

# The business rates revaluation and statutory compensation to tenants under the Landlord and Tenant Act 1954 (LTA 1954)

The forthcoming business rates revaluation may affect the amount of statutory compensation landlords must pay to business tenants whose leases are not renewed. Where the rateable value of the property is increasing or reducing on 1 April 2017, there are tactical points that both landlords and tenants should be aware of.

## When may landlords have to pay statutory compensation to business tenants for non-renewal of leases?

If a tenant enjoys protection under the LTA 1954 including the right to apply for a new lease, it may be entitled to statutory compensation from the landlord when it leaves the premises. This right only arises if the landlord successfully opposes the tenant's request for a new lease solely on grounds that do not involve tenant fault. There are three "no fault" grounds:

- ground (e)- the tenant has a sublease of part, and the landlord is the superior landlord of the whole and intends to re-let the whole for substantially more rent than the aggregate of the rent obtainable on re-lettings of part;
- ground (f)- the landlord intends to demolish, reconstruct or carry out substantial construction work and could not reasonably do that without obtaining possession of that part of the building the tenant occupies; and
- ground (g)- the landlord intends to occupy the property for business purposes or as a residence.

However, if the landlord successfully opposes a new tenancy on one of the grounds involving tenant fault (either alone or in conjunction with a "no fault" ground), the landlord will not have to pay statutory compensation. These "tenant fault" grounds include persistent tenant delay in paying rent on time, disrepair of the premises in breach of tenant covenant, other substantial breach of tenant covenants, another reason connected with the use or management of the premises or if the landlord has offered suitable alternative accommodation.

## Is there an agreement contracting out of compensation?

If it appears likely that the landlord will only be able to oppose a renewal on a "no fault" ground, it is worth checking whether the parties have agreed (for example in the lease) that the landlord does not have to pay such compensation.

## If so, is the agreement valid?

Such agreements are generally only valid if at the date the tenant quits, it has been in continuous occupation of the property for the purpose of its business for less than five years. Occupation by the tenant's predecessors can be taken into account if the same business has been carried on.

## How is compensation calculated?

Broadly speaking, a tenant is entitled to compensation at the same amount as the property's rateable value. However if the tenant and any predecessor with the same business has been in occupation for 14 years or more, compensation is twice the rateable value. The 14 year period is calculated backwards from the termination date specified in the landlord's section 25 notice, or the tenant's section 26 request for a new lease.

## The business rates revaluation

Current rateable values took effect in England and Wales on 1 April 2010, based on rateable values on 1 April 2008. However the Valuation Office Agency (VOA) is revising rateable values on 1 April 2017. While the rateable value of some properties is reducing, other properties (for example many London retail and restaurant premises) face a significant increase. You can check the draft rateable values on the VOA website ([www.gov.uk/introduction-to-business-rates/revaluation](http://www.gov.uk/introduction-to-business-rates/revaluation)) to see whether your property's rateable value is due to change.

## Which notices does a landlord serve if it wants to terminate a LTA 1954 protected lease?

If a landlord wants to terminate a lease and oppose the grant of a new lease, it serves a valid notice pursuant to section 25 of the LTA 1954. The notice must state the landlord's ground(s) of opposition and specify a lease termination date. This date can be the lease's contractual expiry date or later, but must be no more than 12 months, and not less than six months after the date of service of the notice.

However, if the tenant has already served on the landlord a section 26 request for a new tenancy, the landlord cannot serve a section 25 notice. Instead it serves a counter-notice on the tenant within two months after service of the section 26 request. The counter-notice must also specify the landlord's ground(s) of opposition.

## Which notices does a tenant serve if it wants to renew a LTA 1954 protected lease?

If a tenant wants to renew its LTA 1954 Act protected lease, it should serve a valid section 26 request on the landlord not more than 12 months, nor less than six months before the proposed commencement date for the new lease specified in the section 26 request. The tenant can serve a section 26 request before the end of the contractual term, or after the end of the contractual term if it has remained in business occupation and its tenancy is continuing under the LTA 1954.

## Which rateable value will compensation be based on if the tenant's lease is not renewed solely on "no fault" grounds?

Compensation is based on the rateable value in effect on the date of service of either the landlord's:

- notice under section 25 of the LTA 1954; or
- counter-notice to the tenant's section 26 request for a new tenancy.

Therefore if:

- the date of service of one of these notices is on or after 1 April 2017; and
- the rateable value of the property is higher in the new valuation list

the landlord may have to pay more compensation to the tenant when it leaves the property if its lease is not renewed.

## Tactics / Timing

### For landlords

- If the rateable value of the property will increase on 1 April 2017, the landlord should consider serving a section 25 notice on or before 31 March 2017. Alternatively, if it receives a section 26 request before 1 April 2017, the landlord should serve its counter-notice within the two month deadline and on or before 31 March 2017 for compensation to be based on the pre-1 April 2017 valuation list.
- If the rateable value of the property will reduce on 1 April 2017, then the landlord may have to pay less compensation if it serves its section 25 notice or counter-notice to a tenant's section 26 request on or after 1 April 2017.

### For tenants

- If the rateable value of the property will increase on 1 April 2017, the tenant should consider serving a section 26 request for a new tenancy on or after 1 April 2017.
- If the rateable value of the property will reduce on 1 April 2017, then the tenant should consider serving its section 26 request on or before 31 January 2017.

## Importance of taking legal advice and acting promptly

Compensation is one of many commercial considerations when a tenant is trying to renew its LTA 1954 protected lease or where a landlord is trying to end a LTA 1954 protected lease without a lease renewal, for example as it intends to redevelop the property. Applying for or opposing a lease renewal are both complex processes, therefore it is highly recommended that you seek early legal advice. It is important to take legal advice well before the dates mentioned above to allow time to draft and serve the required notices and/or respond to any notices received.

**Markus Klempa is a Senior Associate and Louise Kellaway is a Professional Support Lawyer in the Real Estate Department of Stevens & Bolton LLP.**



**Markus Klempa**  
Senior Associate  
+44 (0)1483 734273  
markus.klempa@stevens-bolton.com



**Louise Kellaway**  
Professional Support Lawyer  
+44 (0)1483 401245  
louise.kellaway@stevens-bolton.com

*This information is necessarily brief and is not intended to be an exhaustive statement of the law. It is essential that professional advice is sought before any decision is taken.*