

Leased
Business
Premises – The
Right to Renew
a Tenancy

DILLON  EUSTACE

DUBLIN CORK BOSTON NEW YORK TOKYO

LEASED BUSINESS PREMISES – THE RIGHT TO RENEW A TENANCY

Introduction

The Landlord and Tenant (Amendment) Act, 1980 (the “1980 Act”), as amended by the Landlord and Tenant (Amendment) Act, 1994 (the “1994 Act”) governs the relationship between landlords and tenants of business premises and in particular, provides for a number of statutory reliefs for tenants, notably the right of a tenant to renew his or her lease.


The right to a new tenancy, and in particular the right to a new business tenancy, has been amended by Section 47 of The Civil Law (Miscellaneous Provisions) Act, 2008 (the “2008 Act”) which enables landlords and tenants of business premises to agree that the tenant shall have the option to opt out of the tenant’s statutory entitlement to a renewal of the lease.


This article outlines the evolution of the laws governing a commercial tenant’s rights of renewal and identifies the changes made by Section 47 of the 2008 Act.

Background

(1) The Landlord and Tenant (Amendment) Act 1980 (the “1980 Act”)

Section 16 of the 1980 Act provides that where Part II of the 1980 Act applies to a tenancy, the tenant shall be entitled to a new tenancy, commencing on the termination of the previous one, subject to proving any one of the following “equities”;

-  Business equity under Section 13(1) (a), as amended by Section 3 of the 1994 Act - if the tenant has continuously occupied the premises for 5 years.

-  Long possession equity under Section 13(1) (b) – the tenant is required to be twenty years in possession.

- ▣ Improvements equity under Section 13(1) (c) – if the tenant is entitled to compensation for improvements and the said improvements amount to half or more than half of the letting value of the tenement when the notice of intention to claim relief is served, then the tenant has an improvements equity.

If a new tenancy is established based on business equity, the new tenancy will be fixed at twenty years or such lesser term as the tenant may nominate. It will not however be fixed for a period of less than five years without the landlord's agreement.

If a new tenancy is based on long possession equity or improvements equity, the term of the new tenancy will be thirty-five years or such lesser term as the tenant may nominate in accordance with Section 23(2) of the 1980 Act, as amended by Section 5 of the 1994 Act. The new tenancy will commence on the termination of the previous tenancy.

Contracting out of one's rights under the 1980 Act is not permitted and Section 85 provides that any provision in a tenancy agreement to contract out of the said act will be void. The position changed somewhat with the implementation of the 1994 Act, as detailed below.

(2) The Landlord and Tenant (Amendment) Act, 1994 (the “1994 Act”)

Section 4 of the 1994 Act allows a tenant of an office premises to contract out of his or her right to a new tenancy, subject to the following conditions:

- ▣ The premises must be a business premises;
- ▣ The premises must be wholly and exclusively for office use;
- ▣ The tenant must validly renounce in writing his or her entitlement to a new tenancy before the term of the new tenancy commences; and
- ▣ The tenant must receive independent legal advice in respect of the renunciation.

The ability to contract out under the 1994 Act was only available to office tenants and did not apply to all business tenants.

Section 47 of the Civil law (Miscellaneous Provisions) Act 2008 (the “2008 Act”)

Section 4 of the 1994 Act was amended by Section 47 of the 2008 Act, which came into operation on the 1st July, 2008. The 2008 Act allows all business tenants, regardless of user, who have a tenancy pursuant to Section 13(1) (a) of the 1980 Act, to contract out of their entitlement to renew their tenancy, after five years. However it would appear that tenants who have a tenancy pursuant to Section 13(1) (b) and 13(1) (c) do not qualify under Section 47 of the 2008 Act and as such are not able to contract out of their rights to renew.

For this provision to apply the tenant must renounce his or her right to a new tenancy, in writing, and must receive independent legal advice in respect of the implications of the renunciation.

There is no requirement that this renunciation should be executed prior to the commencement of the tenancy (as was required under Section 4 of the 1994 Act), which means a tenant can agree to renounce his or her rights during the term of the lease.

Assuming a landlord wishes to avoid the legal obligation of having to renew a tenancy, the landlord should prior to the signing of a lease ensure that the tenant executes a valid deed of renunciation and is satisfied that the tenant has received independent legal advice regarding the implications of the renunciation.

Conclusion

Section 47 of the 2008 Act provides greater flexibility and freedom to both landlords and tenants when negotiating the term of the lease. It allows the landlord and tenant the opportunity to agree a tenancy term which is in keeping with their requirements and commercial realities without the landlord being statutory obliged to renew the lease. The contracting out provisions as provided for in the 2008 Act applies not only to a lease for office use but also includes retail, industrial and other business sections.

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