



# Landlord and Tenant Act 1987

## 1987 CHAPTER 31

### PART I

#### TENANTS' RIGHTS OF FIRST REFUSAL

##### *Notices conferring rights of first refusal*

#### **5 Requirement to serve notice conferring rights of first refusal**

- (1) Where, in the case of any premises to which this Part applies, the landlord proposes to make a relevant disposal affecting the premises, he shall serve a notice under this section on the qualifying tenants of the flats contained in the premises.
- (2) A notice under this section must—
  - (a) contain particulars of the principal terms of the disposal proposed by the landlord, including in particular—
    - (i) the property to which it relates and the estate or interest in that property proposed to be disposed of, and
    - (ii) the consideration required by the landlord for making the disposal;
  - (b) state that the notice constitutes an offer by the landlord to dispose of the property on those terms which may be accepted by the requisite majority of qualifying tenants of the constituent flats;
  - (c) specify a period within which that offer may be so accepted, being a period of not less than two months which is to begin with the date of service of the notice; and
  - (d) specify a further period within which a person or persons may be nominated for the purposes of section 6, being a period of not less than two months which is to begin with the end of the period specified under paragraph (c).
- (3) Where, as the result of a notice under this section being served on different tenants on different dates, the period specified in the notice under subsection (2)(c) would, apart from this subsection, end on different dates—

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- (a) the notice shall have effect in relation to all the qualifying tenants on whom it is served as if it provided for that period to end with the latest of those dates, and for the period specified in the notice under subsection (2)(d) to begin with the end of that period; and
  - (b) references in this Part to the period specified in the notice under subsection (2)(c) or (as the case may be) subsection (2)(d) shall be construed accordingly.
- (4) Where a landlord has not served a notice under this section on all of the qualifying tenants on whom it was required to be served by virtue of subsection (1), he shall nevertheless be treated as having complied with that subsection if—
- (a) he has served such a notice on not less than 90 per cent. of the qualifying tenants on whom it was so required to be served, or
  - (b) where the qualifying tenants on whom it was so required to be served number less than ten, he has served such a notice on all but one of them.
- (5) Where a landlord proposes to effect a transaction that would involve both—
- (a) a disposal of an estate or interest in the whole or part of a building constituting a relevant disposal affecting any premises to which this Part applies, and
  - (b) a disposal of an estate or interest in the whole or part of another building (whether or not constituting a relevant disposal affecting any premises to which this Part applies) or more than one such disposal,
- the landlord shall, for the purpose of complying with this section in relation to any relevant disposal falling within paragraph (a) or (b) above, sever the transaction in such a way as to secure that, in the notice served by him under this section with respect to that disposal, the terms specified in pursuance of subsection (2)(a) are the terms on which he is willing to make that disposal.
- (6) References in this Part to the requisite majority of qualifying tenants of the constituent flats are references to qualifying tenants of those flats with more than 50 per cent. of the available votes; and for the purposes of this subsection—
- (a) the total number of available votes shall be determined as follows, namely—
    - (i) in a case where a notice has been served under this section, that number shall correspond to the total number of constituent flats let to qualifying tenants on the date when the period specified in that notice under subsection (2)(c) expires,
    - (ii) in a case where a notice is served under section 11 without a notice having been previously served under this section, that number shall correspond to the total number of constituent flats let to qualifying tenants on the date of service of the notice under section 11, and
    - (iii) in a case where a notice is served under section 12 or 15 without a notice having been previously served under this section or under section 11, that number shall correspond to the total number of constituent flats let to qualifying tenants on the date of service of the notice under section 12 or 15; and
  - (b) there shall be one available vote in respect of each of the flats so let on the date referred to in the relevant provision of paragraph (a) which shall be attributed to the qualifying tenant to whom it is let.
- (7) Nothing in this Part shall be construed as requiring the persons constituting the requisite majority of qualifying tenants in any one context to be the same as the persons constituting any such majority in any other context.

- (8) For the purposes of—
- (a) subsection (2) above and sections 6 to 10, and
  - (b) subsection (6) above so far as it has effect for the purposes of those provisions, a flat is a constituent flat if it is contained in the premises affected by the relevant disposal with respect to which the notice was served under this section; and for the purposes of sections 11 to 17, and subsection (6) above so far as it has effect for the purposes of those sections, a flat is a constituent flat if it is contained in the premises affected by the relevant disposal referred to in section 11(1)(a).

