# A STUDY OF THE IMPACT OF THE LANDLORD AND TENANT ACT 1954 IN ENGLAND

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## Introduction

This study is about the Landlord and Tenant Act of 1954.[1] The Act addressed two main topics, originally: in part 1 the protection of residential tenancies, and in part 2 the security of business tenancies. Part 1 has been superseded by later Acts (Wikipedia, 2017). This study will therefore concentrate only on Part 2, the statutory framework for regulating business tenancies.

> The 'mischief' that Parliament sought to address by this Act was lack of a fair balance between the interests of landlords and tenants. Provided that (i) the tenancy is within the terms of the Act (ss. 23 and 43); (ii) was not contracted-out (ss. 38 and 38A); (iii) the tenant has complied with the technical statutory notice formalities within the prescribed time limits (ss. 24 and 26); and (iv) landlord cannot prove one of the statutory grounds of opposition (s. 30), then tenant is entitled to a new lease of that part of the holding actually occupied for business purposes at an open-market rent (Moys, 2013, p5).

However, I believe that a larger public policy purpose should be presumed to underlie this Act, which the legal commentators rarely if ever mention, as from a legal standpoint it makes little sense. Why should Parliament *ever* favour the tenant over the landlord on property that belongs to the landlord, who ought to be considered and always had been considered 'lord of the land'? Why should it favour business tenants, who are using others' property just to enrich themselves? The answer stands out obvious to the business mind. The insecurity of business tenures implies the risk of frequent changes of location of sellers *who cater for the general public*. In practice, frequent evictions would be normal as landlords manoeuvred for advantage in the commercial estate market; meanwhile, in the consumer market, instability of retail venues may cause severe inconvenience to the public in today's mass consumer society. In the case of industrial tenures, too, insecurity (or the constant compulsion to move workplaces) may lead to supply disruptions which, though temporary in the longer run, may cause great public inconvenience. The labour market is also a consideration, in that stability of employments depends in part on stability of business premises. The 1954 Act was intended to secure the public interest above all, in every way that is, also, as fair to the landlord as possible. The business tenant's own self-interests are actually secondary to these intents and purposes. It is *not* a Favouring Tenants Over Landlords Act. This must be borne in mind at all times when struggling to understand the case law, which contains

[1] 2 and 3 Eliz 2, c. 56. Available from http://www.legislation.gov.uk/ukpga/Eliz2/2-3/56 .

strategic interpretations and many reversals of the Act's application – due to tenants' missteps and misconduct changing sharply their limited rights – which may surprise those who do not heed the public interest as legislative intent. I do not deny that the Act may be grooming small business, but again, why? No one would care if it did not knock on a public interest. This reading is one man's opinion, but I believe it is the best for explaining the case law.

**The Act**

These public interest issues justified Parliament's departure from the common law of contracts and of landed property, and suggested the provisions of the Landlord and Tenant Act 1954. It created rights and obligations for landlords and tenants in property that 'is or includes premises which are occupied by the tenant and are so occupied for the purposes of a business carried on by him or for those and other purposes' (s. 23). Excluded is land in use for mining or farming (s. 43). Any person invested in non-excluded *commercial* (not residential) estates, from small retail shops, offices, and workshops to large retail *and industrial* premises, needs to acquire a firm grasp of this Act. Its provisions are the law for England and Wales only. The laws for Northern Ireland and particularly for Scotland differ in some important ways. Expert advice is likely needed in all cases (Smith, 2012).

Specifically, the Act gives business tenants the right to renew their leases and get a new tenancy on broadly similar terms to their existing one, or as determined by the competent court in case of irreconcilable dispute. A business tenancy may not necessarily end at the expiry of the fixed contractual term, nor may a periodic tenancy be terminated by an ordinary notice to quit without tenant's consent. In sum, *such a tenancy cannot come to an end unless and until terminated in accordance with the Act*. In the meantime, a tenant is entitled to stay under continuation tenancy on the same terms as the last contractual tenancy *and* – even after termination, a tenant has the further right to renewed tenancy, unless the landlord can maintain one of the Act's grounds for regaining possession.

That said, tenants should note that their leases are wholly governed by the common law and by the terms of their contracts with landlords up till the expiry date of the current tenancy (whether it actually ends on that date or not). Only at that point in time will tenants' rights under the Act come into play (Entwhistle, 2014).

**Components**

Tenants of business premises have statutory rights once the contractual lease has expired.

