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Commercial landlord and tenant 101

In this guide, produced in collaboration with Wilkes' Mark Hodgson, you'll learn what the UK laws say about the terms agreed between commercial landlords and tenants.

Whether you're a commercial landlord or a tenant, the videos, notes and infographics within this guide should give you the information you need to be confident your commercial tenancy agreements are correct, fair and legally compliant.

And if you're looking for tailored advice just for your business, get in touch via our [**Speak to an Adviser**](https://www.farill.io/speak-to-an-adviser) feature and we'll connect you with an expert who can assist you.

## What does it mean to be a commercial landlord?

Being a landlord is a business. And, like all business activities, while much of what landlords and tenants may agree between them is the product of negotiation and market dynamics, law also plays a key part.

The law that governs landlord and tenant relationships is well established and, in a number of cases, it's non-negotiable.

If you're a landlord providing premises to someone intending to run their business from that spot, or you're a business tenant about to agree terms with a landlord for those purposes, you should be aware of these laws.

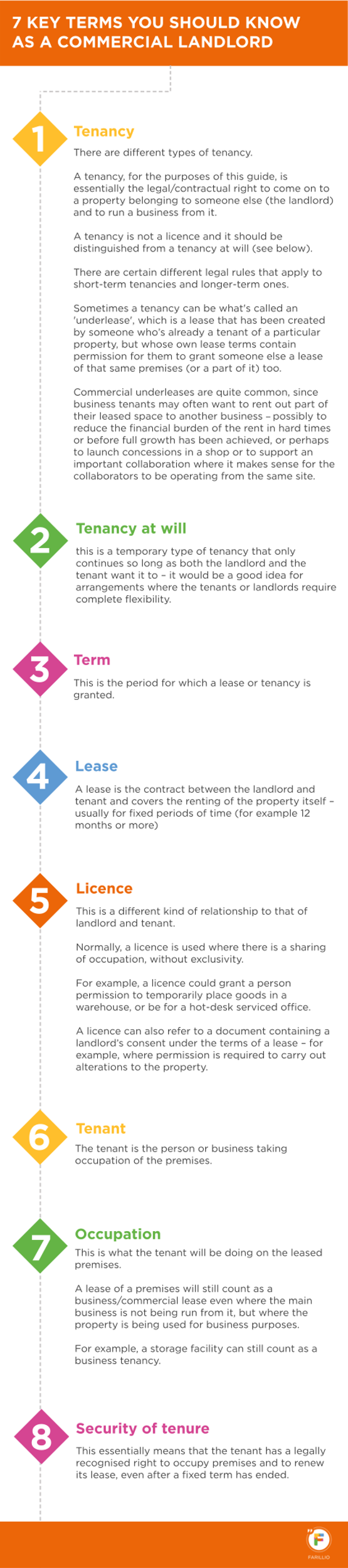
Commercial leases are a significant commitment that can have a very material impact on a business and its prospects of success. If either a landlord or tenant becomes unhappy with the terms they've agreed, wants to end them or wants to change them, what's gone into the terms of that agreement may suddenly become critically important and potentially very contentious.

So, here's what you need to know up front...

## 7 key terms you should know as a commercial landlord

The UK's property laws applicable to business landlords and tenants are peppered with terms and phrases that have very defined legal meaning.

Take a quick look at our infographic below for a fast summary of some of the main ones you'll come across in this guide.



## Why it's important to know about landlord and tenant law

The principal law governing business landlord and tenant relationships is called the Landlord and Tenant Act 1954

If you're agreeing a lease or an underlease to use a property for business reasons, this statute will automatically apply to the terms of your relationship with your tenant, unless the agreement to occupy is either:

• a tenancy at will; or

• a licence not giving exclusive possession; or

• a fixed-term tenancy for a term not exceeding 6 months (and where the same tenant hasn’t been in occupation for more than 12 months)

#### **Automatic protection for tenants**

The 1954 Act contains important protections for business tenants, such as the right to:

* lawfully remain on the premises on the same terms as their existing lease when it expires and
* ask the Court to grant them a new lease if terms cannot be agreed with the landlord (called 'security of tenure').

