a right to the grant of a new tenancy.

## Does it apply to me?

The 1996 Order applies with certain exceptions to any tenancy where the property is occupied by the tenant for the purposes of a business carried on by the tenant.

## What is a business?

'Business' is defined quite broadly to include any trade, profession or employment and any activity carried on by a body of persons whether corporate or unincorporate. It does not matter if the business is not carried on for gain or reward and so might include the activities of charities and other voluntary groups.

## What tenancies are not included?

Several types of tenancies are excluded from the 1996 Order including, most significantly, a tenancy for a term not exceeding 9 months, except where the tenant has been in occupation for a period which, together with any period during which any predecessor in the carrying on of the same business was in occupation, exceeds 18 months.

## What are the security of tenure and statutory renewal provisions?

The general principle under the 1996 Order is that

business tenancies continue automatically for an indefinite period until terminated by one of the parties in accordance with its provisions. If the landlord does wish to bring the tenancy to an end, then this may only be done in accordance with the provisions of the Order.

A landlord may only terminate the tenancy by serving a 'notice to determine', which must state a 'date of termination' not less than 6 months and not more than 12 months after the date of service. It must also state whether the landlord is willing to grant a new tenancy and, if so, upon what terms. If the landlord is not willing to grant a new tenancy, he must state under which of the grounds set out in the 1996 Order he will oppose any application for the grant of a new tenancy. These include:-

a: Where the tenant has failed to comply with obligations in relation to repair and maintenance;  
b: Where the tenant has persistently delayed in paying rent;

c: Where there have been other substantial breaches of the tenant's obligations under the tenancy;

d: Where the landlord has made a reasonable offer of alternative accommodation;

e: Where the landlord intends to demolish and

undertake a substantial development of the property or to carry out substantial works of construction on the property or part of it and this could not be reasonably be done without obtaining possession of the holding;

f: Where the landlord or a company in which the landlord has a controlling interest intends to carry on a business at the property or the landlord intends to reside in it.;

g: Where the landlord is a company and a person with a controlling interest in that company intends that he or the company will carry on a business at the property or that he will reside in it. \*

It should be noted that grounds a, b, and c are discretionary grounds and if any of these is established by the landlord the Lands Tribunal has a discretion to order the grant of a new tenancy. The remaining grounds, d, e, f, and g are mandatory and if any of these is established the Lands Tribunal must refuse the tenant's application.

\* These grounds cannot be relied upon unless the landlord has owned the property for at least five years and where the landlord is a company unless the person with the controlling interest in that company has owned it for at least five years.

The tenant's application

If a tenant makes an application to the Lands Tribunal for a new tenancy and the landlord cannot successfully establish any of these grounds, the Tribunal must grant a new tenancy.

In the absence of agreement regarding the terms of this new tenancy, the Lands Tribunal has power to fix the term, rent and other provisions, subject to a maximum term of 15 years and with a rent based on the open market rent.

If the Tribunal dismisses an application for a new tenancy on any of the grounds other than those at a to c outlined above or where the tenant decides not to apply for or withdraws an application for a new tenancy due to opposition by the landlord on those grounds, the tenant is entitled to compensation for disturbance on quitting the property.

## Conclusion

The provisions of the 1996 Order are complex and compliance with the time-limits specified in connection with tenancy applications is vital. It is therefore very important for both landlords and tenants to seek expert advice at the earliest opportunity when faced with any such issues.

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