

Insights

HOW CAN A LANDLORD RECOVER POSSESSION OF BUSINESS PREMISES SO THAT IT CAN OCCUPY FOR ITS OWN BUSINESS?

Nov 15, 2021

You are a landlord of business premises^[1]. You have owned the premises for more than five years. You have granted a lease of your premises to T, which is protected by the Landlord and Tenant Act 1954. The tenant (T) is a good tenant who pays the rent on time and complies with the terms of the lease. The lease ends in two years' time, and T has the right to claim a new business lease when the current lease ends. However, you want to use the premises for a new business of your own. How can you recover possession of the premises when T's current lease ends?

You can oppose the grant of a new lease to T if at the end of the current tenancy you intend to occupy the premises for, or partly for, your own business. To "intend" means more than to contemplate. It requires a decision, as far as you can, to bring it about and to have a reasonable prospect of bringing it about by your own will. You must have reached a "firm and settled" intention to occupy the premises for the purposes of the business you wish to carry on.

Not everything needs to be in place such that you have taken all actions necessary to be ready to occupy the premises for your business. A common sense judgment is needed as to whether the steps you have and have not taken confirm or undermine your stated intention to occupy for those purposes.

Your stated intention must be your genuine intention to occupy for those purposes, whether or not T occupies the premises. If your intention is to operate your business from the premises because you believe that will enable you to defeat T's claim for a new tenancy, that intention will not count. If your intention is to occupy the premises for your own business, even if T voluntarily vacates the premises at the end of the current lease, that intention supports your case.

Some things you may be able to do to prove intention are:

- Produce a robust business plan for the intended venture.
- Planning permission: confirm that you do not need planning for your intended use or, if you do, that consent is likely to be granted; better, obtain planning permission.

- Funding: demonstrate the source of funds for the project.
- Staff: explain where the staff will be found and that they have or will have in good time any qualifications required for their roles.
- Crucially, produce a paper to your board adopted by a duly minuted resolution that proves that you wish to proceed and would do so even if you have vacant possession of the premises.

Good luck with obtaining possession and with the new business.

[i] In England and Wales

This insight was originally authored by Roger Cohen.

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