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Relief for landlords as the Court of Appeal confirms that leases have been validly contracted out

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One of the requirements for tenants to contract out of the security of tenure regime contained in the Landlord and Tenant Act 1954 is that they make a simple or statutory declaration before entering into the lease (or prior to an agreement for lease). That declaration has to be in the form, or substantially in the form, prescribed by the legislation.

The prescribed form of declaration requires the tenant to insert a date when the lease term will commence and makes no allowance for the fact that, more often than not, that date will be unknown when the declaration is made. To get around this, tenants will often resort to wording similar to that used in a recent case. The case concerned six leases in designer retail outlet centres where the declarations identified the start of the lease terms in three different ways - an access date determined under an earlier agreement for lease, a date to be agreed between the parties or the date when the tenancy is granted.

The Court of Appeal has approved the wording used in all six declarations (meaning that the leases had therefore been validly contracted out).

Landlords will breathe a huge sigh of relief after this decision. Had it gone the other way, it would have made it very difficult (if not impossible) to contract out a lease where the term commencement date was not known in advance. In addition, it would potentially have invalidated the contracting out process used in the past, opening the floodgates to tenants claiming security of tenure at the end of their leases.

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