



FORTHCOMING LANDLORD AND TENANT (BUSINESS LEASES REVIEW) BILL

The papers this week carried word of forthcoming legislation which in certain circumstances would entitle a business tenant to apply to the Circuit Court for a reduction in rent under its lease.

It is a very dangerous exercise to try to guess in advance the contents of legislation, particular on controversial topics. Nonetheless it seems as if the Government is determined to live up to expectations that it would introduce such legislation in 2011. It seems that to allay doubts about the constitutionality of the legislation, the Bill will include obligations on tenants (i) to engage in compulsory mediation with their landlord as regards rent; (ii) to prove both that the existing rent is in excess of current market rates; and also (iii) that they themselves are vulnerable if the rent is not reduced. Essentially this amounts to making a “*financial hardship*” case, specific to them.

There is “*many a slip twixt cup and lip*”, but traps and anomalies abound in legislating for such circumstances.

For instance, would it be reasonable for a landlord under a pre 28 February 2010 lease (from which date other legislation banning upwards only rent reviews in new leases came into effect) to require a proposed assignee to prove that it could indeed comfortably pay the ‘*current*’ rent, thus attempting to cut off a future ‘*financial hardship*’ argument from that

assignee? It has always been considered reasonable for a landlord to seek such evidence before consenting to an assignment.

For instance, could an existing tenant properly obtain a rent reduction on financial hardship grounds, and then readily assign its interest, pocketing a premium, to a chain retailer who would have been unable itself to show financial hardship? How fair would that be to landlords?

Ronan Daly Jermyn is keeping it’s eye out for these and any other legislative changes in property and business law to keep clients up-to-date on same.

For further information, to receive a copy of our legal updates or to discuss any aspect of commercial property law please contact Pat Ahern at patrick.ahern@rdj.ie or Margaret Ring at margaret.ring@rdj.ie

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