

Business Tenants Stronger Right to Renew Lease

Are you planning to purchase a commercial property that already has a tenant? Is the plan to let it out for better rates or occupy it yourself? Or perhaps you are looking to redevelop the building? Have you been advised how you can require the tenant to leave when their lease ends, despite it being a protected tenancy? If the answer to any of these questions is yes, then you need to factor a new UK Supreme Court judgement into your plans.

Many commercial tenants have the benefit of a protected tenancy under the Landlord and Tenant Act 1954. This grants a tenant an automatic right to renew their lease at the end of the lease term on terms decided by the court, if the parties are unable to come to an agreement. A landlord may still be able to obtain vacant possession of the property, notwithstanding the tenant's statutory rights, but do so they will first need to prove one of the seven grounds set out in the 1954 Act. In summary the grounds are:

1. The landlord has already owned the property for five years and intends to run their own business from the property or live there.
2. The tenant's landlord is not the owner, and has sub-let part of it to the tenant, but now plans to sub-let the whole property.
3. The landlord offers reasonable alternative accommodation suitable for the tenant's requirements, including the need to preserve their business's goodwill value.
4. The tenant has been repeatedly late

in paying rent.

5. The tenant has failed to repair and maintain the property up to the standard of their contractual commitments.
6. The tenant has committed unlawful conduct or other substantial breaches of their lease.
7. The landlord intends to reconstruct or demolish the property, and the works could not be carried out without the tenant leaving.

As an aside, if the landlord is looking to rely on grounds 1, 2 and 7 above then they are obliged to pay compensation to the tenant. The sums can be significant and amongst other things, will depend on the period of time that the tenant has been in occupation.

The new Supreme Court decision is relevant to landlords looking to obtain vacant possession by proving the seventh ground – the development ground.

Until this new judgment, landlords could present to the court planned works the sole purpose of which was to be sufficient to prove the development ground. In other words, the works added no value to the property and were pointless, save they allowed the landlord to maintain in court

that the tenant had to vacate as the landlord would otherwise be unable to carry out those works.

The law has now effectively changed given the December 2018 final judgment in *S Franses Ltd v The Cavendish Hotel (London) Ltd*. The landlord proposed pointless construction works. They were open about only intending to carry out the works, if necessary to get rid of the tenant. When the High Court looked at this case they ruled in favour of the landlord, as required by precedent rulings. The Supreme Court decided to overrule and thus strengthened the tenant's right to renew.



David Prais.

Going forward, the landlord has to convince the court that they would plan to carry out the same work even if the tenant chose to leave. The landlord's intention to carry out the work can't be conditional on whether the tenant tries to get a new tenancy. This intention can be inferred from the redevelopment plans themselves. Judges will ask whether such works would make financial sense if the tenant was choosing to leave anyway.

A redevelopment of a property you plan to re-let, can of course make business sense. The plan can make the property suitable for sale or re-letting to a differ-

ent type of tenant who would pay a higher rent, and the increased rental or sale value has to justify the cost of the construction.

To use construction plans as grounds to prevent a tenant renewing, will now require plans that would be sensible even if the tenant leaves voluntarily. Well-advised tenants now have greater reason to seek disclosure and examine such plans.

If you're purchasing a commercial property with a protected tenant, there may still be options to gain vacant possession. But those who ignore this new ruling, may find themselves suiting up for court.

Please contact David Prais of Asserson if you wish to discuss this case further or if you need some other legal advice.

David Prais and Jonathan Perrin – Asserson ■

Asserson launched in 1995 as a bold experiment in providing UK legal services from a remote location, at a time when legal off-shoring had not even been dreamed of. Beginning with Dispute Resolution, the Firm has grown rapidly adding Business Law, Banking, Employment and Real Estate services alongside a UK planning team. Headquartered in Central London but with our largest office in Tel Aviv's business district, we support clients around the world who are looking to do business under English law. Our locations and our approach to doing business attract both great clients and great lawyers.

Challenges Facing Landlords Today

This week's Property Pro features Moishe & Boruch Neumann of EPC National who will be looking at some of the energy issues facing landlords today, and how to resolve them, with Simon Dresdner, Director of Merco Facilities Services and FCS Management Services.



Simon Dresdner.

the owners on how to rectify the problems.

Some of the reasons why the government put this requirement in place: 1) To ensure tenants are not left with a neglected building 2) To reduce energy bills 3) To reduce pollution

SD: What problem do you solve for your clients?