*Security of tenure*:

a. the right to remain in occupation at the end of a lease's contractual term
b. the right to apply to court for the grant of a new lease.

The landlord cannot object and regain possession except on grounds specified by the Act (Section 24).

*Grounds for regaining possession*:

c. the landlord requisitions the property either for development, or to occupy

himself.

d. the tenant has a history of non-payment of rent, or non-compliance with his obligations under the terms and conditions of the lease.
e. the premises have been split up by underletting as many sub-units, and the whole premises could command a higher rent if let as one under one lease.

Ordinarily, renewal negotiations are carried out against the backdrop of the Act, and renewals are agreed between landlord and tenant, not in court proceedings (Smith, 2012).

*Terminating leases with security of tenure*:

Leases may contain contractual rights for tenants to terminate them during their term (so-called 'break clauses'). These are common law rights on which the Act has no bearing. This includes also the landlord's right to forfeit the lease for breach of covenant in the usual way. In addition to the Act's rules on renewal (see below), commercial leases can be terminated by:

a. forfeiture.
b. surrender by the tenant and acceptance of surrender by the landlord.
c. by tenant ceasing to be in occupation for business purposes at lease's end.

(Entwhistle, 2014).

A secured business tenancy under the Act will continue even after lease's end until it is brought to an end in the ways specified by the Act. This concept is crucial to both landlord and tenant, as either may be interested to anticipate the lease's expiry. Some notices must comply with the formalities set out by the Act; others may be drafted at the parties' discretion. Legal advice is advisable before serving any notice, as small technical errors may invalidate it, with serious consequences (Smith, 2012). The main notices are these:

*Notice by landlord under Section 25 (Section 25 notice)*:

d. Cannot be given before the lease's last year, nor after tenant has served upon landlord a request for a new tenancy under section 26 (see below).
e. Allows landlord to start a proceeding either to grant tenant a new lease or to compel tenant to vacate.

Section 25 notices must specify the date certain on which landlord proposes to end the current lease, which cannot be earlier than:

a. the end date of the lease; or
b. six months from the date of giving the Section 25 notice; nor
c. later than twelve months after that date.

Section 25 notices must also:

a. state whether landlord will oppose tenant's applying to court for a new lease, and, if so, on what grounds.
b. outline terms on which landlord is willing to grant a renewal, the length of term proposed, and the rent sum.

*Request by tenant under Section 26 (Section 26 request)*:

a. for new tenancy upon termination of the old one. A section 26 request must

specify a date certain for current lease to end, neither more than six months before Section 26 request, nor more than twelve months thereafter.

b. cannot be served before contractual lease's last year, nor after landlord has served a Section 25 notice.
c. cannot end current lease before its normal expiry date.

The section 26 request must also:

a. outline tenant's proposals for the new lease terms, covering the same points set out above for the section 25 notice.

*Notice by tenant under Section 27 (Section 27 notice)*:

a. expires on or after the lease expiry date.
b. tenant alone has right to end the tenancy under section 27, by giving notice at least three months before the date of contractual expiry.
c. extinguishes tenant's right to remain in occupation after Section 27 notice's expiry, and his security of tenure conferred by the Act.

Section 27 notices are advisable when tenant wishes not to renew and needs assurance the lease will not be continued automatically by the Act; also, if lease has already expired but tenancy is continued under the 1954 Act, tenant may end continuing tenancy by giving not less than three months' notice in writing to landlord (Smith, 2012).

*Consequences of service of Section 25 and 26 notices*:

a. either party has the right to apply to court to grant tenant a new tenancy, but to preserve this right, the time limits provided in the Act must be met.
b. either party has the right to apply to court to reckon an 'interim rent' payable during the period from the current lease's end until the new lease takes effect (or until tenant ends the tenancy).
c. the parties may agree to extend a time limit, provided they do it before date of termination; however, if they do not apply to court before termination or agreed time limit extension, tenant loses security of tenure and must vacate.

*Opposition by landlord to grant of new tenancy*:

Typically, landlords do not oppose the request for a new tenancy. Where they do, the specific facts of each case will merit special consideration (see case study of *O'May* below). However, it is important to note the following:

a. landlord must declare if he opposes a new tenancy and if so, on which of the specified grounds, in any Section 25 notice.
b. if landlord opposes tenant's Section 26 request, landlord must serve notice on tenant stating which grounds *within two months* of service of the Section 26 request.
c. if landlord opposes for reasons *other than* non-payment of rent or other non-compliance with lease, tenant becomes *entitled to compensation* on leaving, based on the rateable value of the premises.

