



# Landlord and Tenant (Covenants) Act 1995

## 1995 CHAPTER 30

### *Liability of former tenant etc. in respect of covenants*

#### **16 Tenant guaranteeing performance of covenant by assignee.**

- (1) Where on an assignment a tenant is to any extent released from a tenant covenant of a tenancy by virtue of this Act (“the relevant covenant”), nothing in this Act (and in particular section 25) shall preclude him from entering into an authorised guarantee agreement with respect to the performance of that covenant by the assignee.
- (2) For the purposes of this section an agreement is an authorised guarantee agreement if—
  - (a) under it the tenant guarantees the performance of the relevant covenant to any extent by the assignee; and
  - (b) it is entered into in the circumstances set out in subsection (3); and
  - (c) its provisions conform with subsections (4) and (5).
- (3) Those circumstances are as follows—
  - (a) by virtue of a covenant against assignment (whether absolute or qualified) the assignment cannot be effected without the consent of the landlord under the tenancy or some other person;
  - (b) any such consent is given subject to a condition (lawfully imposed) that the tenant is to enter into an agreement guaranteeing the performance of the covenant by the assignee; and
  - (c) the agreement is entered into by the tenant in pursuance of that condition.
- (4) An agreement is not an authorised guarantee agreement to the extent that it purports—
  - (a) to impose on the tenant any requirement to guarantee in any way the performance of the relevant covenant by any person other than the assignee; or
  - (b) to impose on the tenant any liability, restriction or other requirement (of whatever nature) in relation to any time after the assignee is released from that covenant by virtue of this Act.

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*Status: Point in time view as at 13/10/2003.*

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- (5) Subject to subsection (4), an authorised guarantee agreement may—
- (a) impose on the tenant any liability as sole or principal debtor in respect of any obligation owed by the assignee under the relevant covenant;
  - (b) impose on the tenant liabilities as guarantor in respect of the assignee's performance of that covenant which are no more onerous than those to which he would be subject in the event of his being liable as sole or principal debtor in respect of any obligation owed by the assignee under that covenant;
  - (c) require the tenant, in the event of the tenancy assigned by him being disclaimed, to enter into a new tenancy of the premises comprised in the assignment—
    - (i) whose term expires not later than the term of the tenancy assigned by the tenant, and
    - (ii) whose tenant covenants are no more onerous than those of that tenancy;
  - (d) make provision incidental or supplementary to any provision made by virtue of any of paragraphs (a) to (c).
- (6) Where a person ("the former tenant") is to any extent released from a covenant of a tenancy by virtue of section 11(2) as from an assignment and the assignor under the assignment enters into an authorised guarantee agreement with the landlord with respect to the performance of that covenant by the assignee under the assignment—
- (a) the landlord may require the former tenant to enter into an agreement under which he guarantees, on terms corresponding to those of that authorised guarantee agreement, the performance of that covenant by the assignee under the assignment; and
  - (b) if its provisions conform with subsections (4) and (5), any such agreement shall be an authorised guarantee agreement for the purposes of this section; and
  - (c) in the application of this section in relation to any such agreement—
    - (i) subsections (2)(b) and (c) and (3) shall be omitted, and
    - (ii) any reference to the tenant or to the assignee shall be read as a reference to the former tenant or to the assignee under the assignment.
- (7) For the purposes of subsection (1) it is immaterial that—
- (a) the tenant has already made an authorised guarantee agreement in respect of a previous assignment by him of the tenancy referred to in that subsection, it having been subsequently re-vested in him following a disclaimer on behalf of the previous assignee, or
  - (b) the tenancy referred to in that subsection is a new tenancy entered into by the tenant in pursuance of an authorised guarantee agreement;
- and in any such case subsections (2) to (5) shall apply accordingly.
- (8) It is hereby declared that the rules of law relating to guarantees (and in particular those relating to the release of sureties) are, subject to its terms, applicable in relation to any authorised guarantee agreement as in relation to any other guarantee agreement.