BN: This is a good question. In many cases the property is in good condition but has failed the EPC check because of on-going changing regulations and there is no need to spend extra money. In many cases the previous assessor did not do the job properly and was too quick to pass the property on a low rating rather than having the problems rectified and scoring a higher rating. A client of ours had a legal case where there was a dispute with a tenant's commercial lease and the tenant found an excuse that he was not provided an EPC which makes the lease illegal. Because we are up to date with all the latest regulations, our clients can relax knowing that their portfolio is in good care and up to date with all the requirements.

SD: Something special about your company that your clients benefit from?

MN: We communicate with the client from the moment they instruct us to assess the property until we know it is fully compliant with the latest regulation! We will help the client know what is required, make it our business to gain access regardless of what we need to do to get in. And every effort will be made to help you pass without compromising on the law or cost-

ing you more than necessary, if in need we can also manage required efficiency works needed.

SD: Can you share 3 tips which they will find useful and may not be aware of?

BN: Some people assume that their building won't pass, due to its neglectful state. But in reality, these buildings might very well be passable. Ask before you assume anything.

And visa versa.

People refurbish properties at a high cost and then realise afterwards their property failed EPC regulations as they put in the wrong systems for that property. Always consult with an assessor before undertaking any work. It's free to ask!

Top floor flats with electric radiators and a flat roof are very often the cause for a fail so be aware of that!

EPC requirements (especially com-

mercial) can vary depending on the terms of the leases, use of the property, exemptions and whether it's a sale, rental or refinancing, so be aware of this and explain your specific case.

SD: Can you share a recent success story?

MN: A client who owned a large office block, was refused finance by the banks due to its failed EPC. He was running out of time and came to us panicking, we looked into his case and on behalf of the client, we explained to the bank that there is no need for an EPC in this case, he got his finance B'H without spending a penny! ■

For advice or help, contact Moishe or Boruch Neumann who will be happy to assist you at any time. Call 03300 88 11 41, email: maurice@epcnational.co.uk or visit www.epcnational.co.uk.



Moishe & Boruch Neumann of EPC National.

Will You Miss Out On The ISA Opportunity?

By Marc Ovits BA (Hons) APFS Cert PFS (DM), Chartered Financial Planner, Principal of Alpha Wealth Management Limited



Marc Ovits

As ISA season gathers pace, will savers make the most of the long-term tax and investment benefits provided by their annual allowance?

The opportunity

For the vast majority of people with money to invest, fully utilising your annual Individual Savings Accounts (ISAs) should be your first priority in managing your personal finances. ISAs provide a tax-efficient way of saving or investing because returns (such as interest, or capital gains) are paid tax-free. The catch with the annual ISA allowance is that if you don't use it, you lose it. Will you be one of those people who don't use their annual allowance before 5th April 2019?

UK residents 16 or over can save up to £20,000 a year (for the 2018-19 tax year) into a cash ISA. Those aged 18 or over can save in a cash or stocks and shares ISA, or combination of ISAs.

Should you follow the crowd?

Despite the returns on offer being near record lows, three quarters of last year's ISA subscriptions were deposited in Cash ISAs. That's nearly £40 billion. While there was also a 28% increase in the amount invested into Stocks & Shares ISAs, it's clear that the preference for cash is proving a hard habit to break.¹

Latest figures from HMRC showed that savers now have over £270 billion deposited in Cash ISAs. Furthermore, over ten million Cash ISAs have received contributions in each of the last ten tax years; ample evidence that these tax-advantaged accounts are being used widely, if not wisely, as part of individuals' long-term savings strategy.²

That could be a costly mistake. How many millionaires do you know who have become wealthy by investing in savings accounts? Moneyfacts reports that the average easy access Cash ISA rate is currently 0.94%. The best rate for a five-year Cash ISA account is 2.30%, only marginally above the current rate of inflation. What's more, that rate is less than the best available for a standard five-year deposit account.³ Why then are savers choosing the cash option for their ISA allowance?

Interestingly, the Aegon research⁴ revealed that concerns about making a wrong decision were the most likely reason preventing people from tak-

ing more risks with their savings and investments. That underlines the vital role that good financial advice can play in helping savers build confidence and improve their understanding of risk, in order for them to make the right long-term investment decisions.

