

OPINION ON COUNCIL LEASES AND LICENCES

Introduction

I have been asked to comment on the updated legal position on leases and licences and to comment on the reasoning as to why it is more appropriate to grant leases in certain circumstances.

The Nature of leases and licences

A lease gives the occupier (tenant/lessee) exclusive possession of premises for a defined period subject to certain conditions.

A licence is a contractual arrangement of a temporary nature. It is not meant to confer any property rights to the licensee but merely formalizes the arrangement by which the licensee occupies or uses the licensor's property. It does not give the occupier exclusive possession and, in many cases, gives the occupier limited use of the premises e.g. a sports club hiring a pitch between 6-8pm Mondays and Wednesdays.

Landlord and tenant statutory provisions

Section 16 of the Landlord and Tenant (Amendment) Act, 1980 ("the 1980 Act") provides that, where Part II of the 1980 Act applies, the tenant shall be entitled to a new tenancy commencing on the termination of the previous one subject to proving any one of the following :

- Business equity under Section 13 (1) (a) as amended by Section 3 of the Landlord and Tenant Amendment Act 1994 ("the 1994 Act") if the tenant has continuously occupied the premises for five years.
- Long possession equity under Section 13(1) (b) that tenant is required to be twenty years in possession and
- Improvements equity under Section 13(1) (c) – if the tenant is entitled to compensation for improvements and the said improvements amount to half or more than half of the letting value of the tenement when the notice of intention to claim relief is served, then the tenant has an improvements equity.

Section 85 of the 1980 Act did not permit the contracting out of one's rights under Section 13 of the 1980 Act.

Changes to Contracting Out Provisions

Section 4 of the 1994 Act allowed the tenant of an *office* premises to contract out of his/her right to a new tenancy subject to the following conditions;

- The premises must be business premises
- The premises must be wholly and exclusively free for office use
- The tenant must validly renounce in writing his/her entitlement to a new tenancy before the term of the new tenancy commences; and
- The tenant must receive independent legal advice in respect of the renunciation.

Section 47 of the Civil Law (Miscellaneous Provisions) Act 2008 (“the 2008 Act”) amended Section 4 of the 1994 Act.

The 2008 Act (which came into operation on the 1st July 2008) permits all business tenants, regardless of user, to contract out of their entitlement to renew their tenancy after five years.

It should be emphasised that for this provision to apply, the tenant must renounce his/her right to a new tenancy, *in writing*, and must receive *independent legal advice* in respect of the implications of the renunciation.

Accordingly, it is good practice for a landlord to issue a renunciation, or indeed for the renunciation to form part of a lease in *all* cases.

Also, as Section 47 of the 2008 Act only applies to leases of twenty years or less, it has become common practice to issue modern day commercial leases for periods of fifteen years or less.

A Deed of Renunciation is now signed as a matter of form in all leases.

The contracting out provisions provided for in the 2008 Act is not only restricted to office lettings but *also apply to general rentals* including industrial, retail and other business uses.

‘Business’ means non-residential and therefore would apply to all Council owned non-residential premises.

The Nature of Council lettings and licences

The majority of leases and licences granted by the Council are to community groups or voluntary organizations occupying a part of a Council building or Council lands.

It should be necessary that *all* occupiers of Council premises enter into a contractual arrangement with the Council which sets out the conditions of that occupation. No matter how ‘urgent’ it may seem at the time of initial occupation, it is recommended that no group or individual should be permitted to occupy Council premises without first signing an occupational agreement.

A licence should *initially* be granted to all occupiers of Council premises, particularly community occupiers.

A licence is a *temporary* occupational arrangement.

Previously, many occupiers of Council buildings were community groups or local residents associations with ad hoc governance. Within the past few years these organizations have become more formalized and, in most cases, have incorporated as companies limited by guarantee so they can avail of government grants. As a result these types of organizations now occupy Council buildings for a number of years.

If it is anticipated that a particular group or individual will be in occupation of a Council owned premises for a period exceeding one year *it is recommended* that the occupier should enter in to a lease/ short term letting with the Council.

In these circumstances it will be necessary for the occupier to sign a renunciation under Section 47 of the Civil Law (Miscellaneous Provisions) Act 2008.

Council Statutory restrictions

The Council is obliged to receive the statutory approval of the Councillors under Section 183 of the Local Government Act, 2001 for all licences and leases exceeding a period of one year.

All lettings for a period exceeding one year will require Council approval. Such lettings should be *strictly subject* to the lessee signing a deed of renunciation prior to entering in to the lease.

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01/09/2016