## **6 Acceptance of landlord's offer**

- (1) Where—
- (a) the landlord has, in accordance with the provisions of section 5, served an offer notice on the qualifying tenants of the constituent flats, and
  - (b) within the period specified in that notice under section 5(2)(c), a notice is served on him by the requisite majority of qualifying tenants of the constituent flats informing him that the persons by whom it is served accept the offer contained in his notice,
- the landlord shall not during the relevant period dispose of the protected interest except to a person or persons nominated for the purposes of this section by the requisite majority of qualifying tenants of the constituent flats.
- (2) In subsection (1) "the relevant period" means—
- (a) in every case, the period beginning with the date of service of the acceptance notice and ending with the end of the period specified in the offer notice under section 5(2)(d), and
  - (b) if any person is nominated for the purposes of this section within that period, an additional period of three months beginning with the end of the period so specified.
- (3) If no person has been nominated for the purposes of this section during the period so specified, the landlord may, during the period of 12 months beginning with the end of that period, dispose of the protected interest to such person as he thinks fit, but subject to the following restrictions, namely—
- (a) that the consideration required by him for the disposal must not be less than that specified in the offer notice, and
  - (b) that the other terms on which the disposal is made must, so far as relating to any matters covered by the terms specified in the offer notice, correspond to those terms.
- (4) It is hereby declared that the entitlement of a landlord, by virtue of subsection (3) or any other corresponding provision of this Part, to dispose of a particular estate or interest in any property during a specified period of 12 months extends only to a disposal of that estate or interest in the property, and accordingly the requirements of section 1(1) must be satisfied with respect to any other disposal by him affecting that property and made during that period of 12 months (unless the disposal is not a relevant disposal affecting any premises to which at the time of the disposal this Part applies).
- (5) A person nominated for the purposes of this section by the requisite majority of qualifying tenants of the constituent flats may only be replaced by another person so nominated if he has (for any reason) ceased to be able to act as a person so nominated.

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- (6) Where two or more persons have been so nominated and any of them ceases to act as such a person without being replaced in accordance with subsection (5), any remaining person or persons so nominated shall be entitled to continue to act in his or their capacity as such.
- (7) Where subsection (1) above applies to the landlord, and he is precluded by virtue of any covenant, condition or other obligation from disposing of the protected interest to the nominated person unless the consent of some other person is obtained, then, subject to subsection (8)—
- (a) he shall use his best endeavours to secure that the consent of that person to that disposal is given, and
  - (b) if it appears to him that that person is obliged not to withhold his consent unreasonably but has nevertheless so withheld it, he shall institute proceedings for a declaration to that effect.
- (8) Subsection (7) shall not apply once a notice is served by or on the landlord in accordance with any provision of section 9 or 10.
- (9) In this Part—
- "acceptance notice" means a notice served on the landlord in pursuance of subsection (1)(b);
  - "offer notice" means a notice served under section 5; and
  - "the protected interest" means (subject to section 9(9)) any such estate or interest in any property as is specified in an offer notice in pursuance of section 5(2)(a).

## 7 **Rejection of landlord's offer: counter-offer by tenants**

- (1) Where—
- (a) a landlord has, in accordance with section 5, served an offer notice on the qualifying tenants of the constituent flats, and
  - (b) an acceptance notice is not served on the landlord by the requisite majority of qualifying tenants of the constituent flats within the period specified in the offer notice under section 5(2)(c), and
  - (c) paragraph (b) of subsection (2) below does not apply,
- the landlord may, during the period of 12 months beginning with the end of that period, dispose of the protected interest to such person as he thinks fit, but subject to the restrictions mentioned in section 6(3)(a) and (b).
- (2) Where—
- (a) a landlord has served an offer notice as mentioned in subsection (1)(a), and
  - (b) within the period specified in the offer notice under section 5(2)(c), a notice is served on the landlord by the requisite majority of qualifying tenants of the constituent flats stating that the persons by whom it is served are making him a counteroffer for the acquisition by them of such estate or interest in the property specified in the offer notice under section 5(2)(a) as is specified in their notice,
- the landlord shall serve on such person as is specified in that notice in pursuance of subsection (3)(b) a notice which either accepts the counteroffer or rejects it.

