

## Commentary

This is a relatively straightforward question that can be anticipated in relation to contested lease renewals. A good answer will cover the renewal procedures under Part II of the Landlord and Tenant Act 1954. Accordingly, it is vital that you have a detailed working knowledge of the Act and how it works in practice before you attempt to answer this type of question. From a perspective of style the question is posed in a memorandum and so you need to answer it in the same format. You also need to carefully reflect upon the structure of your answer. Because you are replying in a memo does not mean that you can simply write a thinly disguised essay. A good answer could, in fact, be written using numbered or bullet points. In essence, your answer should be direct and to the point, offering the legal advice required and the procedure necessary for recovering possession.

## Suggested answer

ABBHEY & RICHARDS SOLICITORS  
INTERNAL MEMORANDUM

**From:** Trainee solicitor

**To:** Commercial property partner

Re Foxtan Investments Ltd

You have asked me for a memorandum of the legal advice we should give our above mentioned client and the procedure for recovering possession of 30 Red House Lane, Oxford from the tenant Mr Richard Sykulu when the current lease expires on 29 September 2021. I therefore set out below the relevant points of law and advice required by the client as follows.

### *Legal Advice*

1. The tenant, Mr Sykulu, appears to be a protected tenant by reason of the terms of Part II of the Landlord and Tenant Act 1954. This is because he would seem to be occupying premises for the purpose of a business. Consequently our client can only terminate the lease occupancy by one of the ways prescribed by the 1954 Act.
2. On the facts presented to me, it would seem that there is no question of forfeiture or even of a negotiated surrender. As a result we will need to serve a s.25 notice and in that notice we will have to establish one or more of the grounds for possession under s.30 (1) of the Act.
3. The fault grounds, for example; breach of repairing covenants or persistent delay in paying rent or other substantial breaches of covenant do not, on the facts, appear to apply. Indeed, nor does ground (e) - where there is a sub-letting of part, that possession is required for the letting or disposal of the property as a whole. In these circumstances the lessor must consider other grounds such as (i) the possibility of alternative accommodation, (ii) redevelopment, or (iii) own-use grounds.

4. I appreciate that our client is keen to secure vacant possession of the property as soon as possible to carry out various improvements and alterations prior to using the premises as its own local office. However, the own-use ground cannot be used at present because the client purchased the reversion only three years ago and as a result the 5-year rule applies. To rely upon the own-use ground the lessor must show that it intends to occupy the premises for business purposes. This ground is not available to a lessor who has acquired the reversionary interest within five years of the termination of the old tenancy (s 30(2)). The lessor's intention to occupy must be capable of being put into effect within a reasonable time after the full court hearing. So, if the occupation would require a prior planning application and consent, the court would need to be shown that the application had been made and be convinced that there was a reasonable chance that consent would be forthcoming (*Gregson v Cyril Lord Ltd* [1963] 1 WLR 41, CA).
5. Bearing in mind the time limits set out above it would be possible to allow Mr Sykulu to hold over and then serve the s.25 notice in Jan 2021 specifying Jan 2022 as the termination date. This would satisfy the 5-year rule for ground (g). However, it would also mean that the lessee would pay rent at the current level for an extended period and this rent might be well below the market value. Furthermore the tenant might pre-empt us and serve a s.26 request for a new tenancy earlier. The effect of this would be to deny us the ability to use ground (g).
6. There is one final alternative ground; that of possible redevelopment. However, on the facts, this ground is only a mere possibility. The courts will need to see redevelopment that amounts to substantial reconstruction etc. The lessor must show at the time of the hearing that the lessor intends to demolish or reconstruct the whole or a substantial part of the subject property, or carry out some considerable work of construction, *and* that the lessor cannot reasonably carry out these proposed works with the lessee still in possession. This would seem unlikely on the facts although we would need to get further details of the proposed works from the client.

### *Procedure*

7. The correct procedure is that we should, on behalf of the lessor, serve a s.25 notice on the lessee on the 29 September 2020 specifying a termination date between six and 12 months hence. A prescribed form of notice is required and, having checked, I can confirm that we have a precedent for the notice in our firm's precedent bank. It should be noted that the termination date cannot be earlier than 29 September 2021 this being the contractual expiry date.
8. Immediately thereafter the lessor can apply without delay for an order that the old lease terminate and that there be no new tenancy for the reason(s) set out in the termination notice. If the ground(s) for possession can be proved the court will not order a tenancy renewal. If the lessor fails in this application the court can make an order for a new lease without the lessee making a fresh application.
9. If no such application to deny a new tenancy is made then at any time before the expiry of the termination notice either party can apply to court to renew. This period can be extended by agreement.

Trainee Solicitor: time engaged 45 minutes