Commercial landlords may well want to exclude this protection so that they have greater control over what happens on their premises, when a lease term ends.

The 1954 Act protections can only be excluded using a very formal, prescribed procedure involving notices and declarations, designed to ensure that the tenant fully understands the rights that they are giving up.

Basically... the landlord has to produce a formal notice document and:

* give it to the tenant, and
* the tenant must then sign a formal declaration to confirm that they understand that the 1954 Act protections will not apply to the terms that they sign
* The lease must contain the appropriate wording confirming this agreement also
* If this process is followed correctly, then the protections set out in the legislation will not apply to the lease and at the end of the term, the tenant must leave the property

It's very common to exclude these terms in a commercial landlord and tenant relationship especially for a lease that's less than 5 years or where a landlord may only have a short-term need to let the premises. It's also very common in sub-leases.

Both landlord and tenant could, of course, subsequently decide that they do in fact want to renew a 'contracted-out' lease. They would then need to document this intention in the form of a new lease.

## How to set deposit and rent amounts as a commercial landlord

## How a landlord can maintain a good relationship with commercial tenants

### **What are the most common complaints from commercial tenants?**

## Ending a protected terms lease

Business tenancies continue until they're terminated in a way that's permitted by the 1954 Act. In fact, at the end of the contractual term of a lease that has the protection of the 1954 Act, the business tenancy actually continues until one of the following events occurs:

### **Landlords notice**

As a landlord, you can give your business tenant notice that you want to terminate their tenancy.

You do this by completing what's called a Section 25 Notice – and in it, you must confirm:

* the date on which the existing lease will come to an end and either
* that you will not oppose the renewal of the business lease, or
* that you do not wish to renew it for the reason(s) that you have set out (see below for a list of the permitted reasons – landlord's do not have free reign here)

You can use our [**Section 25 Notice template**](https://www.farill.io/templates/section-25-notice-landlord-renewingrejecting-renewal-of-protected-terms-lease/preview).

The wording of this template is specified by statute, so you should not revise it except to complete the missing information that is indicated.

Make sure you always include the notes that accompany the notice as well. Notices won't be valid without them.

**Strict time frames apply to the service of this notice on the tenant**

Your Section 25 Notice must be served between 12 and 6 months before the end of the leases’ contractual term, and it cannot be served after the Tenant has served you with formal notice that they want to renew the lease.

The tenant's formal notice is called a Section 26 Notice – see further below. If the lease is already in its last 6 months or less, or if it has expired, you still have to give at least 6 months’ notice.

## Tenant's options when a lease is ended

### **Where you DON'T want to stay**

If, as a tenant, you decide you don't want to continue using the premises for your business purposes after contractual lease term has expired, then what you do depends on how long you've been occupying the premises already.

**If you make the decision not to stay on before the contractual termination date has passed:** then provided you've vacated the premises prior to that contractual termination date, then your lease comes to an end in the usual way (and up until that date, you remain contractually liable for complying with all the terms of that lease).

**If you remain on the premises after the contractual termination date, and only later decide to leave:** you'll need to give your landlord 3 months’ notice of your intention to terminate this business tenancy – and you'll enter into a tenancy at will for this time period.

The form of notice that you'd use to serve this notice is called a Section 27 Notice

We have a [**Section 27 Notice template**](https://www.farill.io/templates/section-27-notice-tenants-notice-to-terminate-protected-terms-lease/preview) that you can use for this.

The wording of this notice is a lot less formal than some of the other notices that apply to landlords and tenants where a protected terms lease has been created.

You can set out your intentions in a straightforward letter, and we recommend you send it to the landlord by recorded or special delivery so you have proof of the date it was sent and confirmation of delivery.

**Once a Section 27 Notice has been served, it's irrevocable.**

You'll have no right to use or stay on the premises once the termination date has passed. And if you've previously served a Section 26 Notice on your landlord (requesting a renewal of your lease, which we will look at below), you won't be able to send a Section 27 Notice with the intention of undoing that request. You can, however, serve a Section 27 Notice to expire after the end date given in your Section 26 Request.

