

Mitigating the risk on leases outside the 54 Act

- What is a tenant's legal status?
- Can a landlord throw a tenant out on lease expiry?
- Does a tenant receive any statutory compensation if the landlord terminates the lease?

It is widely known that an occupied site held on a lease 'inside' the Landlord and Tenant Act 1954 (the 54 Act) will benefit from the terms of that lease continuing beyond the contractual expiry date until one of the parties formally brings it to an end, either through the landlord serving a section 25 notice or the tenant a section 26 notice.

Less well known is the status and rights of a tenant on the expiry of a lease 'outside' the 54 Act and what action a tenant needs to take to maintain possession or protect their position.

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Under this scenario, tenants will be in a relatively weak negotiating position at the outset because:

- The tenant has no right to remain in occupation after the lease expires.
- If the tenant remains in occupation after the lease expiry, without the landlord's permission, the landlord can easily terminate the tenant's occupation, either by applying to court for possession or by simply changing the locks.
- Tenants have no automatic right to receive any statutory compensation on being forced to vacate.

The following scenarios usually play out when a lease is outside the Act:

1. If the landlord is happy to grant a new lease, allowing the tenant to remain in occupation, it might permit the tenant to remain in occupation whilst negotiations continue after the due expiry date.

A well-advised landlord will either:

- a) put a rent stop on the account (to avoid creating any implied tenancy), informing the tenant that its lease is ending and that after expiry, it will be a trespasser;

or

- b) contact the tenant (on a without prejudice basis) to say that it will not enforce its right to recover possession for say a few weeks after expiry, to allow the tenant time to sign a new lease.

2. The landlord might allow the tenant to remain in occupation whilst a new lease is negotiated and continues to collect rent. If this happens, the tenant is more than likely to be considered a tenant-at-will, despite the fact that rent is being collected. A 'tenancy-at-will' does not confer any rights of occupation, so a landlord can simply terminate the tenancy at any time and recover possession as above.
3. If the landlord does not wish to grant a lease, or agreement cannot be reached on acceptable terms, the landlord may seek possession at, or after the expiry date, as above.

Each case depends on the facts, but tenants need to be aware of the implications of their status on lease expiry. Occupation beyond the expiry date may only continue on a 'tenancy-at-will' basis and they have no right to remain. As the tenant's negotiating position is effectively very limited, it is important to open dialogue with the landlord at an early stage to establish possible options and enable either agreement by the expiry date or put the tenant in a timely position to consider their exit strategy/relocation options. The more effort put into the process at an early stage the more likely a better deal can be struck or a viable alternative reached.