



## What happens if a tenant stays in occupation after its lease expires and that lease was contracted out of the Landlord & Tenant Act 1954?

---

We are often asked what happens if a tenant stays in occupation after its lease expires and that lease was contracted out of the Landlord & Tenant Act 1954. A recent case in the High Court has looked at this question and the answer is still “it depends”.

In *Barclays Wealth Trustees (Jersey) Limited v Erimus Housing Limited* (2013), a contracted out tenant remained in occupation after expiry and the landlord and tenant took their time agreeing terms for a new lease. In fact, it took almost two years before the terms agreed. Then, the tenant changed its mind and notified the landlord that it intended to terminate its occupation.

The tenant argued that it occupied the property under a tenancy at will and so could terminate the occupation quickly, on no notice.

The landlord argued that the tenant occupied under an implied periodic tenancy, so that the tenant had to give six months’ notice before it could terminate. On the facts of this case, this meant that the tenant would have to pay an extra £185,000 in rent.

Unfortunately for the tenant, the Court agreed with the landlord. This was because the negotiations for the new lease had been sporadic and half-hearted and the parties had acted in such a way that they both understood that the landlord would not seek to evict the tenant without notice.

The lesson must be to document any occupation as soon as possible. If a contracted out lease ends and the tenant remains in occupation, a tenancy at will should be signed. Otherwise, the tenant may acquire security of tenure.

If there is no signed agreement, each case will depend on its own facts and the Courts will imply from the surrounding circumstances the terms under which the parties intended the tenant to remain in occupation.

Often, if the parties are negotiating terms for a new tenancy, and the tenant is allowed to stay in occupation while those terms are being agreed, then the Courts will hold that there is a tenancy at will in place.

However, as we have seen in this new case, this is not always so and it very much depends on the parties' attitude and behaviour, by looking at the correspondence between them and how hard they are trying to agree the new terms.

## JOANNA CLARK

This article is not intended to be a full summary of the law and advice should be sought on all issues.

### Contact



**Joanna Clark**

Partner

Email  
[joanna.clark@adamsandremers.com](mailto:joanna.clark@adamsandremers.com)

### Adams & Remers LLP

#### Lewes

Trinity House, School Hill,  
Lewes, Sussex BN7 2NN

Tel +44 (0)1273 480616

Fax +44 (0)1273 480618

DX 3100 Lewes 1

Email [lewes@adamsandremers.com](mailto:lewes@adamsandremers.com)

#### London

Commonwealth House,  
55-58 Pall Mall, London, SW1Y 5JH

Tel +44 (0)20 7024 3600

Fax +44 (0)20 7839 5244

DX 140545 Piccadilly 5

Email [london@adamsandremers.com](mailto:london@adamsandremers.com)