- (3) Any notice making a counter-offer in accordance with subsection (2)(b) must specify—
- (a) the terms (including those relating to the consideration payable) on which the counter-offer is made; and
  - (b) the name and address of a person on whom any notice by the landlord under subsection (2) is to be served.
- (4) If the landlord serves a notice under subsection (2) above accepting the counter-offer, section 6(1) and the other provisions of section 6 shall apply to him as if an acceptance notice had been served on him as mentioned in section 6(1)(b), except that—
- (a) any reference to the protected interest shall be read as a reference to any such estate or interest as is specified in the notice making the counter-offer in accordance with subsection (2)(b) above;
  - (b) any reference in section 6(3) to the offer notice shall be read as a reference to the notice making the counter-offer; and
  - (c) where the landlord's notice is served under subsection (2) above after the end of the period specified under section 5(2)(c), section 6(2) and (3) shall have effect as if the period specified under section 5(2)(d) began with the date of service of the landlord's notice.
- (5) If the landlord serves a notice under subsection (2) above rejecting the counter-offer, then, unless it is a notice falling within section 8(1), subsection (1) above shall apply to him as if no such notice as is mentioned in subsection (2)(b) above had been served on him (except that where he serves his notice under subsection (2) above after the end of the period specified under section 5(2)(c), subsection (1) above shall have effect as if the period of 12 months there mentioned began with the date of service of that notice).

## **8 Fresh offer by landlord: further negotiations between parties**

- (1) This section applies where the landlord serves a notice under subsection (2) of section 7 rejecting a counter-offer but the notice—
- (a) states that it constitutes a fresh offer by the landlord to dispose of an estate or interest in the property specified in the offer notice under section 5(2)(a) which may be accepted by the requisite majority of qualifying tenants of the constituent flats;
  - (b) contains particulars of the estate or interest in that property which he proposes to dispose of, the consideration required by him for the disposal and the other principal terms of the disposal; and
  - (c) specifies a period within which the offer may be accepted as mentioned in paragraph (a) above.
- (2) If, within the period specified in the landlord's notice under subsection (1)(c) above, a notice is served on the landlord by the requisite majority of qualifying tenants of the constituent flats informing him that the persons by whom it is served accept the offer contained in the landlord's notice, section 6(1) and the other provisions of section 6 shall apply to the landlord as if an acceptance notice had been served on him as mentioned in section 6(1)(b), except that—
- (a) any reference to the protected interest shall be read as a reference to any such estate or interest as is specified in the landlord's notice in pursuance of subsection (1)(b) above; and

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- (b) any reference in section 6(3) to the offer notice shall be read as a reference to the landlord's notice under subsection (1) above; and
  - (c) where the notice served on the landlord in pursuance of this subsection is served after the end of the period specified under section 5(2)(c), section 6(2) and (3) shall have effect as if the period specified under section 5(2)(d) began with the date of service of that notice.
- (3) If, within the period specified in the landlord's notice under subsection (1)(c) above, no notice is served on the landlord as mentioned in subsection (2) above and subsection (4) below does not apply, the landlord may, during the period of 12 months beginning with the end of that period dispose of any such estate or interest as is specified in the landlord's notice under subsection (1)(b) above to such person as he thinks fit, but subject to the following restrictions, namely—
- (a) that the consideration required by him for the disposal must not be less than that specified in his notice under subsection (1), and
  - (b) that the other terms on which the disposal is made must, so far as relating to any matters covered by the terms specified in that notice, correspond to those terms.
- (4) If, within the period so specified in the landlord's notice, a notice is served on him by the requisite majority of qualifying tenants of the constituent flats stating that the persons by whom it is served are making him a further counter-offer for the acquisition by them of such estate or interest in the property specified in the offer notice under section 5(2)(a) as is specified in their notice, the provisions of subsections (2) to (5) of section 7 and the provisions of this section (including this subsection) shall apply, with any necessary modifications, in relation to any such notice as they apply in relation to a notice served as mentioned in subsection (2)(b) of section 7.

## **9 Withdrawal of either party from transaction**

- (1) Where—
- (a) section 6(1) applies to a landlord by virtue of any provision of sections 6 to 8, and
  - (b) any person has been nominated for the purposes of section 6 by the requisite majority of qualifying tenants of the constituent flats within the period specified by the landlord in his offer notice under section 5(2)(d) (taking into account any postponement of the commencement of that period effected by any of the preceding provisions of this Part), and
  - (c) the nominated person serves a notice on the landlord indicating an intention no longer to proceed with the acquisition of the protected interest,
- the landlord may, during the period of 12 months beginning with the date of service of the nominated person's notice, dispose of the protected interest to such person as he thinks fit, but subject to the restrictions mentioned in subsection (2).
- (2) The restrictions referred to in subsection (1) are—
- (a) that the consideration required by him for the disposal must not be less than the amount which has been agreed to by the parties (subject to contract) for the disposal of the protected interest, and
  - (b) that the other terms on which the disposal is made must correspond to those so agreed to by the parties in relation to the disposal.