(Smith, 2012)

Seven grounds exist for opposing a new tenancy according to Section 30(1) (a)-(g):

Discretionary grounds – the court may (or not) grant new tenancy if landlord makes out tenant's:

a. failure to repair
b. persistent rent arrears
c. other prejudicial acts or breaches of obligation
d. sub-letting is uneconomic

Mandatory grounds – by Section 31(1) the court shall deny new tenancy if landlord makes out:

a. suitable alternative accommodation for tenant
b. landlord intent to demolish and reconstruct
c. landlord intent to occupy

(Moys, 2013, p5)

*New lease granted under the Act*:

A significant benefit to the tenant of the renewal arrangements in the Act is that the court may oversee and, if the parties cannot agree, decide:

a. length of the new lease (Section 33).
b. rent payable under new lease (Section 34).
c. terms of the new lease (Section 35).

*Length of lease*

The court may grant no lease for a term of more than 15 years (although the parties may agree a longer term). Courts are likelier to agree to the length requested by tenant than by landlord. If tenant wants a short lease, even if the old lease had a longer period, landlord opposition may fail. If tenant wants a longer term than landlord wants, landlord must prove he needs flexibility (as because of development plans) to prevail on the court to order a break clause (Smith, 2012).

*Rent*

The court may also decide this if the parties cannot agree, but it must be a market rent, which is to ignore the fact that tenant is in occupation and any goodwill of the business, and is adjusted to ignore the effect of specified improvements carried out by tenant at his expense (Section 34 (2)).

*Lease terms*

Landlord and tenant may agree anything, but if they cannot agree, the mediating court's starting point is that the new lease will reflect the terms of the old lease. Either party may propose new terms if he can prove the new terms are reasonable for a modern lease compared to the old ones (esp. if changes in the law need to be incorporated into the lease). The courts are resistant to inclusion of terms against the will of one party, if they depart from the underlying commercial terms of the previous lease or flip the balance of the commercial bargain.

*Security of tenure excluded by a landlord-tenant agreement*:

If landlord and tenant have agreed that there should be no security of tenure conferred by the lease, formal steps must be taken according to Section 38A (3) &

(4) – referring, respectively, to Schedules 1 & 3 of the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003.[2] The procedure for agreeing to exclude is elaborate:

a. landlord must serve a formal notice on the tenant in a prescribed form.
b. tenant must respond by making a declaration, also in a prescribed form, that he understands the effect of the lease being excluded from the protection of the Act.

An excluded lease will expire (at the latest) on the date stated in the lease, and will not benefit from the continuation tenancy allowed by the Act (Smith, 2012).

Business tenants' rights are many fewer under leases excluded from the Act; they hint at what marketplaces might look like without it:

a. tenant has no right to remain to run his business in the premises.
b. landlord has complete discretion whether to grant a new lease and need give no reason for demanding possession instead.
c. there is no presumption that a new lease will allow the terms of the old one.
d. tenant remaining in occupation is a trespasser liable for damages to landlord, who also has a right to obtain a court order evicting tenant.
e. tenant's rights to compensation for being compelled to vacate is excluded.

**Cases**

*O'May v City of London Real Property Co. Ltd* [1983] 2 AC 726

*O'May* gives authoritative guidance as to Section 30 ('Opposition by landlord to application for new tenancy'), and as to Sections 32 through 35 covering renewed tenancies of which the terms must be ordered by the court because the parties could not agree (which I focus on).

The facts:

Defendant landlord demised to tenants his premises in an office block for five years. On expiry, landlord proposed to give a new five-year lease, transferring to tenants obligations to maintain, repair and service the building in return for a small rent reduction. The proposals would have created a 'clear lease' that increased the property's commercial value. At first instance the court allowed the variation, but the Court of Appeal reversed. The House of Lords dismissed appeal to itself (upholding the Court of Appeal), ruling that the court ought not to sanction a departure from current lease that would impose such enormously fluctuating obligations on tenants.

In essence, the court in *O'May* promulgated a four-stage test that must be met before the court pursuant to Section 35 shall order a proposed variation in the lease terms: (1) valid reason; (2) adverse party must be adequately compensated for the new term's effect on the rent; (3) tenant business must not be impaired; and (4) burden falls on a new term's proposer to prove it is fair and reasonable (Moys, 2013).