"Regardless of the current turbulent political and investment landscape, failing to take measured risk is not prudent," said Nick Dixon, Investment Director at Aegon. "Over the longer term, reckless caution is the biggest risk of all."

The more attractive valuation levels across global markets will be seen by many investors as a long-term opportunity. But other savers may be uneasy about committing money to the stock market and happier to take what they perceive as the safer option of cash.

So what type of ISA could you invest in?

Selecting which type of ISA is most suitable for you is not always straight-



forward. Taking some competent professional advice at the outset can make a meaningful difference to your savings and investments over time.

There are six main types of ISA:

- Cash
- Stocks and shares
- Innovative finance
- Junior
- Help to Buy
- Lifetime

Cash ISAs

Cash ISAs are offered by banks and building societies. Like normal savings accounts, there are a variety of cash ISAs available, including instant access, regular savers and fixed-rate deals. Interest is always paid tax-free.

A cash ISA can be a great account for short-term savings goals such as a holiday. Your money is safe in a cash ISA deposits up to £85,000 per person per institution are protected by the Financial Services Compensation Scheme (FSCS). If you choose an instant access cash ISA, you can withdraw money whenever you like (but the interest may be lower because of this advantage).

Stocks and shares ISAs

Stocks and shares ISAs are usually managed by an online broker, a platform, a fund management group or a

fund supermarket. This type of ISA allows you to invest in shares in individual companies, investment funds and bonds. Stocks and shares ISAs are more risky than cash ISAs because the value of your ISA will go up and down with the stock market, and you may get back less than you invested.

A stocks and shares ISA can help you reach long-term financial goals such as saving for your child's education. Drip-feeding money into your account each month should help you ride out the ups and downs of the stock market.

Innovative finance ISA

Innovative finance ISAs are a fairly new type of ISA. They allow savers using direct lending or peer-to-peer (P2P) or crowdfunding lending platforms to receive tax-free interest on their investments.

Peer-to-peer lending matches investors with borrowers such as new businesses or property developers. The potential rates of interest are higher

in the account belongs to the child and can only be accessed by the child at the age of 18 – so there's the risk your child might not make sensible spending decisions.

Help to Buy ISAs

Help to Buy ISAs are a type of cash ISA designed to help people save a deposit for their first home. Savers can put in up to £3,400 in the first year of holding a Help To Buy ISA and £2,400 in subsequent years.

The Government adds a 25% bonus to savings up to a maximum bonus of £3,000. To be eligible for the bonus, the money in a Help To Buy ISA must be used to buy your first home.

Lifetime ISAs

Lifetime ISAs (LISAs) can either be cash or stocks and shares. This type of ISA can be opened by savers aged between 18 and 40. The LISA has a £4,000 annual limit and the Government will add a 25% bonus, up to a maximum of £1,000, each year. Contributions can be made up to the age of 50.

To get the government bonus, you must either use the money to buy your first property or wait until the age of 60 to access the money.

In general, Lifetime ISAs can be a great way to save for a first home – but there are alternative ways to save for retirement, such as pensions.

Conclusion

For those who have already built up significant ISA funds, ask yourself how are the investment managers you have managing your investments performing? Is the asset mix, geographic spread or fund choice still right for you? Are you happy with the service you're receiving from your adviser? A thorough review of an ISA portfolio by a competent wealth manager can ensure that your investments are kept on track towards helping you achieve your immediate or future financial goals.

The information and any opinions expressed in this article should not be taken as financial advice. The value of investments can go down as well as up, and you could get back less than you paid in.

An investment in equities does not provide the security of capital associated with a deposit account with a bank, building society or Cash ISA.

The levels and bases of taxation, and reliefs from taxation, can change at any time and are generally dependent on individual circumstances. ■

The Writer is the owner and Managing Director of Alpha Wealth Management Limited. Drawing on over 20 years' experience in financial services, Marc helps private clients, businesses, charities and trusts optimize their finances. He is a Chartered Financial Planner providing 'Independent' financial advice. Prior to being a financial adviser, Marc was a Director at several global investment banks, providing investment advice to Europe's leading institutional investment and pension fund managers. For advice on inheritance, investment, protection, or retirement planning, please contact Marc on 020 8203 6920 or 07866 503 898 or marc@alphawm.co.uk.

HMRC, Individual Savings Accounts (ISA) statistics, September 2018

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HMRC, Individual Savings Accounts (ISA) statistics, September 2018

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Moneyfacts, January 2019

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Aegon, January 2019

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