

COMMERCIAL LEASES IN IRELAND

‘I want them out’

The home-made commercial lease and the limits of the landlord’s remedies

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The title of this article is a provocative one and it comes from a place of frustration. A landlord came to this office recently with a very short lease of a commercial premises, which he had prepared himself with the help of an internet search, and with an instruction of four words. “I want them out.” The tenant was in default. The breach, as the landlord saw it, was blatant, obvious and continuing, and when he raised it the tenant’s replies were, to put it mildly, robust. He assumed, as most people would, that where the wrong is so plain the remedy must be equally plain. It is not an uncommon story, and this article explains why that assumption so often fails.

How the difficulty arises

The difficulty is a common one even where both parties are commercially astute and want the same thing. One wants premises from which to trade and the other wants income from an investment. Commercial lettings are frequently arranged between people who know the ground well and who reach agreement quickly on what are called the heads of terms. A rent is agreed, a term is fixed, and the bargain is recorded in a page or two drawn up by the landlord, or by a director acting for the

company that owns the building, sometimes now with the assistance of an artificial intelligence tool. Both sides sign. The tenant goes into occupation, the deposit is paid, the rent, insurance and rates fall due month after month, and the document goes into a drawer.

It comes out again only when something goes wrong. Each side then turns to the lease to find support for its position, and each discovers that the document says a good deal less than either of them remembered. It may offer no remedy at all that suits the problem that has arisen. A relationship that began well can sour quickly once the parties realise that the essentials were never written down.

This article considers how Irish law treats that situation, why an obvious breach does not of itself entitle a landlord to possession, and what proper advice from heads of terms onward would have put in place. The central point is a simple one. The remedies a landlord expects to have on default are, for the most part, creatures of the lease. If the lease does not create them, the general law will not supply a substitute that suits.

An informal lease is still a lease

The first surprise for the landlord is that the brevity of the document does nothing to weaken the tenant’s position. Section 3 of the Landlord and Tenant Law Amendment Act, Ireland 1860, known as Deasy’s Act, provides that the relation of landlord and tenant is founded on the contract of the parties, express or implied.[1] Section 4 requires a letting for any period longer than from year to year to be by deed or by a note in writing signed by the landlord or by an agent authorised in writing.[2] It is the signature that matters. A short note signed by the parties may therefore be a perfectly good lease for a term of years, binding both of them for the whole of that term, while giving them almost none of the machinery that a professionally drawn lease would contain.

Nor will it necessarily assist the landlord to have called the arrangement a licence, a temporary letting or a caretaker’s agreement. The courts look at the transaction as a whole. In *Gatien Motor Co Ltd v Continental Oil Co of Ireland Ltd* the Supreme Court upheld a caretaker’s agreement, but in doing so laid emphasis on the fact that the parties had dealt at arm’s length and with the benefit of legal advice.[3] In *Irish Shell and BP Ltd v John Costello Ltd* an agreement described as a licence was

held to be a tenancy,[4] and in *Smith v Córas Iompair Éireann* Peart J reached the same conclusion about a written agreement which called itself a licence and expressly disclaimed any tenancy.[5] The cases in which a licence has survived scrutiny are, almost without exception, cases in which the document was carefully drawn by lawyers. The home-made licence is the one most likely to be found to be a tenancy.

A related problem arises where the landlord has signed in the wrong capacity. It is not unusual to find that the premises are owned by a company while the lease names the director personally, or that a director has signed “for” the company with no written authority of the kind section 4 contemplates. The point may lie dormant for years. It emerges when a notice has to be served or proceedings issued, and the tenant’s advisers ask who precisely the landlord is. A notice to quit or a forfeiture notice given by the wrong person is a bad notice, and the time lost in starting again is time during which the tenant remains in possession.

There is also the matter of stamp duty. A lease is a stampable instrument, and section 127 of the Stamp Duties Consolidation Act 1999 restricts the reception in evidence in civil proceedings of an instrument which has not been duly stamped.[6] The home-made lease has very often never been

presented for stamping, and the landlord who wishes to rely on it in court may first have to regularise that position, with whatever interest and penalties have accrued.

