



Commercial Leases: Ready for Business Rates Changes?

Statutory Compensation for Business Tenancies

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Business Rates and Statutory Compensation

On 1 April 2017, Business Rates are changing for the first time in seven years but with the draft Rating List being published on 30 September 2016, it is time for commercial landlords and tenants to start considering the impact of the changes on the Statutory Compensation which could be payable under the Landlord and Tenant Act 1954.

When does Statutory Compensation arise?

Business tenancies which benefit from security of tenure under the Landlord and Tenant Act 1954 ("the 1954 Act") can give rise to the payment by the landlord of Statutory Compensation to the tenant. This occurs when the landlord opposes the tenant's renewal of its tenancy on strategic grounds such as wishing to develop the premises or occupy them itself.

The landlord must state its grounds for opposing the renewal in either:

- The landlord's notice ending the tenancy under Section 25 of the 1954 Act; or
- A counter-notice to the tenant's request for a new tenancy under Section 26 of the 1954 Act.

Both the tenant's request and the landlord's notice cannot be served before the final year of the term of the lease.

How much Statutory Compensation will be payable?

The amount of Statutory Compensation payable is calculated based on the rateable value of the premises. Where the tenant (or its predecessor in business) has occupied the premises for the last 14 years, the Statutory Compensation will be twice the rateable value of the premises. In other cases, Statutory Compensation will be the rateable value of the premises.

The rateable value used to calculate the Statutory Compensation is based on the valuation list in force at the date either of the following is served:

- The landlord's notice ending the tenancy; or
- The landlord's counter-notice to the tenant's request for a new tenancy.

What impact does the change to Business Rates have?

31 March 2017 is the last day on which the old valuation list will be in force. As the amount of Statutory Compensation depends on the valuation list in force when the landlord's notice or counter-notice is served, this means that the timing of service could make a big difference. For example, if the rateable value of the premises is higher in the new list, then service of a notice on or after 1 April 2017 will mean that more Statutory Compensation could be payable.

The rateable value of most premises is expected to go up and after the draft Rating List is published on 30 September 2016 landlords and tenants will know by how much. The interests of landlords and tenants will inevitably conflict and the landlords have the upper hand. This is because, if the rateable value is set to increase, then it will be in the tenant's interest to wait until after 1 April 2017 to serve its request for a new tenancy so that, if the landlord opposes the renewal, a higher rate (based on the new list) of Statutory Compensation could be payable.

Conversely however, it will be in the interests of a landlord that wishes to oppose renewal to serve its notice to end the tenancy by 31 March 2017 so that a lower rate (based on the old list) of Statutory Compensation will be payable. As long as the end date of the lease is less than one year from 31 March 2017, it will be possible for the landlord to serve its notice prior to the new valuation list coming into force and there is very little (if anything) that the tenant can do about it. Once a landlord's notice is served, the tenant cannot then serve its own notice after 31 March 2017.

Key Points

On or after 30 September 2016, check whether the rateable value of your premises has increased (if it has decreased then the situation is essentially reversed). On the assumption that it has increased, the advice for landlords and tenants is quite different.

Landlords

If you are planning on opposing the renewal of a business tenancy, then failing to serve a notice before 31 March 2017 could lead to increased Statutory Compensation being owed to the tenant.

If you receive a Section 26 Request from a tenant at any time before 1 April 2017 and wish to oppose renewal, then beware that you must serve a counter-notice by 31 March 2017 to avoid higher Statutory Compensation and this might mean responding sooner than the deadline of two months.

Tenants

If you are thinking about serving a request for a new tenancy, consider whether it may be worth waiting until 1 April 2017 so that you could receive more Statutory Compensation should your landlord oppose your renewal.

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