### **Where you DO want to stay...**

If you do want to continue using the premises for your business, and you've not received a Section 25 Notice from the landlord recording their intention to terminate the lease, you can send your landlord a formal request informing them that you require a new tenancy and specifying the terms of the new lease that you want.

The form of notice that you need to send is also prescribed by statute and it's called a Section 26 Notice.

You can use our [**Section 26 Notice template**](https://www.farill.io/resources/templates/section-26-notice-tenant-request-to-renew-protected-terms-lease/) for these purposes. Please only amend it to complete the missing areas where we prompt you to do so. The drafting is laid down by the law.

In the schedule to the Notice, you can specify the terms that you'd like for the new lease. If you're unable to agree these terms with your landlord, the court can step in and determine what those terms should be.

Until a business tenancy is terminated in one of the ways described above, it will continue, on the same terms and conditions as the original lease, and at the same rent as the rent immediately payable prior to its contractual termination date.

### **The Landlord's served a Section 25 Notice but the tenant doesn't want to go...**

If the landlord serves the Section 25 Notice but the tenant doesn't want to leave the premises, the process takes the following legally prescribed steps:

1. the landlord serves the Section 25 Notice on the tenant (recorded or special delivery is recommended)
2. the tenant, who disagrees, informs the landlord that they're not willing to leave the premises, by sending what's called a 'counter notice', the format of which must follow the instruction notes that accompanied the landlord's Section 25 Notice
3. the two parties ideally negotiate a compromise
4. if they can't reach agreement, the landlord will need to apply to court for an order permitting them to re-take possession of the property
5. in response, the tenant can make a counter application to the court, requesting a new lease

...and the court will ultimately need to decide the outcome.

It's not that common for these kinds of disagreement to get as far as the courts – not least since court actions are costly. Sometimes, a landlord may be prepared to offer a financial incentive, like a month's rent for free in return for agreement and to resolve the matter more quickly and potentially more cost effectively.

The procedure is dictated almost entirely by statute, so there's little scope to depart from it, and getting it wrong means you could lose your chances of getting the outcome you want, so it's important to pay attention to the procedural details and to take advice if you're not sure.

If the court finds in favour of the tenant, the landlord will be ordered to grant a new tenancy to them. If the parties can't agree the terms, the court will decide what they should be after hearing from both parties and/or their surveyor experts.

The maximum length of a new tenancy granted under this process is 14 years. The court will order a rent at a level that the premises might reasonably be expected to be let on the open market.

## Landlord's permitted reasons for not agreeing to renew a lease

If, as the landlord, you don't want to grant a new tenancy, there are only a limited number of lawful reasons that you can draw on to refuse your tenant’s application for a new lease.

We've summarised these reasons below...

A number of them may involve the assistance of the courts and the business tenant is in a strong position if they want to renew the lease since many of the grounds listed are difficult to prove or are time constrained.

### **(a) Disrepair**

If:

* the landlord can prove that the premises are in substantial disrepair (i.e. the tenant's really not taken care of them and may even have caused damage to them because of this lack of care), and
* the terms of the lease made the tenant responsible for taking good care of the premises and keeping them in a reasonable state,the landlord can oppose the tenant’s application for a new lease.

If this turns into a dispute about whether the premises were in such a condition that the landlord is justified in refusing to grant a new lease, the courts may have the final say. Whether the landlord can evict the tenant on that basis will then be their call.

### **(b) Persistent delay in paying the rent**

If:

* the tenant's frequently late in paying the rent and
* collecting it causes the landlord additional cost or expense, and
* a court feels that this pattern of events could quite well continue to be a problem for the landlord,the court may be prepared to support the landlord in opposing the tenant's application for renewal of the lease.

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### **(c) Other breaches**

If the landlord can:

* prove that there are substantial breaches of the tenant’s obligations under the lease, (for example, the tenant has, without permission, sub-let the premises, materially altered them or used them for a purpose that isn't permitted), or
* evidence some other reason connected with the tenant's misuse or mismanagement of the premises, which arguably ought to dis-entitle the tenant to a renewal of the lease's terms, again, a court is likely to side with the landlord and refuse the tenant's request for renewal.

