

Guidance on Security of Tenure

1. Generally speaking, business tenants have a right to security of tenure, i.e. the right to remain in occupation of the premises if the lease expires and to apply to court for the grant of a new lease. However, a landlord and tenant can agree that security of tenure should be excluded.
2. Before 1 June 2004, a contract for a lease offered to business tenants had to be subject to a three step procedure must be followed in order to exclude the security of tenure. The procedure is set out below. A failure to follow the procedure means the tenant acquiring security of tenure.
 3. Step 1 – notice
 - 3.1 The landlord must give a written notice to the proposed tenant. This notice contains a "health warning" which explains to the proposed tenant the effect of entering into a lease without security of tenure.
 - 3.2 The notice must be given to the proposed tenant before the lease is entered into or before the tenant becomes contractually bound to enter into it. So, if there is to be an agreement for lease, the notice must be given before the agreement is entered into.
 - 3.3 The landlord should explain the effect of the proposed tenant until the terms of the new lease are agreed and the lease is in its final form. If the notice is served before all the terms have been agreed, it may not be valid.
 4. Step 2 – declaration (simple or statutory)
 - 4.1 Once the landlord's notice has been given to the proposed tenant, the landlord must require the proposed tenant to make a simple declaration or swear a statutory declaration.
 - 4.2 If the landlord's notice is a simple notice (or, if applicable, before the lease is entered into) the tenant must sign the "tenant's simple declaration".
 - 4.3 If the landlord's notice is a statutory notice (or, if applicable, before the lease is entered into) the tenant must swear the "tenant's statutory declaration" before an independent solicitor, i.e. a solicitor who is not the landlord or the tenant in relation to the lease.
 - 4.4 Both declarations are required and they both confirm that the tenant has received the notice, that the tenant has read and understood the notice containing the "health warning", that the tenant accepts the consequences of entering into a lease without security of tenure.
 5. Step 3 – reference in lease
 - 5.1 The new lease must refer to the landlord's notice, the simple or statutory declaration made by the tenant and the parties' agreement to exclude security of tenure. Sections 24 to 28 of the Act.
 - 5.2 It is good practice to refer to the landlord's notice and the tenant's simple declaration in the lease.