
Under Irish law, it was not possible, until recently, for a tenant to contract out of its statutory right to a new tenancy to commercial premises unless the relevant premises were offices. This caused many landlords to feel compelled to grant leases of less than 5 years which did not always suit tenants, especially UK tenants used to having the ability to “contract out”.

Now, under section 47 of the Civil Law (Miscellaneous Provisions) Act 2008 (“the 2008 Act”) a tenant may contract out of its rights to a new tenancy to all commercial premises.

This is significant for landlords of premises, which are not office premises, as it now allows them to commercially negotiate with tenants to “give up” their rights and obtain vacant possession of premises after a five year period where previously this would not be possible. Landlords of commercial premises of any kind may now utilise this new provision.

Further, the new wording inserted by the 2008 Act does not include the requirement that the Deed of Renunciation be executed by the tenant prior to the commencement of the tenancy, which was previously a strict limit on the application of this provision. This suggests that a tenant may now contract out of its right to a new tenancy at any stage of their current tenancy.

Other criteria contained in the existing Landlord and Tenant legislation is repeated in order for a renunciation to be valid, namely:

- It must be in writing; and
- The tenant must have received independent legal advice in respect of the renunciation otherwise a Court may deem the renunciation to be invalid.

If the above criteria are not met, a Court may deem the tenant to be entitled to a new tenancy and grant it a lease at a fixed term of twenty years or such shorter term that the tenant may nominate provided it shall not be less than 5 years, without the landlord's agreement.

In addition to applying to new leases, it is arguable (but subject to judicial determination) that the 2008 provisions can be utilised by parties who have entered into leases, before the commencement of the Act, including situations where the entitlement to a new tenancy has already accrued.

Overall the new provisions should have a positive effect on the letting market in general, giving a new freedom to landlords, in particular to commit to longer leases without potentially tying up a property for decades.

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