

LANDLORD AND TENANT

A Brief Guide to Lease Extensions of Leasehold Flats

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LEASE EXTENSIONS OF LEASEHOLD FLATS

As the term of a lease substantially reduces, the value of the flat decreases. A reduced lease can make the flat less marketable.

Statutory Right to a Lease Extension

Under the Leasehold Reform Housing and Urban Development Act 1993 (as amended) (the Act) the tenant has a statutory right (subject to complying with the terms of the Act) to a lease extension.

Under the Act, the tenant is able to claim an extension of the lease by adding a further 90 years onto the remaining lease. Also the extended lease will be granted at a peppercorn rent.

Qualification

In order to qualify for the right to claim the lease extension the requirements are that:

- a) The Tenant must have been the registered proprietor of the flat for a minimum period of 2 years
- b) The lease must initially have been granted for an original term exceeding 21 years.

There are certain exceptions to the right to apply and it is recommended that a tenant seeks legal advice to ensure that their lease does not fall into any of the exceptions.

Costs

Under the terms of the Act, once the tenant serves notice on the landlord, the tenant becomes responsible for the reasonable professional fees of the landlord's surveyor and solicitor.

Valuation

On service of the tenant's initial notice, it will be necessary for the tenant to state in that notice the price that he proposes to pay for the extended lease. The tenant is advised to obtain advice from a valuer as to the premium payable for the purchase of the extended lease.

Procedure

Once the tenant has ascertained the premium that he wishes to state in the notice, the formal process can then begin by serving on the landlord, the tenant's claim to a new lease. On the claim for a new lease, the tenant sets out the proposed premium for the new extended lease. The tenant's notice must state a date which must be at least 2

months after service of the tenant's notice by which date the landlord must serve their counter-notice.

After Service of the Tenant's Claim to a New Lease

Once the tenant has served the claim for the new lease, the landlord is entitled to require that the tenant pays a deposit of 10% of the premium.

Further once the tenant's notice has been served, it can be assigned with the lease. This means that if a tenant is in the course of selling the leasehold interest, the new buyer of the property will not have to wait 2 years before obtaining the right to apply for a new extended lease.

Landlord's Counter Notice

Within the timescale set out in the tenant's notice (at least 2 months after service of the tenant's notice) the landlord must serve his counter-notice. In the counter-notice, the landlord must state whether he accepts the tenant's right to a new lease. If he accepts the right to the new lease proposed he may propose a different premium and may either accept or reject any additional terms proposed or suggest some different terms to the new extended lease.

If the current lease is due to run out within 5 years of the date of the notice, the landlord may object to the grant of a new lease by stating that he intends to make an application for a Court Order on the grounds that he plans to redevelop.

Landlord's failure to serve the counter-notice.

In the event that the landlord fails to serve the counter-notice within the required timescale, then within 6 months of the date on which the counter-notice should have been served, the tenant may apply to the court for a vesting order. In those circumstances the court will grant an order to vest the new lease in the tenant on the terms set out in the tenant's notice.

Negotiation

Once the landlord's counter-notice has been served, if the landlord has proposed a different premium and different terms, negotiations will then need to take place to reach agreement on these matters. If agreement cannot be reached, then either party can apply to the Leasehold Valuation Tribunal for determination of an agreement. An application must be made to the Leasehold Valuation Tribunal not earlier than 2 months and not later than 6 months after the date of the service of the counter-notice by the landlord.

Terms Agreed

Once terms have been agreed, the landlord's solicitors will then prepare the new extended lease.

Withdrawal by the Tenant

The tenant may withdraw from the process at any time prior to exchanging contracts for a new extended lease. If the tenant does withdraw on this basis the tenant will be liable for the landlord's reasonable legal and surveyor's fees up to that date.

The Landlord's Redevelopment Right

Once the extended lease is granted, the landlord does have a right during the period of 12 months ending with the term date of the original lease or during a period of 5 years prior to the end of expiry of the new extended lease to apply to the court for possession of the flat on the grounds of re-development. The landlord would need to be able to satisfy the court that he is to redevelop the property and that he cannot do so without obtaining possession of the flat. In the event that the court orders that the landlord is entitled to do this, then the landlord would be required to pay compensation to the tenant.

This leaflet is designed to be a brief guide to lease extensions. It is not a step by step procedural guide to lease extensions and you should therefore always seek legal advice on lease extensions. Please note that the Partners of Neves cannot accept any responsibility for any loss suffered by any person acting in reliance on the contents of this booklet.