

## **Is this the End? Tenants' Automatic Renewal Rights**

A very significant change to Landlord and Tenant legislation was enacted on 20<sup>th</sup> July 2008. This change will have a big impact on business lettings in Ireland as it will allow a business tenant to contract out of his statutory rights of renewal in certain circumstances.

### **Pre-1994 Position**

Up until 1994 where a tenant was in continuous occupation for at least three years for business purposes of a tenement (being defined as lands covered wholly or partly with buildings or a defined portion of a building), the tenant acquired a business equity. This entitled the sitting tenant to call on his landlord to grant him a lease renewal at a current market rent with five or seven year rent reviews. It was not possible for landlords and tenants to opt out of these statutory provisions.

This situation was unsatisfactory for many landlords, as they wanted to avoid tenants acquiring automatic renewal rights. This resulted in many landlords granting leases of less than three years (most commonly two year nine month or two year eleven month leases). While this gave the landlord the flexibility he required, it also involved disruption to his cash flow and the expense of finding new tenants at relatively short intervals. It gave the tenant nothing but the prospect of moving premises at regular intervals with the obvious disruption and cost to his business that this entailed.

### **Post 1994 Position**

In 1994 some significant changes were made to the then existing legislation in that;

1. The period of continuous occupation was extended to five years; and
2. The tenant was permitted to contract out of his statutory right for renewal where: (a) the tenement was used wholly or exclusively *as an office*.; (b) *prior to* the commencement of the tenancy the tenant had executed whether for or without valuable consideration a valid renunciation of his entitlement to a new tenancy and (c) had *received independent legal advice* in relation to the renunciation.

While this improved the tenant's legal position, its affect on the business community was limited, as it provided no benefit to tenants of business premises or of office premises where the tenant was already in occupation.

What resulted from these changes was that many landlords would not grant a lease longer than four year nine months or four year eleven months to non-office business tenants. In addition where parties agreed between themselves that an existing lease would be renewed without attracting the business equity, the tenant was obliged to fully vacate the premises over a period of time to ensure a break between the existing tenancy and the new tenancy. This was needless trouble from a tenant's perspective.

### **Current Position**

As and from the passing of the Civil Law (Miscellaneous Provisions) Act 2008 on the 20<sup>th</sup> of July of that year, any tenant of business premises can renounce in writing, whether for or without valuable consideration, his or her entitlement to a new tenancy in the tenement where he has received independent legal advice in relation to the renunciation.

The effect of this change is that all business premises are covered and the renunciation can be effected during the currency of an existing lease. The only proviso is that independent legal advice must be taken in relation to the renunciation. This is of major significance to landlords and tenants and allows them to frame their agreements on the basis of their actual requirements and needs without resorting to artificial arrangements.

Landlords will have the entitlement to vacant possession at the end of the agreed term if required without having to pay compensation to the tenant. Tenants will have security of tenure for the term required and can develop their business without the disruption and cost involved of imposed relocation.

While it is to be expected that the practice of granting four year nine month leases will decline by virtue of this legislation, it may not be as rapid as initially thought due to the downturn in the global economy. Many tenants may not wish to take longer-term leases at present. However such leases can now be negotiated on commercial realities and the specific needs of the parties rather

than on artificial arrangements designed to avoid the statutory protection afforded to tenants.