- (3) If at any time the nominated person becomes aware that the number of the qualifying tenants of the constituent flats desiring to proceed with the acquisition of the protected interest is less than the requisite majority of qualifying tenants of those flats, he shall forthwith serve on the landlord such a notice as is mentioned in subsection (1)(c).
- (4) Where—
- (a) paragraphs (a) and (b) of subsection (1) apply, and
  - (b) the landlord serves a notice on the nominated person indicating an intention no longer to proceed with the disposal of the protected interest,
- the landlord shall not be entitled to dispose of that interest in accordance with that subsection but the notice shall have the consequences set out in subsection (5) or (6) (as the case may be).
- (5) If any notice served in pursuance of subsection (1), (3) or (4) above is served not later than the end of the first four weeks of the period referred to in subsection (1)(b) above, the party serving it shall not be liable for any costs incurred by the other party in connection with the disposal.
- (6) If any such notice is served after the end of those four weeks, the party on whom it is served may recover from the other party any costs reasonably incurred by the first-mentioned party in connection with the disposal between the end of those four weeks and the time when that notice is served on him.
- (7) For the purposes of this section the parties are—
- (a) the landlord, and
  - (b) the qualifying tenants who served the acceptance notice or other notice accepting an offer by the landlord, or (as the case may be) the notice making the counter-offer which was accepted by the landlord, together with the nominated person,
- and any liability of those tenants and the nominated person which arises under this section shall be a joint and several liability.
- (8) Nothing in this section applies where a binding contract for the disposal of the protected interest has been entered into by the landlord and the nominated person.
- (9) In this section and section 10—
- "the nominated person" means the person or persons for the time Wing nominated for the purposes of section 6 by the requisite majority of qualifying tenants of the constituent flats; and
  - "the protected interest" means—
- (a) except where section 6(1) applies to the landlord by virtue of section 7(4) or 8(2), the protected interest as defined by section 6(9); and
  - (b) where section 6(1) applies to the landlord by virtue of section 7(4) or 8(2), any such estate or interest as is mentioned in section 7(4)(a) or (as the case may be) in section 8(2)(a).

## **10 Lapse of landlord's offer**

- (1) If, at any time after a landlord has served an offer notice with respect to any relevant disposal affecting any premises to which this Part applies, those premises cease to be premises to which this Part applies, the landlord may serve a notice on the qualifying tenants of the constituent flats stating—

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- (a) that the premises have ceased to be premises to which this Part applies, and
- (b) that the offer notice, and anything done in pursuance of it, is to be treated as not having been served or done;

and, on the service of any such notice, the provisions of this Part shall cease to have effect in relation to that disposal.

- (2) Subsection (4) of section 5 shall apply to a notice under subsection (1) above as it applies to a notice under that section, but as if the references to the qualifying tenants on whom such a notice is required to be served by virtue of subsection (1) of that section were references to the qualifying tenants mentioned in subsection (1) above.
- (3) In a case where a landlord is entitled to serve a notice under subsection (1) above but does not do so, this Part shall continue to have effect in relation to the disposal in question as if the premises in question were still premises to which this Part applies.
- (4) Where—
  - (a) in the case of a landlord to whom section 6(7) applies—
    - (i) the landlord has discharged any duty imposed on him by that provision, and
    - (ii) any such consent as is there mentioned has been withheld, and
    - (iii) no such declaration as is there mentioned has been made, or
  - (b) the period specified in section 6(2)(b) has expired without any binding contract having been entered into between the landlord and the nominated person,

and the landlord serves a notice on the nominated person stating that paragraph (a) or (b) above applies, the landlord may, during the period of 12 months beginning with the end of the period specified in section 6(2)(b), dispose of the protected interest to such person as he thinks fit, but subject to the restrictions mentioned in section 9(2).

References in this subsection to section 6(2)(b) include references to that provision as it has effect by virtue of section 7(4)(c) or 8(2)(c).

- (5) Where any such notice is served in a case to which paragraph (b) of subsection (4) applies, the landlord may recover from the other party any costs reasonably incurred by him in connection with the disposal to the nominated person between the end of the first four weeks of the period referred to in section 9(1)(b) and the time when that notice is served by him; and section 9(7) shall apply for the purposes of this section as it applies for the purposes of section 9.
- (6) Where any binding contract with respect to the disposal of the protected interest has been entered into between the landlord and the nominated person but it has been lawfully rescinded by the landlord, the landlord may, during the period of 12 months beginning with the date of the rescission of the contract, dispose of that interest to such person (and on such terms) as he thinks fit.
- (7) Section 9(9) applies for the purposes of this section.