## **17 Restriction on liability of former tenant or his guarantor for rent or service charge etc.**

- (1) This section applies where a person ("the former tenant") is as a result of an assignment no longer a tenant under a tenancy but—

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- (a) (in the case of a tenancy which is a new tenancy) he has under an authorised guarantee agreement guaranteed the performance by his assignee of a tenant covenant of the tenancy under which any fixed charge is payable; or
    - (b) (in the case of any tenancy) he remains bound by such a covenant.
  - (2) The former tenant shall not be liable under that agreement or (as the case may be) the covenant to pay any amount in respect of any fixed charge payable under the covenant unless, within the period of six months beginning with the date when the charge becomes due, the landlord serves on the former tenant a notice informing him—
    - (a) that the charge is now due; and
    - (b) that in respect of the charge the landlord intends to recover from the former tenant such amount as is specified in the notice and (where payable) interest calculated on such basis as is so specified.
  - (3) Where a person (“the guarantor”) has agreed to guarantee the performance by the former tenant of such a covenant as is mentioned in subsection (1), the guarantor shall not be liable under the agreement to pay any amount in respect of any fixed charge payable under the covenant unless, within the period of six months beginning with the date when the charge becomes due, the landlord serves on the guarantor a notice informing him—
    - (a) that the charge is now due; and
    - (b) that in respect of the charge the landlord intends to recover from the guarantor such amount as is specified in the notice and (where payable) interest calculated on such basis as is so specified.
  - (4) Where the landlord has duly served a notice under subsection (2) or (3), the amount (exclusive of interest) which the former tenant or (as the case may be) the guarantor is liable to pay in respect of the fixed charge in question shall not exceed the amount specified in the notice unless—
    - (a) his liability in respect of the charge is subsequently determined to be for a greater amount,
    - (b) the notice informed him of the possibility that that liability would be so determined, and
    - (c) within the period of three months beginning with the date of the determination, the landlord serves on him a further notice informing him that the landlord intends to recover that greater amount from him (plus interest, where payable).
  - (5) For the purposes of subsection (2) or (3) any fixed charge which has become due before the date on which this Act comes into force shall be treated as becoming due on that date; but neither of those subsections applies to any such charge if before that date proceedings have been instituted by the landlord for the recovery from the former tenant of any amount in respect of it.
  - (6) In this section—

“fixed charge”, in relation to a tenancy, means—

    - (a) rent,
    - (b) any service charge as defined by section 18 of the <sup>M1</sup>Landlord and Tenant Act 1985 (the words “of a dwelling” being disregarded for this purpose), and
    - (c) any amount payable under a tenant covenant of the tenancy providing for the payment of a liquidated sum in the event of a failure to comply with any such covenant;

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“landlord”, in relation to a fixed charge, includes any person who has a right to enforce payment of the charge.

#### Marginal Citations

M1 1985 c. 70.

### 18 Restriction of liability of former tenant or his guarantor where tenancy subsequently varied.

- (1) This section applies where a person (“the former tenant”) is as a result of an assignment no longer a tenant under a tenancy but—
  - (a) (in the case of a new tenancy) he has under an authorised guarantee agreement guaranteed the performance by his assignee of any tenant covenant of the tenancy; or
  - (b) (in the case of any tenancy) he remains bound by such a covenant.
- (2) The former tenant shall not be liable under the agreement or (as the case may be) the covenant to pay any amount in respect of the covenant to the extent that the amount is referable to any relevant variation of the tenant covenants of the tenancy effected after the assignment.
- (3) Where a person (“the guarantor”) has agreed to guarantee the performance by the former tenant of a tenant covenant of the tenancy, the guarantor (where his liability to do so is not wholly discharged by any such variation of the tenant covenants of the tenancy) shall not be liable under the agreement to pay any amount in respect of the covenant to the extent that the amount is referable to any such variation.
- (4) For the purposes of this section a variation of the tenant covenants of a tenancy is a “relevant variation” if either—
  - (a) the landlord has, at the time of the variation, an absolute right to refuse to allow it; or
  - (b) the landlord would have had such a right if the variation had been sought by the former tenant immediately before the assignment by him but, between the time of that assignment and the time of the variation, the tenant covenants of the tenancy have been so varied as to deprive the landlord of such a right.
- (5) In determining whether the landlord has or would have had such a right at any particular time regard shall be had to all the circumstances (including the effect of any provision made by or under any enactment).
- (6) Nothing in this section applies to any variation of the tenant covenants of a tenancy effected before the date on which this Act comes into force.
- (7) In this section “variation” means a variation whether effected by deed or otherwise.

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