The *dicta* of Lord Hailsham and Lord Wilberforce are worth setting out in full for the guidance they give (Stacey, 2012). Citing Sections 34 and 35 of the Act, Lord Hailsham said:

[2] Available from http://www.legislation.gov.uk/uksi/2003/3096/contents/made .

> From these sections I deduce three general propositions. (1) It is clear from section 34 that [in contrast to Part 1 on residential lettings] Parliament did not intend … to protect the tenant from the operation of market forces in the determination of rent [reinforcing my inference that Part 2 is about protecting the public interest, not business tenants]. (2) In contrast to the determination of rent, it is the court and not the market forces which, with one vital qualification, has an almost complete discretion as to the other terms of the tenancy (which, of course in turn must exercise a decisive influence on the market rent to be ascertained under section 34 [once again avoiding favour to tenant, who has to pay the value of his preferred terms]). And (3) in deciding the terms of the new tenancy, as to which its discretion is otherwise not fettered, the court must start by 'having regard to' the terms of the current tenancy … [Without binding] the parties to the terms of the current tenancy in any permanent form … the burden of persuading the court to impose a change in those terms against the will of either party must rest on the party proposing the change [this does not favour tenant over landlord but favours continuity and stability over perpetual motion], and … take into account … the comparatively weak negotiating position of a sitting tenant requiring renewal particularly in conditions of scarcity [as this would tend to destabilise tenures], and the general purpose of the Act which is to protect the business interests of the tenant [for its own sake? or for the sake of its customers?] so far as they are affected by the approaching termination of the current lease, in particular as regards his security of tenure. … The point is emphasised by the decision in *Charles Clements (London) Ltd. v. Rank City Wall Ltd.* (1978) 246 E.G. 739 , where the court rejected an attempt by the landlord as a means of raising the rent to force on a tenant a relaxation of a covenant limiting user which would have been of no value to the particular tenant, and *Aldwych Club Ltd. v. Copthall Property Co. Ltd* (1962) 185 E.G. 219 where the court rejected an attempt by the tenant to narrow the permitted user with a view to reducing the rent [actually, the two decisions together prove tenant is not being favoured over landlord, therefore a higher purpose was intended].

Lord Wilberforce added:

> The Act [Part 2] is in the main a discretionary Act, giving wide powers to the judge to grant and settle the terms … [of] a new lease. … The crucial section, for present purposes, is section 35 which relates to the terms of the tenancy, other than terms as to duration and rent [which] contains a mandatory guideline or direction to 'have regard to' the terms of the current tenancy and to all relevant circumstances. The words 'have regard to' are elastic: they compel something between an obligation to reproduce existing terms and an unfettered right to substitute others.

According to Ollech (2015):

> The landlord's case rested on the fact that the evidence demonstrated (a) that the freehold interest commanded a higher price if let on a clear lease and that the shift was in the landlord's interest; and (b) that the new leases of property … were by this stage (the 1980s) usually granted and accepted as

clear leases. This was part of the modern trend away from all inclusive models which had tended to dominate in the past. Although Lord Wilberforce accepted that these were relevant circumstances, he did not consider that there was any obligation under the Act to make the lease conform to modern market practice. He also considered that the advantage sought by the landlord had to be weighed against the disadvantage to the tenant. In this regard he considered that the assumption by the tenant of an unpredictable and potentially very significant burden of risk in the future, which it had not originally bargained for, to outweigh the commercial advantage sought by the landlord.

By this reasoning, either Parliament favoured business tenants for their own sake over landlords in the landlords' own property, or else my interpretation stated above best explains case law of the Act: that Parliament subordinated the landlord's interest in seeking advantage in the estates market to the public interest in the stable consumer marketplace that a stable regime of business tenures provides. After all, why not just allow tenant O'May to leave the premises and take up a tenancy elsewhere?

This ruling is distinguishable from the subsequent case of *Edwards & Walkden (Norfolk) Ltd v The Mayor and Commonality and Citizens of the City of London* [2012] EWHC 2527 (Ch), where tenants advocated their exemption from just such unpredictable costs in their tenures in the historic Smithfield Market. The judge disallowed the petition on the grounds that their own interest in the upkeep of the premises was as great as the City of London's. Underlying such a seemingly inconsistent result is that the Market is a commercial relic that market forces would have obliterated long ago but for the political decision to subsidise it, – and it was precisely the mass consuming public that no longer shopped the Market in numbers enough to make it viable.

