

Security of
Tenure in
Commercial
and Residential
Tenancies

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SECURITY OF TENURE IN COMMERCIAL AND RESIDENTIAL TENANCIES

The Four Equities

A commercial or residential tenant will look to the Landlord and Tenant (Amendment) Act 1980 (the “1980 Act”) and the Landlord and Tenant (Amendment) Act 1994 in asserting his or her rights to renew an existing lease. These acts provide that in order to be entitled to a new tenancy beginning on the termination of the previous tenancy, a tenant must prove the existence of one of the four “equities”.

Business Equity

A tenant has a business equity if he or she is in occupation of a business premise used wholly or partly for the purpose of carrying on a business for a continuous period of five years immediately prior to service of notice of intention to claim relief.

Long Possession Equity

A tenant has a long possession equity if he or she has been in continuous occupation of business or residential premises for a period of 20 years immediately prior to service of notice of intention to claim relief.

Improvements Equity

A tenant has an improvements equity if improvements have been made on either business or residential premises of which he or she is in occupation and not less than one-half of the letting value of the premises at the time is attributable to those improvements.

Rent Acts Equity

Sections 14 and 15 of the Landlord and Tenant (Amendment) Act 1980 give certain tenants of both commercial and residential premises, which were decontrolled by the Rent Restriction Acts 1960-1967, rights to a new tenancy.

As can be seen, the requirements which residential tenants must meet under the acts if they are to claim the right to renew an existing tenancy, put them in a rather unenviable position as compared to that enjoyed by a commercial tenant, which must only prove five years continuous occupation.

Grounds for Refusal to Grant New Tenancy

The legislative provisions under which a tenant may lose his/her entitlement to a new tenancy are more likely to impact adversely on residential tenants. Section 17(2) of the 1980 Act outlines the grounds on which a landlord can refuse to grant a new tenancy to which the tenant would otherwise be entitled. These grounds include where the landlord intends or has agreed to pull down or reconstruct the buildings or any part of the buildings, or where the landlord requires vacant possession for the purpose of carrying out a scheme of development. The relevance of these provisions to a tenant of a private house as opposed to a tenant of a unit in a shopping centre is obvious.

The Residential Tenancies Act, 2004 (the “2004 Act”)

The 2004 Act introduced significant changes in the law in respect of the private rented residential sector. Section 3(1) states that subject to exceptions outlined in subsection (2) the 2004 Act applies to every dwelling which is the subject of a tenancy. This includes a tenancy created before the passing of the 2004 Act. “Dwelling” includes any self-contained residential unit for valuable consideration, though it excludes a structure that is not permanently attached to the ground and a vessel and a vehicle (whether mobile or not). Section 5(1) defines tenancy to include a periodic tenancy and a tenancy for a fixed term whether oral or in writing or implied and where the context admits include a sub-tenancy and a tenancy or a sub-tenancy that has been terminated.

Part 4 of the 2004 Act deals with the issue of security of tenure and outlines the statutory relief for tenants of dwellings. Section 28 (1) states that where a person has, under a tenancy, been in occupation of a dwelling for a period of six months and provided that no notice of termination (subsection (3), details the required period of notice) has been served in respect of the tenancy before the expiry of the said six months then the tenancy shall continue for a period of four years from either the commencement of the tenancy or the relevant date, whichever is the later. This is known as a “part 4 tenancy”. If a tenant becomes entitled to a part 4 tenancy the landlord can only terminate on one of the following reasons:

- ▣ The tenant has not fulfilled his obligations under the tenancy.
- ▣ The accommodation is no longer suitable to the tenant’s circumstances (e.g. overcrowding).
- ▣ The landlord wishes to sell the dwelling within three months of the termination of the tenancy.
- ▣ The landlord requires the dwelling or the property containing the dwelling for his own occupation or the occupation of this family.
- ▣ The landlord wishes to refurbish or renovate the property to such an extent that he requires the property to be vacated.
- ▣ The landlord intends to change the use of the dwelling to some other use.

These are various provisions within the 2004 Act to safeguard the tenant’s position and to prevent a landlord vacating the tenant from the premises wrongfully.

A number of other key provisions of the 2004 Act relate to the frequency of rental reviews and to the limitations imposed upon the ability of a landlord to increase the size of rental payments.

Conclusion

The 2004 Act has improved security of tenure through a system of four year tenancy cycles with tenancy termination procedures including longer notice periods linked to the length of the tenancy.

The introduction of the 2004 Act would seem to be a further step towards balancing the landlord's right to use and dispose of his property as he sees fit and the tenant's right to a reasonable degree of security of tenure.

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