What the law supplies when the lease is silent

Deasy’s Act does fill some gaps. Section 41 implies on the landlord’s part agreements for good title and quiet enjoyment. Section 42 implies on the tenant’s part agreements to pay the rent and the taxes payable by the tenant, to keep the premises in good and substantial repair and condition, and to give up peaceable possession in that condition at the end of the term.[7] The tenant under even the briefest lease is therefore not free of obligation. The landlord can sue for the rent and can sue for disrepair.

What the general law does not supply is the remedy the landlord actually wants, which is his property returned to him. A right to forfeit the lease and re-enter for breach of covenant exists only where the lease contains a proviso for re-entry, or where the obligation broken has been framed as a condition of the tenancy and not merely as a covenant. A breach of covenant in a lease with no forfeiture clause may sound in damages, and perhaps in an injunction. It does not bring the term to an end.

Reform under which a right of re-entry would arise automatically on breach has been proposed, but it has not been enacted.[8]

In the absence of a forfeiture clause the landlord whose rent is unpaid is thrown back on section 52 of Deasy’s Act, which permits ejectment for non-payment of rent but only where a full year’s rent is in arrear.[9] A landlord who is told that he must wait until twelve months’ rent is outstanding before he can issue proceedings for possession, and that the Act contemplates restitution of possession to a tenant who later discharges what is due,[10] might think that the law has taken leave of its senses. It has not. It simply assumes that a landlord who wanted a swifter remedy would have contracted for one.

The same is true across the range of matters that a commercial lease ordinarily regulates. If the lease contains no rent review clause, the rent is fixed for the term, however long. Section 132 of the Land and Conveyancing Law Reform Act 2009 governs the operation of a review clause in a business lease. It does not create one.[11] If there is no covenant restricting assignment or subletting, the tenant is in principle free to pass the premises to a stranger of whom the landlord knows nothing. If there is no user clause, no covenant to insure or to reimburse the premium, no provision for interest on late rent, no service charge machinery, no right for the landlord to enter

and inspect, no guarantor and no deposit, then none of those protections exists. A court will not write them in after the event.

Where the short lease does address a matter, it will often do so ambiguously, and here the landlord meets a further difficulty. The modern approach to construction, adopted by the Supreme Court in *Analog Devices BV v Zurich Insurance Co*, asks what the document would convey to a reasonable person with the background knowledge available to the parties.[12] Where real ambiguity remains, it may be resolved against the party who put the wording forward, which is the *contra proferentem* rule.[13] In *Ickendel Ltd v Bewley’s Café Grafton Street Ltd* it was observed that the rule has little part to play where a lease has been negotiated at arm’s length with each side advised and able to propose amendments.[14] The corollary is uncomfortable for the landlord who drafted alone. He is the *proferens*, and a doubt in his own document is liable to be resolved in favour of his tenant. There is no bias towards tenants in this. It is the ordinary consequence of a document prepared without care.

The standard mortgage offers a useful comparison. Its conditions have been refined over generations and tested repeatedly before the courts, so that when a borrower defaults there is clear and precise language recording what was agreed

and what each party may then do. A properly drawn lease does the same work for landlord and tenant.

The tenant who will not sign

A variation on the theme is the tenant who is let into possession on foot of heads of terms or an exchange of emails, pays rent, and then declines to execute the formal lease when it is eventually produced. The landlord supposes that the tenant is bound by the lease as drafted. The tenant supposes nothing of the kind.