### **(d) Alternative accommodation**

If the landlord can show:

* they've made an offer of suitable and reasonable alternative accommodation (appropriate to the relationship the parties have had to date and to the purpose for which the premises have been used), and that
* they remain willing to provide this alternative to the tenant and this becomes a dispute, then, again, it may fall to the court to decide (in its discretion) whether to refuse the tenant’s request for a renewal of the lease for the current premises.

### **(e) Complex sub-lettings**

This is one of the least used of all of the grounds because it's very fact specific.

Here, to be able to justify refusing to renew the lease, the landlord must show that:

* the business tenancy in question is a sub-letting of a main lease to which the landlord has the overall rights,
* the combined rents on a letting of the entire leaseholding would be economically better for the landlord if the premises were let as a whole rather than as sub-lets, and
* the landlord requires possession so that they can let the entire premises as a whole and cease any sub-lets.

### **(f) Demolition, reconstruction or substantial works of construction**

This is the most common ground of opposition to a tenant's request for renewal of a lease.

Here, the landlord must evidence an intention to:

* demolish or reconstruct the premises (or a substantial part of them), or
* carry out substantial construction works on the whole or part of it,

...all of which could not reasonably done without obtaining possession.

To prove that intent, the landlord must show they have:

* the requisite planning consents, or a reasonable prospect of obtaining those consents, at the date of the court hearing fixed to hear the dispute,
* an intention to carry out the works and
* the means to carry out the works (financially as well as physically)

### **(g) Own occupation**

If the landlord can show an intention to occupy the premises, in whole or in part, so that they can carry on their own business activities, or to reside there, then the landlord can oppose their tenant’s rights to renewal.

There are limitations on this right, however.

If you're a landlord and less than 5 years before your business tenant applies to renew the lease, you either bought the freehold (the absolute rights) to the business property, or the residue of any superior leasehold interest in the business property, you can't exercise this right.

## What remedies do commercial landlords have against problem tenants?

## Can a commercial tenant sublet to someone else?

## Compensation for the tenant if the landlord refuses to renew

If you're a tenant and your landlord opposes renewal of your lease on grounds 5–7 above, then you may be entitled to compensation if the court agrees in favour of your landlord and you're forced to vacate the premises.

Compensation is calculated taking account of the rateable value of the property.

For business tenants who have occupied the premises for fewer than 14 years, the compensation is 1 x the rateable value of the property.

For business tenants been in situ for over 14 years, the compensation is 2 x the rateable value.

## Landlord obligations to business tenants

Landlords of commercial premises have far less in the way of obligations to their business tenants, as do residential tenants. Whereas residential landlords have certain statutory obligations, these do not apply to commercial landlords, where the relationship is governed by the lease.

### **Health and safety responsibilities**

In most cases, the landlord shifts/shares the responsibility for health and safety obligations to/with their tenant. However – if there are communal areas, then there are still a number of obligations for which a commercial landlord will remain responsible.

The health and safety requirements on landlords essentially mean that they must keep communal areas safe and free from health hazards, often charging the cost of doing so back to the tenant via a service charge.

When it comes to things like evacuation procedures in the event of a fire or serious incident, the business tenant is typically responsible for devising and operating these.

Ensuring that any communal fire exits and escapes are structurally fit for purpose will almost always fall to the landlord, and the supply of fire safety equipment, including smoke alarms and carbon monoxide detectors in communal areas may also be included in those obligations. Again, costs can usually be re-charged to tenants via a service charge.

Keeping exits clear and maintaining the condition of the property will generally fall to the business tenant. But these are all considerations that must be very clearly defined in the terms of the business lease.

### **Maintenance and repair**

Generally, commercial leases are let on full repairing terms, meaning that the tenant will be responsible for all repairs to the property. However, if only part of a building is being let, careful consideration will need to be given to who maintains what, to ensure that no items of repair become neither the landlord’s nor the tenants responsibility.

