



TO RENEW OR NOT TO RENEW Is it as straightforward as you think?

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In today's current economic climate it is all too common place to find boarded up shops, empty warehouses and vacant shopping centre units scattered over our landscape. What was once a thriving, bustling marketplace now seems like a figment of the imagination. So it is most refreshing and encouraging when a Tenant decides to renew its lease on the natural expiry of its Lease term. Could this possibly be the realisation of the myth of the "green shoots of recovery". Only time will tell.

The Tenant's Renewal:

Under the Business Tenancies (Northern Ireland) Order 1996 (the BTO), there is an inbuilt security of tenure provision to ensure that despite the Tenant's lease coming to a natural end, the tenancy does not end as a Tenant has the right to continue its tenancy under the existing lease terms until such time that either party formalise their intentions regarding the tenancy.

If the Tenant seeks a new lease either before the term of its existing

lease expires or afterwards it could reach an agreement with the Landlord for a new lease. If neither party has agreed a new lease or are unable to, the Tenant should formally serve upon the Landlord a notice in accordance with the BTO (Article 7 Notice) stipulating a start date for a new tenancy and the salient terms relating to such.

If both parties can't reach agreement on the new terms but both wish for a new lease to be created or if the Landlord rejects the request for a new lease, the Tenant should make an application to the Lands Tribunal to decide the matter. It is often worthwhile for the Tenant to make this application as more often than not it can bring about a swift resolution of the dispute before the matter progresses through Lands Tribunal.

The Landlord's Renewal

If the Landlord is happy with the Tenant it may decide to offer the Tenant a new lease by serving on the Tenant a notice in accordance with the BTO (Article 6 Notice)

formally terminating the old lease and stating the terms of the new tenancy. If the Tenant is agreeable a new lease will be granted.

If both parties can't reach agreement on the new terms but both wish for a new lease to be created either party should make an application to the Lands Tribunal to decide the matter.

What if the Landlord does not want to renew the lease?

There may be many reasons why, given the current uncertainty of the commercial rental market, a Landlord would not want to grant a new lease to its Tenant and some of the typical grounds for opposing a new lease include, the Tenant's failure to comply with its repair and maintenance obligations, persistent late payment of rent or persistent substantial breach of its obligations under the terms of the lease.

The above grounds are discretionary so the Landlord may encounter difficulty in persuading the Lands Tribunal to refuse the Tenant a new lease if the above grounds are rectified by the Tenant before any hearing takes place at the Lands Tribunal.

The Landlord may also raise opposition on grounds which are personal to it, namely:

- a) The Landlord seeks to carry out development/construction works to the premises; or
- b) The Landlord wishes to take back the premises for the purposes of using it for its own use.

The above grounds are quite specific and there is a great degree of burden of proof placed upon the Landlord in order to establish such grounds. The Ground (a) objection is quite common however, given the current economic market, it may not make commercial sense for a Landlord to reject a new tenancy for the purposes of redevelopment of the premises

In terms of the Ground (b) objection it is simply not enough to merely contemplate taking back the premises for the Landlord's own use particularly if there are hurdles to overcome such as obtaining the necessary finance and statutory approvals such as planning permission and building control approvals. If it is the case that there are matters that are unresolved and outside the Landlord's control at the time that the matter comes before the Lands Tribunal for hearing then the Lands Tribunal will not look favourably on the Landlord's objection on the basis that the Landlord cannot prove his intention in support of this objection.

Overview:-

There are various statutory notices and timings to consider when dealing with renewals. There is also a great onus placed upon the Landlord particularly if it does not want to renew a Tenant's lease. Is this unfair? Is the BTO too pro Tenant? Perhaps it is, but the fact remains that if it is the intention of the Landlord to formally determine the Tenant's tenancy at the end of the lease it is imperative that the Landlord does its homework.

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