The analysis is unsatisfactory from the landlord’s point of view whichever way it is approached. He may contend for a concluded agreement for a lease, enforceable by specific performance. That requires a sufficient note or memorandum under section 51 of the 2009 Act or acts of part performance,[15] and it requires that the parties had in truth reached agreement on all the terms they regarded as essential. *Boyle v Lee* and *Supermacs Ireland Ltd v Katesan (Naas) Ltd* are reminders of how readily a court will find that negotiations had not yet ripened into contract.[16] Alternatively, the law may imply a periodic tenancy from possession and the payment and acceptance of rent. A tenancy from year to year so arising can be determined only by a half year’s notice to quit expiring at the end of a

year of the tenancy, and it carries none of the detailed covenants in the unsigned draft.

The uncertainty is itself the tenant’s advantage. In *Oysters Shuckers Ltd v Architecture Manufacture Support (EU) Ltd* the parties were at odds as to whether a new lease had been validly concluded some two years earlier or whether the tenant was overholding on the earlier terms, and that question had to be litigated before anything else could be resolved.[17] In *Edward Lee & Co (1974) Ltd v N1 Property Developments Ltd* a tenant remained in possession and trading after its lease expired without any fresh lease being signed, and the court was required to decide whether a new tenancy was to be inferred and how the landlord was to be remunerated for the period of occupation.[18]

Meanwhile time runs in the tenant’s favour. Under section 13(1)(a) of the Landlord and Tenant (Amendment) Act 1980, as amended, a tenant acquires what is called a business equity, and with it the right to a new tenancy, after five years of continuous occupation for the purposes of a business.[19] The statute is concerned with occupation as tenant. It is indifferent to whether a formal lease was ever executed. The right can be excluded, but only where the tenant has renounced it in writing and has received independent legal advice in relation to the

renunciation.[20] A tenant who has signed nothing has renounced nothing. For such a tenant, declining to sign is a rational strategy and not merely an irritation, and the landlord who has handed over the keys before the documents were executed has given away the only leverage he had.

The tenant who will not leave

Where the term has expired and the tenant stays on, Deasy’s Act offers the landlord some assistance. Under section 5 a landlord who has demanded possession and been refused for more than a month may elect to treat the tenant as holding from year to year on the old terms. Under section 76 a tenant who wilfully holds over after a written demand for possession is liable to double rent for the period of overholding.[21] The landlord may also proceed by ejectment for overholding. These remedies are slow and they depend on the landlord having conducted himself consistently.

A word of caution is needed about money accepted from a tenant in that position. A landlord who demands possession in one letter and banks the rent in the next invites the argument that a new periodic tenancy has come into being. If the landlord is to take payment at all from a tenant who has overheld, or whose lease he says has been forfeited, he must make it

clear before or immediately upon receipt that the money is accepted as mesne rates, that is, as compensation for use and occupation, and not as rent, and that it is taken without prejudice to his right to recover possession. A landlord must tread very carefully here, because the unqualified acceptance of rent is the readiest way to lose the right to proceed.

Where the tenant has a business equity, the position is more difficult again. On the termination of the tenancy the tenant may serve notice of intention to claim relief and apply for a new tenancy, and under section 28 of the 1980 Act is entitled to remain in occupation on the terms of the old tenancy until the application is determined.[22] If the tenant succeeds, the court may fix a new tenancy for a term of up to twenty years.[23] If the tenant fails on certain grounds, compensation for disturbance may be payable.[24] The grounds on which a landlord may resist a new tenancy, such as a genuine scheme of redevelopment, are narrow.

This is why a deed of renunciation matters so much, and why it is best signed when the lease is granted. It is also why one so often meets lettings of four years and nine months, or four years and eleven months, which are designed to stop short of the five years of occupation that give rise to the business equity. The landlord who drafts his own lease very often knows

nothing of either device. He grants a term of five years or more with no renunciation, or allows a shorter letting to run on, and finds that his tenant has acquired a statutory right to stay.

The tenant is, however, disentitled to a new tenancy where the tenancy has been terminated for non-payment of rent or for breach of covenant, or by a notice to quit given for good and sufficient reason.[25] It follows that the manner in which the tenancy is brought to an end is of the first importance. A landlord with a properly drawn lease can forfeit for the breach and point to the forfeiture. A landlord with a home-made lease and no forfeiture clause may be unable to terminate for the breach at all, and may find himself arguing about the tenant’s conduct only after the event, in answer to the tenant’s own application for a new tenancy.