*Youssefi v Musselwhite* [2014] EWCA Civ 885

The grounds for opposing renewed tenancy stated in 30(1)(c) of the Act – 'that the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding.' – has rarely received much scrutiny in case law, but now *Youssefi* has given useful guidance.

The facts:

Tenant held a 15-year lease of premises comprising a dwelling house, shop and garden. Tenant had breached repairing covenants many times; had been late in paying rent; and had committed various other breaches. Tenant served Section 26 request for new tenancy, but landlord opposed and applied under Section 29(2) for the court to deny request.

Youssefi was allowed to appeal denial of new tenancy by the court of first instance. In relation to ground (c), that court was affirmed in focussing not only on 'other substantial breaches' but also on 'any other reason connected with the tenant's use or management of the holding'. There had been substantial breaches of the user covenant in the lease. The fact that the tenant *had not attempted to start a business* or shown any intention of doing so justified the court to conclude that breach of the

user covenant was prejudicial to the landlord's legitimate interests, and thus substantial (Male & Holland, 2016).

Sawtell (2014), however, has pointed out that the case of *Horne and Meredith Properties v Cox and Billingsley* [2014] EWCA Civ 423 had established that the 'or' separating the two parts of subsection (c) meant that a breach of any obligation of the tenancy agreement is not necessary to trigger the application of the Act. 'Any other reason' *need not derive from the relationship of the parties* as landlord and tenant. The words are broad: *the court can look at everything it regards as relevant in connection with the tenant's use and management of the property*.

This proves that you can read the Act's intents and purposes as encompassing more than either landlord's or tenant's self-interests. Why would it matter if Youssefi never endeavoured to start a business in the premises so long as she paid the rent on time? It is true that disuse of premises for intended purpose may sometimes prejudice letting it in future by lessening assessed market value, but landlord in *Youssefi* was not required to show this actually happened. It was enough that the lease served no larger (*i.e.* public) purpose for the court to exclude its tenancy from the Act.

*Adams v Green [1978] 2 EGLR 46*

In cases where landlord intends redevelopment, although the appropriate court order may be a new tenancy for a short term, as in *Reohorn v Barry Corporation* ([1956] 1 WLR 845), the court may instead insert a redevelopment break clause in the new lease to achieve the same objective in a more balanced way. This was the result on appeal in *Adams v Green*.

The facts:

Landlords held the reversion to a row of shops, one of which was the subject of lease renewal proceedings begun by tenant, Mr. Adams, a confectioner and tobacconist. Mr. and Mrs. Green, though unable to undertake redevelopment of the row of shops themselves, believed they could sell the property for redevelopment in the medium term. They had stipulated rebuilding clauses in other leases of shops in the same row.

At first instance the judge awarded a 7-year term with no break clause. On appeal Lord Justice Stamp ordered a 14-year lease with a break clause, operable on two years' notice in the event of redevelopment intended by the landlord being carried through.

The court stressed three points of principle:

1. it was no part of the [public] policy of the Act to give security of tenure to a business tenant at the expense of preventing redevelopment.
2. it was no part of the policy of the Act to confer on a tenant a saleable asset: it was primarily to protect him in the plying of his business.
3. it is part of the policy of the Act to protect tenant, in the event a break clause being ordered, from the effect of any notice not given *bona fide*, as the tenant may put landlord to the proof of his intention to redevelop on ground 30(1) (f) in future lease renewal proceedings.

(Lamont, 2012)

Here again public policy underlies a decision that favours landlord's private interest, according to an Act of Parliament that restricts landlord's private interest seemingly in favour of tenant's for no obvious reason if you ignore public interest. The public interest, specifically the workers' and mass consumer interest in redevelopment of commercial properties is obvious to a business mind. Redevelopment adds value to any property, but particularly to premises let for business purposes, because this is the physical basis of the mass marketplace. The virtue of inserting a break clause in a longer-term lease is to allow two private interests to co-exist peacefully, both of which serve the public interest yet are conflicting: redevelopment but also stability of venue. If the former becomes feasible, then the latter can yield; but if not, then the latter may prevail. Principle 2, above, is especially noteworthy, as it exposes the fallacy that Parliament intended to favour (small) business tenants (tenant had argued for a longer lease, in effect because it was more valuable to himself in case he should sell up). Refuting, Lord Stamp held that tenants are protected only so far as their dealings with the public; their self-enrichment is no object.

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