



Assigning and Underletting: Getting Landlord's Consent

What is Landlord's Consent?

Most residential and commercial leases contain provisions that restrict the tenant's ability to assign or underlet the lease. This is the way in which the landlord can retain a degree of control over the identity of the tenant and protect the value of its interest. Certain dealings may be completely prohibited whereas others may be allowed provided that the landlord gives its written consent, which generally, whether expressly stated or not, must not be unreasonably withheld.

It is sensible to obtain legal advice at an early stage. Failure to understand rights and duties may result in significant delay, when timing may be critical, or could result in a claim for damages being made against a landlord.

Points for Tenants

Tenants should ensure that, firstly, consent is actually required for what is proposed as often parties overlook to consider the terms of the lease. If it is required, then applications need to be made in the correct manner. It is also sensible to try and pre-empt any potential questions or challenges a landlord may raise by providing as much information as possible.

Landlords

For landlords, the effect of such applications, if made properly, is to impose statutory duties which include to give written notice of decisions within a reasonable time and to give consent unless it is reasonable not to. If consent is refused, the landlord must give reasons for that refusal. Failure to comply with the requirements is a breach of statutory duty and the landlord can be sued for damages. These could be significant if the tenant has lost a possible assignee or undertenant as a result of the landlord's breach.

Reasonable Time and Reasonable Refusals

The main issues in practice concern what amounts to a 'reasonable' time to respond to an application for consent and when is it reasonable to refuse consent. The lease may specify the grounds upon which it is reasonable for the landlord to refuse consent to an assignment although such grounds are not always easy to apply in practice and advice may be required. Ultimately, each case turns on its own facts and requires an experienced judgment call, which is why this can be a difficult area of law.

Points to Consider

How and to whom should the application be made?

What information needs to be provided?

Does the landlord need to pass the application to any other parties?

How quickly must the landlord respond?

How should the landlord respond?

If the consent is given with reasons, are those reasons reasonable?

If consent is refused, are the grounds for refusal reasonable?