Forfeiture and its traps

Even the landlord whose lease does contain a right of re-entry must exercise it with care, and the home-made clause seldom provides what is needed. For breaches other than non-payment of rent, section 14 of the Conveyancing Act 1881 requires a notice specifying the breach, requiring it to be remedied if it is capable of remedy, and requiring compensation, and the landlord must then allow a reasonable time.[26] Non-payment of rent

is outside the section,[27] but at common law a formal demand for the rent is required unless the lease dispenses with it. The professionally drawn proviso always does so. The amateur one almost never does.

The right may also be lost by waiver. The classic statement is that a landlord who, with knowledge of the breach, does some unequivocal act recognising the continued existence of the lease is taken to have elected not to forfeit.[28] The demand and acceptance of rent falling due after the breach is the paradigm. The client who says “I want them out” has, more often than not, been accepting the rent every month in the meantime. By contrast, once a landlord has unequivocally re-entered, the later receipt of a payment against arrears has been held not to amount to a waiver.[29]

Then there is the act of re-entry itself. Forfeiture is effected either by the issue and service of proceedings for possession or by peaceable physical re-entry. A notice alone does not do it, as *Bank of Ireland v Lady Lisa Ireland Ltd* illustrates.[30] Peaceable re-entry was upheld by Carroll J in *Sweeney Ltd v Powerscourt Shopping Centre Ltd*,[31] and more recently in *Hafeez* and in *Perfect Stripe Ltd v Fennell*, where Twomey J refused to restore to possession a tenant who was in substantial arrears and declined to allow what has been called a free ride.[32] The remedy is

nonetheless a hazardous one. The entry must be peaceable in fact. In *Verbenagrove Ltd v Evans* the High Court was dealing with the aftermath of a Circuit Court finding that a forfeiture was invalid because the re-entry had not been peaceable,[33] and in *ILG Ltd v Aprilane Ltd* Allen J expressed doubt as to whether a landlord is entitled to cause damage in gaining entry.[34] The Prohibition of Forcible Entry and Occupation Act 1971 stands in the background. A landlord who changes the locks without a clear contractual right, properly exercised, exposes himself to an injunction and to a claim in damages for trespass, and converts a strong case into a weak one.

Finally, a tenant whose lease has been forfeited may apply for relief, under section 14(2) of the 1881 Act or, in the case of rent, under the equitable jurisdiction recognised in *Whipp v Mackey*.[35] The Supreme Court in *Cue Club Ltd v Navaro Ltd* doubted that the equitable discretion applies with the same force to substantial commercial transactions between parties on equal terms,[36] and relief has been refused where the tenant’s defaults were serious and persistent.[37] It is right to notice, however, that in each of the cases cited here in which the landlord prevailed, the lease contained a clear proviso for re-entry and the landlord had followed it. The judicial impatience with

the defaulting commercial tenant is real, but it operates on the lease the parties made.

Damage to the premises

The implied agreement in section 42 of Deasy’s Act gives the landlord a claim where the tenant has allowed the premises to fall into disrepair. Its value is limited. Section 65 of the 1980 Act caps the damages recoverable for breach of a covenant to repair at the amount by which the value of the landlord’s reversion has been diminished, and excludes them altogether in certain cases where repair is impracticable or the building is to be demolished or reconstructed.[38] The cost of putting the premises right is evidence of the loss. It is not the measure of it.

The practical obstacles are greater than the legal ones. The home-made lease will have no schedule of condition, so that the state of the premises at the commencement of the term becomes a contest of recollection. It will have no right of entry to inspect or to carry out works in default and recover the cost as a debt. It will have no reinstatement or yielding up clause, no covenant against alterations, and no deposit or guarantee against which the landlord can recover. And because there is no proviso for re-entry, the disrepair, however serious, does not entitle the landlord to end the letting.