### **Asbestos risks**

The tenant will be the duty holder for the Asbestos Regulations. A sensible tenant will ask his landlords for a copy of any asbestos survey before taking a lease to ensure that any asbestos risks are properly managed. Asbestos doesn't always need to be removed, but not managing the risks properly can lead to fines of up to £20,000 and two years in prison.

### **Utilities**

When it comes to utility services, like water, gas and electricity, the tenant will usually be responsible for ensuring that the property is fit for purpose and connected to these essential facilities, unless the property is part of a larger building, like an office block.

The tenant is also likely to be responsible, in most cases, for the regular maintenance and inspection of these service arrangements by qualified engineers and the safe storage and display of the relevant safety certification. Again, a sensible tenant will request safety certificates from their landlord before signing a lease.

And if the tenant modifies the supply arrangements, these will fall within their responsibility. The lease terms should be clear on what the tenant is permitted to do and where any consent from the landlord is required before any additional modifications might be permitted.

### **Fixtures and fittings**

Fixtures and fittings are the more cosmetic features of a property and they're typically non-structural and often non-permanent.

There's no formal legal definition of fixtures and fittings, but as a general rule of practice, 'fixtures' are items that tend to be attached or bolted to walls, ceilings or floors (like wall lights, light switches, doorbells, radiators, sinks, curtain rods, cabinets and meters). 'Fittings' are generally free-standing, like desks, work benches, racking and bins.

Any fixtures will generally belong to the landlord as part of the property, but fall to be maintained by the tenant. Fittings that the tenant's installed in, or placed on the property need to be safe to use. This includes correct installation and, in the case of some electrical equipment, a safety certificate.

If the tenant installs any fixtures and fittings themselves, then it will be their responsibility to maintain those.

## Insurance

Landlords and tenants will both need separate and appropriate insurance cover for the property and what's in it.

**What insurance cover should commercial landlords have?**

Landlords tend to insure the fabric of the building, together with loss of rent, but usually recharge the cost back to the tenant.

### **What insurance cover should business tenants have?**

Business tenants can take a look at [**our insurance 101 guide**](https://www.farill.io/guides/insurance-101-for-small-businesses-what-do-you-need), and [**why need SMEs need insurance**](https://www.farill.io/guides/why-smes-need-insurance), which cover what you need to consider.

## The code for leasing business premises in England and Wales

This Code was published in 2007.

It's not legally binding, but as it was authorised by such regulatory bodies as the British Council for Offices, the British Retail Consortium, and the Confederation of British Industry, as well as groups representing insurers and surveyors, it does have real persuasive force, especially when landlords are looking to evidence that their actions towards their commercial tenants have been reasonable.

The Code has a particular focus on the terms of leases, aiming to ensure that their terms are easily understood and unambiguous, particularly when the setting out the responsibilities of commercial landlords and tenants.

The code covers:

• lease negotiations

• rent deposits and guarantees

• length of term, break clauses and renewal rights

• rent review

• assignment and subletting

• service charges

• repairs

• alterations and changes of use

• insurance

• ongoing management

Not all leases incorporate the Code, which seeks to strike a reasonable balance between landlords’ and tenants’ obligations.

To find out more on the code, follow the link [**here**](http://www.leasingbusinesspremises.co.uk/downloads/code_comm_lease090805.pdf)

## The minimum Energy Efficiency Standards (MEES)

From April 2018, by law, many rented commercial properties must now have a minimum energy performance rating of E on an Energy Performance Certificate (EPC).

This means that it’s now unlawful to grant new leases of eligible commercial property which have an EPC rating below an E. This is the case whether those new leases are to existing tenants who are renewing their terms or new tenants.

From 1 April 2023, it will be also unlawful to continue to lease any eligible commercial property that doesn’t meet these minimum energy efficiency standards.

There are exemptions that can be applied for if certain criteria are met and some properties fall outside of the regulations altogether. You can find out more [**here**](https://www.gov.uk/government/publications/non-domestic-private-rented-property-minimum-energy-efficiency-standard-landlord-guidance).

## How to draft a fixed short-term commercial tenancy agreement

## How to draft a licence to occupy

## Top tips for commercial landlords