

What Happens When a Tenant Stays On After Lease Expires?

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In tackling the often thorny problem of distinguishing between tenancies at will and protected periodic tenancies, the Court of Appeal in the case of *Barclays Wealth Trustees (Jersey) v Erimus Housing (2014)* has ruled that a tenant who stayed on after the expiry of his lease was not obliged to give six months' notice before ceasing to pay rent on office premises.

Following the end of a previous five-year lease, negotiations between landlord and tenant with a view to executing a new one had continued in a somewhat desultory fashion. Fresh terms had eventually been agreed in principle but, prior to execution of a new lease, the tenant announced that he had found alternative premises.

The landlord successfully argued before the High Court that, after the expiry of the lease, the tenant had continued to occupy the office under a periodic yearly tenancy and that six months' notice of termination was therefore required.

However, in allowing the tenant's appeal, the Court of Appeal found on the evidence that, whilst the negotiations had been ongoing, the parties had agreed to create only a tenancy at will and that the tenant was thus not obliged to give notice.

The Court noted that, when a party holds over after the end of a lease, he does so as a tenant on sufferance until his possession is consented to by the landlord. However, such consent was implicit in the negotiations for a new lease and the tenant therefore had at the very least a tenancy at will to continue in occupation.

The tenant's continued payment of rent was not inconsistent with his remaining a tenant at will even though the rent reserved by the former lease was paid on an annual basis. The payment of rent did not give rise to a presumption of a periodic tenancy and the parties' intentions fell to be determined by consideration of all the surrounding circumstances. The overwhelming inference was that the parties had not intended to enter into any intermediate contractual arrangement that might have jeopardised the ongoing negotiations for a new lease.

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