What advice from the outset would have secured

None of this is an argument for long documents for their own sake, nor is it a sales pitch for lawyers. It is an argument for a landlord taking advice before the terms are settled and not after the default, and for that advice to run from heads of terms to completion.

At the stage of heads of terms, the adviser will see that the negotiation is expressed to be subject to lease, so that no tenancy arises by accident, and will establish who the landlord is and whether title is in order. If the property is held by a company, the company grants the lease and those who sign do so with authority. If the property is charged, the lender’s consent is obtained. The tenant is investigated with the same care. A search is made against a corporate tenant, its accounts are considered, and a decision is taken as to whether a personal guarantee, a deposit or both should be required. A guarantee, to be enforceable, must itself be in writing.

In negotiating the terms, the adviser will fix the length of the letting by reference to the 1980 Act and not by instinct. If the landlord wishes to be sure of recovering the premises at the end of the term, a renunciation is taken, and the tenant is sep-

arately advised so that the renunciation will stand. The rent, the dates for payment, interest on arrears, review, rates, insurance and outgoings are dealt with expressly. User, alterations and alienation are controlled. The repairing obligation is defined and tied to a schedule of condition, with a right for the landlord to enter, inspect and repair in default.

Above all, the lease will contain a proviso for re-entry which is triggered by rent remaining unpaid for a stated number of days whether formally demanded or not, by breach of any covenant, and by insolvency. It will say what is to happen if the tenant holds over, at what rate the tenant is to pay for occupation, and that acceptance of that payment creates no new tenancy. Those few clauses are the difference between a landlord who can act on a default and a landlord who can only complain of it.

At completion, the lease is executed by both parties, stamped, and a counterpart retained. The tenant does not go into possession until that has been done. The cost of all of this is modest when set against a single contested application for possession, and trivial when set against a statutory new tenancy of up to twenty years in favour of a tenant the landlord wishes to be rid of.

When the instruction is “I want them out”

For the landlord who is already in difficulty, the advice has to be candid. The first task is to establish what the tenancy actually is, who the parties to it are, when it began and whether five years of business occupation have passed or are about to pass. The second is to take a deliberate decision about the rent. Continuing to accept it may be commercially necessary, but it should be a decision and not a habit, and its effect on any right to terminate should be understood. The third is to choose the route by reference to the lease as it stands. That may be a notice to quit a periodic tenancy, stating the reasons relied upon. It may be ejectment under section 52 where a year’s rent is due. It may be proceedings for the arrears alone, in the expectation that judgment will bring the tenant to the table. Very often the best outcome is a negotiated surrender, properly documented, on terms that the landlord would not have had to offer had the lease been adequate.

What the landlord should not do is act on the instruction literally. Self-help without a clear right of re-entry, properly exercised, is the surest way to hand the tenant a grievance and a cause of action.

Conclusion

The phrase “I want them out” expresses a perfectly reasonable commercial wish. The law will give effect to it, sometimes with striking speed, where the landlord holds a lease which reserves the right and prescribes the means. Where the lease is a page or two prepared without advice, and the usual protections were never written into it, the same wish runs into Deasy’s Act, the 1881 Act and the 1980 Act, each of which protects the tenant in the absence of contrary provision validly made. The breach may be blatant, obvious and continuing. Without the right clauses it is a ground for an action in damages and little more. The time for a landlord to consult a solicitor is before the tenant has the keys and not after.

This article provides general information on the law of landlord and tenant in Ireland as at November 2026 and is not a substitute for legal advice on a particular lease or dispute.

