

## How easily can I recover possession from my tenant for the redevelopment of a commercial property?



Unless the lease has been specifically excluded from the protections of the Landlord and Tenant Act 1954 (“the Act”), your tenant’s right to occupy will not automatically come to an end on the expiry date under the lease. For a landlord who wishes to redevelop its property, recovering possession of the same from its tenant can prove a major first hurdle. At PDT, we are experienced in assisting landlords in opposing a tenant’s claim for a lease renewal.

### When does a tenant have a right to remain?

A tenant will have the right to claim a renewal of its lease at the end of the fixed term where it can satisfy the following qualifying criteria:

- The property is occupied by the tenant for the purposes of a business carried on by the tenant.
- The tenancy does not fall within the specific statutory exemptions, such as agricultural tenancies, tenancies for six months or less and service tenancies.
- The lease has not been contracted out of the Act.

### Opposing renewal on redevelopment grounds

As a landlord, you can oppose a lease renewal on certain statutory grounds, one of which is that you have an intention to demolish or reconstruct the property. This is commonly referred to as Ground (f).

To successfully rely on Ground (f), you must be able to demonstrate the following:

- the proposed works are either demolition, substantial works of construction or reconstruction
- the works could not reasonably be carried out without possession being obtained (even despite any express reservation in the lease allowing you to enter the property to make improvements)
- you have a firm and settled intention to carry out the works
- you have a realistic prospect of implementing that intention.

## Intention

Whilst your intention only needs to be demonstrated at the date of any Court Hearing, your chances of success can be vastly improved by taking some or all of the following practical steps at an early a stage as possible:

- **Plans** – obtaining detailed plans helps demonstrate a firm decision to proceed (rather than just a consideration of options).
- **Costings** – helps demonstrate an understanding of the budget needed to implement the scheme.
- **Planning Permission** – whilst there is inevitably a cost to applying for consent, obtaining planning permission before a Court Hearing can actually reduce legal costs (as otherwise expert evidence will usually be required as to the likelihood of permission being granted).
- **Third Party Consents** – seek any consents needed from others to allow the proposed works to go ahead, such as consent from a superior landlord.
- **Funding** – given that cost is a critical factor in whether a landlord has a realistic prospect of carrying out the redevelopment, having funds in place or having applied for funding will assist.
- **Building Contracts** – the more progress which has been made in terms of obtaining quotes
- **Tenders or tenders for the works or appointing a contractor** – the more fixed your intention will appear and the more likely it will be that you can achieve the works.

In addition, a tenant, upon receipt from its landlord of either a statutory notice or counter-notice confirming that a lease renewal will be opposed on Ground (f), will often seek details and evidence at a preliminary stage as to the proposed works and your intention and ability to carry them out. If a convincing position can be established at this early stage, a tenant will often accept the position, take its statutory compensation and vacate without making a court application.

## Compensation for your tenant

Finally, and just as a reminder, whilst there is much a landlord which wishes to redevelop its property can do to boost its chances of successfully recovering possession, once that tenant eventually goes, the tenant will be entitled to statutory compensation based on the rate-able value of its premises.

However, where a tenant fault-based ground (such as a failure to pay rent or to keep the property in repair) is also relied on, you may be able to avoid the payment of compensation.

This is a complicated area of law with traps for the unwary. Taking advice at an early stage can put you in a stronger position and may save time and cost, particularly if court proceedings can then be avoided.

If you would like further advice, please contact our [property disputes team](#).



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