

Interim Rent FAQ's

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Interim rent seems to be a cause for much confusion and can sometimes even be overlooked entirely. Here we address some frequently asked questions:

When does interim rent run from?

Interim rent will run from the earliest termination date that could have been put in the *actual* section 25 or section 26 notice that is served. Such notices require that a minimum of 6 months' and a maximum of 12 months' notice is given to terminate the lease (on or after the contractual expiry date). There is no entitlement to it unless one of these notices is served.

e.g. *Contractual expiry date is 29 September 2020*

Landlord serves a section 25 notice on 24 June 2020 terminating the tenancy on 31 December 2020

Interim rent will run from 24 December 2020

Who can make an interim rent application?

Either party can make an interim rent application but only one application needs to be made. It is usually made as part of the renewal proceedings, either in the claim form or acknowledgment of service simply by ticking a box, although a stand-alone application can be made (both before the renewal proceedings are issued or after they have been concluded). The court cannot award interim rent unless either party has applied for it.

When can an interim rent application be made?

Assuming an application is not made as part of the renewal proceedings, either party has until 6 months after the termination of the *statutory* tenancy to apply. The termination date will vary according to the circumstances and whether or not proceedings are issued. Ultimately, the effect of this is that the application can be made after any renewal lease has completed or the tenant has vacated premises following termination.

How is interim rent assessed on an unopposed lease renewal?

Where a new lease is granted of the whole of the premises comprised in the old tenancy, the rent will be assessed under section 24C which provides that the interim rent will be the same as the new rent. However, there are two important exceptions to this:

- Change in market - where the rent "differs substantially" from the rent which the court would have fixed under section 34 if the new tenancy had commenced on the date from which the interim rent is payable. There is little guidance on what will be considered a substantial difference. A figure of 10% has been rejected (*Charles Brooker, Leslie Brooker v Unique Pub Properties Ltd, 2009*). In *MacWilliam v Clough (2014)* the valuation evidence was that the market rent at the date of hearing (September 2013) was approximately 40% lower than the date from which the interim rent started (April 2008). The judge ordered an interim rent of £37,566 compared with £22,232 under the new tenancy;
- Change in lease terms - where the terms of the new tenancy differ from the terms of the old tenancy to such an extent that the rent payable under the new lease is "substantially different" from the rent which would have been determined to be paid under section 34 under a tenancy which commenced on the same day as the new tenancy and whose other terms were the same as the old lease. This might apply where, for example, a turnover rent is introduced, there are changes in repairing or service charge obligations or where the new tenancy comprises new land.

How is interim rent assessed if the landlord unsuccessfully opposes a lease renewal?

If the landlord unsuccessfully opposes the grant of a new tenancy, the interim rent is determined on the basis of what is the "reasonable" rent for the tenant to pay for a yearly tenancy of the premises on the old lease terms and assessed in accordance with Section 34 of the LTA 1954 (i.e. open market letting to a willing tenant, disregarding previous occupation, goodwill, tenant's improvements etc.) (section 24D). This may result in a much lower figure than the open market rent and the court has a wide discretion in making the award with the "reasonable" rent being the "main guiding principle" (NB the same ground applies where the tenant is not in occupation of the whole).

Can a landlord claim interest on interim rent?

No, there is no basis to claim interest on interim rent.

To what extent should interim rent be addressed in expert valuation reports in proceedings?

An expert should consider the basis on which they consider the interim rent to be assessed (with reasons in support if their opposite number disagrees) and make their valuation on that basis. They should also undertake a valuation on their opponent's basis if this differs from their own.

What impact will COVID have on interim rent?

Delays in claims reaching trial may mean that the rent "differs substantially" under the s24C exception. Depending on when the interim rent period runs from, landlords may want to argue that rents were higher or tenants may wish to argue that rents were lower, particularly if the interim rent period falls during lockdown. Similarly, the inclusion of 'COVID clauses' in new leases where rent payments are suspended during forced closures may be examples of terms which impact on rental levels. COVID may also impact what is a "reasonable" rent to pay under section 24D, particularly when businesses were closed.

Are there any tactical considerations to be aware of?

Many of the tactical considerations were lost with the reforms in 2004. However, it is important to consider what happens to an interim rent application if a claim is discontinued or withdrawn to ensure that there is no risk of a claim being lost altogether. Whoever makes the application has control of the process – this may be a tactical advantage.

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