Notes

1. Landlord and Tenant Law Amendment Act, Ireland 1860, s 3.
2. ibid, s 4.
3. [1979] IR 406.
4. [1981] ILRM 66.
5. [2002] IEHC 103. Contrast *Governors of National Maternity Hospital v McGouran* [1994] 1 ILRM 521 and *Kenny Homes & Co Ltd v Leonard* (Supreme Court, 10 June 1998), where carefully drawn agreements were upheld as licences.
6. Stamp Duties Consolidation Act 1999, s 127. For a term not exceeding 35 years the charge is 1 per cent of the average annual rent.
7. Landlord and Tenant Law Amendment Act, Ireland 1860, ss 41 and 42. Both sections yield to the express terms of the lease.
8. See the draft Landlord and Tenant Law Reform Bill 2011, s 68(1), which followed the Law Reform Commission’s Report on the Law of Landlord and Tenant (LRC 85-2007), discussed in Maddox, ‘Effecting Forfeiture by Peaceable Re-Entry’ [2025] Irish Judicial Studies Journal Vol 9(2) 97.
9. Landlord and Tenant Law Amendment Act, Ireland 1860, s 52. See also *Bank of Ireland v Lady Lisa Ireland Ltd* [1992] 1 IR 404.
10. ibid, ss 70 and 71.
11. Land and Conveyancing Law Reform Act 2009, s 132, which applies to leases granted after 28 February 2010.
12. [2005] IESC 12, [2005] 1 IR 274.
13. *Brady v Irish National Insurance Co Ltd* [1986] IR 698.
14. [2014] IESC 41.
15. Land and Conveyancing Law Reform Act 2009, s 51. On part performance see *Mackey v Wilde* [1998] 2 IR 578.
16. *Boyle v Lee* [1992] 1 IR 555. *Supermacs Ireland Ltd v Katesan (Naas) Ltd* [2000] 4 IR 273.
17. [2020] IEHC 527 (Sanfey J).
18. [2013] IEHC 162 (Charleton J), applying *Twil Ltd v Kearney* [2001] 4 IR 476.

19. Landlord and Tenant (Amendment) Act 1980, s 13(1)(a), as amended by the Landlord and Tenant (Amendment) Act 1994, s 3.
20. ibid, s 17(1)(a)(iiia), as substituted by the Civil Law (Miscellaneous Provisions) Act 2008, s 47.
21. Landlord and Tenant Law Amendment Act, Ireland 1860, ss 5 and 76.
22. Landlord and Tenant (Amendment) Act 1980, ss 20, 21 and 28. See *Harrisrange Ltd v Duncan* [2003] 4 IR 1 and *Crofter Properties Ltd v Genport Ltd* [2007] IEHC 80.
23. ibid, s 23, as amended.
24. ibid, s 58.
25. ibid, s 17(1)(a).
26. Conveyancing Act 1881, s 14(1), as amended by the Landlord and Tenant (Ground Rents) Act 1967, s 35.
27. ibid, s 14(8). See *Hafeez v CPM Consulting Ltd* [2020] IEHC 536 (Keane J).
28. *Matthews v Smallwood* [1910] 1 Ch 777, an English authority of long standing and persuasive only.
29. *Oysters Shuckers*, note 17 above. *Hafeez*, note 27 above.
30. [1992] 1 IR 404 (O’Hanlon J), where it was also held that the summary summons procedure was not appropriate to the claim for possession.
31. [1984] IR 501.
32. [2025] IEHC 585.
33. [2025] IEHC 151 (Barry O’Donnell J).
34. [2024] IEHC 420.
35. [1927] IR 372.
36. Supreme Court, 23 October 1996 (Murphy J).
37. *Campus and Stadium Ireland Development Ltd v Dublin Waterworld Ltd* [2006] IEHC 200 (Gilligan J). See also *Foley v Mangan* [2009] IEHC 404 (Laffoy J) and *Lindat Ltd v The PW Plaza Café Bar Ltd* [2024] IEHC 355 (Nolan J).
38. Landlord and Tenant (Amendment) Act 1980, s 65. On the predecessor provision, s 55 of the Landlord and Tenant Act 1931, see *Gilligan v Silke* [1963] IR 1.



BEFORE THE TENANT HAS THE KEYS

The time to take advice is at heads of terms

We act for landlords and tenants on commercial leases, from the first terms to completion, and advise where a letting has already gone wrong.

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