

Commercial leases and security of tenure – how can this be tackled?

Security of tenure is a term that many of you may be familiar with. It exists through the Landlord and Tenant Act 1954 (LTA 1954). In simple terms it is the legal right that tenants have to renew their lease, if they operate the premises for the purpose of their business, once the lease has come to the end of its term.

What this means for a landlord is that they can only oppose renewal on a limited number of grounds (all of which Wilson Browne can advise on). This isn't ideal for a landlord who may want keep their options open and explore other avenues in the future.

However, there is a way to prevent this provision from existing in the original lease in the first place. Usually the LTA 1954 prevents any contracting out of any of its provisions, but one section allows "the persons who will be the landlord and the tenant in relation to a tenancy to be granted for a term of years certain". Effectively what this means is that security of tenure can be 'contracted out' and excluded in relation to that tenancy.

There are different forms of wording for the 'contracting out' clause which depends entirely on the circumstances of your situation.

How can this be done?

- The potential tenancy must be for a term of years certain – essentially what this means is that it must be granted for a fixed term or granted for a fixed term with a break clause.
- The correct procedure must be followed – something which Wilson Browne are more than happy to advise on – which contains three key stages: landlords warning notice, tenants' declaration and then endorsement.

So what exactly is the effect of 'contracting out'?

- The tenant has no right to remain in the property at the end of the lease
- The tenant has to leave the property by the end of the lease unless the landlord offers them a new one
- The tenant has no right to compensation from the landlord when leaving the property at the end of their lease
- The tenant doesn't have a right to ask the court to fix the rent or terms of the lease if the landlord decides to offer a new one

For more information on security of tenure and contracting out please get in touch with our [Commercial Property team](#).