



Landlord and Tenant (Covenants) Act 1995

1995 CHAPTER 30

Overriding leases

19 Right of former tenant or his guarantor to overriding lease

- (1) Where in respect of any tenancy (“the relevant tenancy”) any person (“the claimant”) makes full payment of an amount which he has been duly required to pay in accordance with section 17, together with any interest payable, he shall be entitled (subject to and in accordance with this section) to have the landlord under that tenancy grant him an overriding lease of the premises demised by the tenancy.
- (2) For the purposes of this section “overriding lease” means a tenancy of the reversion expectant on the relevant tenancy which—
 - (a) is granted for a term equal to the remainder of the term of the relevant tenancy plus three days or the longest period (less than three days) that will not wholly displace the landlord’s reversionary interest expectant on the relevant tenancy, as the case may require; and
 - (b) (subject to subsections (3) and (4) and to any modifications agreed to by the claimant and the landlord) otherwise contains the same covenants as the relevant tenancy, as they have effect immediately before the grant of the lease.
- (3) An overriding lease shall not be required to reproduce any covenant of the relevant tenancy to the extent that the covenant is (in whatever terms) expressed to be a personal covenant between the landlord and the tenant under that tenancy.
- (4) If any right, liability or other matter arising under a covenant of the relevant tenancy falls to be determined or otherwise operates (whether expressly or otherwise) by reference to the commencement of that tenancy—
 - (a) the corresponding covenant of the overriding lease shall be so framed that that right, liability or matter falls to be determined or otherwise operates by reference to the commencement of that tenancy; but

- (b) the overriding lease shall not be required to reproduce any covenant of that tenancy to the extent that it has become spent by the time that that lease is granted.
- (5) A claim to exercise the right to an overriding lease under this section is made by the claimant making a request for such a lease to the landlord; and any such request—
 - (a) must be made to the landlord in writing and specify the payment by virtue of which the claimant claims to be entitled to the lease (“the qualifying payment”); and
 - (b) must be so made at the time of making the qualifying payment or within the period of 12 months beginning with the date of that payment.
- (6) Where the claimant duly makes such a request—
 - (a) the landlord shall (subject to subsection (7)) grant and deliver to the claimant an overriding lease of the demised premises within a reasonable time of the request being received by the landlord; and
 - (b) the claimant—
 - (i) shall thereupon deliver to the landlord a counterpart of the lease duly executed by the claimant, and
 - (ii) shall be liable for the landlord’s reasonable costs of and incidental to the grant of the lease.
- (7) The landlord shall not be under any obligation to grant an overriding lease of the demised premises under this section at a time when the relevant tenancy has been determined; and a claimant shall not be entitled to the grant of such a lease if at the time when he makes his request—
 - (a) the landlord has already granted such a lease and that lease remains in force; or
 - (b) another person has already duly made a request for such a lease to the landlord and that request has been neither withdrawn nor abandoned by that person.
- (8) Where two or more requests are duly made on the same day, then for the purposes of subsection (7)—
 - (a) a request made by a person who was liable for the qualifying payment as a former tenant shall be treated as made before a request made by a person who was so liable as a guarantor; and
 - (b) a request made by a person whose liability in respect of the covenant in question commenced earlier than any such liability of another person shall be treated as made before a request made by that other person.
- (9) Where a claimant who has duly made a request for an overriding lease under this section subsequently withdraws or abandons the request before he is granted such a lease by the landlord, the claimant shall be liable for the landlord’s reasonable costs incurred in pursuance of the request down to the time of its withdrawal or abandonment; and for the purposes of this section—
 - (a) a claimant’s request is withdrawn by the claimant notifying the landlord in writing that he is withdrawing his request; and
 - (b) a claimant is to be regarded as having abandoned his request if—
 - (i) the landlord has requested the claimant in writing to take, within such reasonable period as is specified in the landlord’s request, all or any of the remaining steps required to be taken by the claimant before the lease can be granted, and
 - (ii) the claimant fails to comply with the landlord’s request,

and is accordingly to be regarded as having abandoned it at the time when that period expires.

- (10) Any request or notification under this section may be sent by post.
- (11) The preceding provisions of this section shall apply where the landlord is the tenant under an overriding lease granted under this section as they apply where no such lease has been granted; and accordingly there may be two or more such leases interposed between the first such lease and the relevant tenancy.

20 Overriding leases: supplementary provisions

- (1) For the purposes of section 1 an overriding lease shall be a new tenancy only if the relevant tenancy is a new tenancy.
- (2) Every overriding lease shall state—
 - (a) that it is a lease granted under section 19, and
 - (b) whether it is or is not a new tenancy for the purposes of section 1;and any such statement shall comply with such requirements as may be prescribed by rules made in pursuance of section 144 of the Land Registration Act 1925 (power to make general rules).
- (3) A claim that the landlord has failed to comply with subsection (6)(a) of section 19 may be made the subject of civil proceedings in like manner as any other claim in tort for breach of statutory duty; and if the claimant under that section fails to comply with subsection (6)(b)(i) of that section he shall not be entitled to exercise any of the rights otherwise exercisable by him under the overriding lease.
- (4) An overriding lease—
 - (a) shall be deemed to be authorised as against the persons interested in any mortgage of the landlord's interest (however created or arising); and
 - (b) shall be binding on any such persons;and if any such person is by virtue of such a mortgage entitled to possession of the documents of title relating to the landlord's interest—
 - (i) the landlord shall within one month of the execution of the lease deliver to that person the counterpart executed in pursuance of section 19(6)(b)(i); and
 - (ii) if he fails to do so, the instrument creating or evidencing the mortgage shall apply as if the obligation to deliver a counterpart were included in the terms of the mortgage as set out in that instrument.
- (5) It is hereby declared—
 - (a) that the fact that an overriding lease takes effect subject to the relevant tenancy shall not constitute a breach of any covenant of the lease against subletting or parting with possession of the premises demised by the lease or any part of them; and
 - (b) that each of sections 16, 17 and 18 applies where the tenancy referred to in subsection (1) of that section is an overriding lease as it applies in other cases falling within that subsection.
- (6) No tenancy shall be registrable under the Land Charges Act 1972 or be taken to be an estate contract within the meaning of that Act by reason of any right or obligation that may arise under section 19, and any right arising from a request made under that section shall not be an overriding interest within the meaning of the Land Registration

Status: This is the original version (as it was originally enacted).

Act 1925; but any such request shall be registrable under the Land Charges Act 1972, or may be the subject of a notice or caution under the Land Registration Act 1925, as if it were an estate contract.

(7) In this section—

- (a) “mortgage” includes “charge”; and
- (b) any expression which is also used in section 19 has the same meaning as in that section.