

## Business Tenancies: Fighting over the terms of your new Lease?

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We act for Landlords and Tenants of business premises throughout Northern Ireland, at locations ranging from high profile, city centre landmark buildings to warehouses and outlets in industrial and retail parks.

Very often, both Landlord and Tenant wish to maintain their relationship at the expiry of the tenancy. However, the devil is in the detail! As we are all aware, the duration of the new Lease and the level of rent are usually the key issues but they are not the only matters which a Landlord and Tenant can fall out about. The other terms of the new Lease, such as the user clause, break clause, repair obligations, or service charge provisions can have dramatic commercial consequences. If those terms cannot be agreed between the Landlord and Tenant, they can be determined by the Lands Tribunal pursuant to Article 19 of the Business Tenancies (Northern Ireland) Order 1996 ("the Order"). We have developed significant expertise in this area of litigation and regularly act for Landlords and Tenants in proceedings before the Lands Tribunal.

In determining the other terms of the new Lease, the Lands Tribunal shall have regard to the terms of the current Lease and to all relevant circumstances. The Lands Tribunal also has the power to direct the inclusion in the new Lease of such terms as it considers appropriate for securing the obligations of either party, including the finding of sureties.

The discretion of the Lands Tribunal to decide the new terms is only limited by the regard which it must have to the existing terms and all relevant circumstances. Clearly, there is the potential for conflict between the terms of the old Lease and the new terms which either party may wish to introduce for sound commercial reasons.

The House of Lords decision in *O'May v City of London Real Property Company Limited* makes it clear that the burden of persuading the Lands Tribunal to impose a change in the terms against the will of either party rests with the party proposing the change. The change proposed must, in the circumstances of the case, be fair and reasonable and should take into account, amongst other things, the comparatively weak negotiating position of a sitting tenant requiring renewal. The three tests set out in the *O'May* case are:-

1. Has the party seeking a variation of the existing terms shown a reason for doing so and is it fair and reasonable?
2. If the party demanding the change is successful, will the party resisting it, in principle, be adequately compensated by consequential adjustment of the open market rent and is this fair and reasonable between the parties?
3. Will the proposed change materially impair the Tenant's security of tenure in carrying on its business and is it fair and reasonable between the parties?

Whilst it may be clear that the terms of the old Lease are outdated and contrary to current market practice, in the absence of agreement, the *O'May* decision can make it quite difficult for either party to introduce changes. Nevertheless, if you are encountering difficulties with your Landlord, or your Tenants during the negotiation of a new Lease, we can pursue your commercial objectives by prosecuting, or defending this type of litigation.

*Please note: The content of this article is for information purposes only and further advice should be sought from a professional advisor before any action is taken.*