



## PainSmith Solicitors Legal Advisor

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### Understanding Business Tenancies

Many agents and landlords fail to understand the key differences between a commercial or business tenancy and a residential tenancy. This matter is becoming increasingly important as individuals work-life balance changes and more flexible working practices are adopted. Frustratingly, the law has failed to keep pace with such changes in lifestyle and finds itself lagging behind society in this area.

Tenancies can either be commercial tenancies or residential tenancies; there is no half-way house. Concepts such as live-work, while they exist as planning categories, do not apply to landlord and tenant law. The test for whether a tenancy is commercial or residential in nature is based entirely on the tenant's authorised use of the property.

If a tenant is using a premises overwhelmingly for residential use then the Courts will construe it as a residential tenancy. Therefore a businessperson who works from home in the evenings or a doctor who occasionally sees patients at home will both be residential tenants. By contrast, a property with any significant commercial use will be seen as a commercial tenancy even if it also has a residential component. Therefore a tenant who runs a business from home, or who works primarily from home and sees clients there regularly will normally be viewed as a commercial tenant. Particular care should be taken in regard to self-employed persons in this context. Any self-employed individual should have a business address and workplace entirely separate from the rental property address otherwise the risk of inadvertently creating a business tenancy will be high. It should also be remembered a tenant who rents residential premises for the purpose of running a business providing accommodation will also be a commercial tenant. This is increasingly common at the moment, particularly in London.

However, this only applies to authorised usage. A tenant who uses premises for commercial reasons without permission will not be a commercial tenant. However, the fact that the tenancy agreement excludes business use will not necessarily be sufficient to protect the landlord. A landlord or agent who authorises a tenant to use the premises for business purposes will be consenting to that use and creating a business tenancy, notwithstanding any provision to the contrary in the actual written agreement.

If a tenancy is a business or commercial tenancy it is held under the terms of the Landlord & Tenant Act 1954 (“the ’54 Act”). This is a very different piece of legislation to the legislation that covers residential tenancies, such as the Housing Act 1988. One of the key provisions of the ’54 Act is that it provides indefinite security of tenure to most tenants. This means that at the end of their tenancy a commercial tenant can seek a new tenancy on similar terms to the previous one and, if the landlord rejects this, can apply to the Court for a new tenancy. While there are ways of avoiding this they are complex and must be done before the start of the tenancy. Landlords and agents would be very unwise to enter into any form of commercial tenancy without taking legal advice and clearly understanding their rights and obligations.

Commercial tenancies escape much of the legislation that will normally apply to residential tenancies. So, for example, the obligation of the landlord to keep the property in repair as required by section 11 of the Landlord & Tenant Act 1985 will not apply and the landlord and tenant are free to come to whatever arrangement they see fit regarding repairs to the property. In fact, it is currently common for commercial tenants to take responsibility for all repairs and decoration in the premises they rent. However, while the Protection From Eviction Act 1977 will not apply to a purely commercial tenancy it will apply where the tenancy has a mixed commercial and residential component. So, where the tenant is legitimately residing in the Premises a landlord will still need to go to Court to regain possession even if the property has been let on a commercial tenancy.

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