

Guidance on the 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 when the lease expires and to apply to court for the grant of a new lease. However, the landlord and tenant can agree that security of tenure should be excluded.
2. Before 1 June 2004, a court order was required in order to exclude the security of tenure. This is no longer required: instead, a three step procedure must be followed by the landlord and tenant. The procedure is set out below. A failure to follow the procedure will prevent a 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 lease is entered into and the lease is in its final form. If the tenant does not understand all the terms have been agreed, the notice is invalid.
4. Step 2 – declaration (simple or statutory)
 - 4.1 Once the landlord's notice has been given to the proposed tenant, the landlord must either make a simple declaration or swear a statutory declaration.
 - 4.2 If the landlord's notice is a simple declaration (or, if applicable, before the lease is entered into) the tenant must sign the "tenant's simple declaration" 4 days before the lease is granted.
 - 4.3 If the landlord's notice is a statutory declaration (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 valid only if the landlord and they both confirm that the tenant has received and understood the "health warning", that the tenant has read and understood the "tenant's simple declaration" and 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 contain a reference to the landlord's notice, the simple declaration or statutory declaration and the parties' agreement to exclude security of tenure. This is set out in sections 24 to 28 of the Act.
 - 5.2 It is good practice to include a reference to the landlord's notice and the tenant's simple declaration in the lease.