

Tenant alterations

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During the term of your lease, you may find that your property requirements change and that you need to make alterations to your premises, whether internal, external or structural. If you find yourself in this situation, one of the first things you must consider (in addition to any planning and statutory requirements) are the terms of your lease.

If your lease is silent in this regard, you are free to carry out such works. However, this is unlikely. Your lease is more likely to contain a tenant covenant regarding alterations, typically stating that internal non-structural alterations are permitted (with consent not to be unreasonably withheld) but that external and structural alterations are prohibited.

So, what then? A landlord is always free to grant consent to works even if they are prohibited by the terms of the lease; therefore, you could try approaching your landlord and simply asking for consent.

What if your landlord will only grant consent on the payment of an exorbitant premium or they simply refuse?

Well, [section 3 of the Landlord and Tenant Act 1927](#) allows a tenant, in certain circumstances, to carry out works even if they are prohibited by the terms of the lease. The works cannot fall within the tenant repair covenant and must be classed as "improvements". Further, section 3 applies only to business premises not domestic/residential.

So how does section 3 work? As a tenant, you would serve a notice on your landlord detailing the proposed works and attaching any plans/specifications. If your landlord does not object within three months, then you are free to proceed with the works.

If your landlord does object, then you can make an application to the court which can (subject to its ability to impose conditions and modify the plans) authorise the improvements provided they:

- are calculated to add to the letting value of the property at the termination of the tenancy;
- are reasonable and suitable to the character of the property; and
- will not diminish the value of any other property which belongs to the landlord or any superior landlord.

If you go on to complete the works, it is important that you apply to your landlord for a certificate of completion confirming that the works have been completed.

Another possible outcome is that your landlord could offer to carry out the works for a reasonable increase in rent. In this scenario, you would not be obliged to accept the offer and could withdraw the section 3 notice so that the landlord would then not be entitled to carry out the works and increase the rent.

What if there is a tenant covenant which allows you to carry out the works subject to consent (and this is not qualified by reference to the landlord not unreasonably withholding consent)?

In this situation [section 19\(2\) of the Landlord and Tenant Act 1927](#) (which applies to both commercial and some residential property) may assist and qualify the covenant with a proviso that consent cannot be unreasonably withheld.

For section 19(2) to apply, the works must again be classed as “improvements”, but here the works are looked at from the point of view of the tenant and need not add to the letting value of the property.

In practice, you could apply to the court for a declaration that consent is being unreasonably withheld, or you could take the commercial risk of carrying out the works without consent. However, because section 19(2) does not impose a positive obligation on the landlord not to withhold consent unreasonably, you would have no right to claim damages if consent was unreasonably withheld.

One final point to note is that tenants of domestic privately rented property can, pursuant to the [Energy Efficiency \(Private Rented Property\) \(England & Wales\) Regulations 2015](#) request landlord's consent to energy efficiency improvement works. This applies where the works are either prohibited by the lease or are subject to qualified consent and require that the landlord (subject to specified exemptions) does not unreasonably refuse consent to the works.

If you have any questions regarding tenant alterations, call our property law specialist, Michael Goodman today.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.

