This is the third in an occasional series in which partner Nick Cox takes a closer look at some of more obscure corners of the law. Sometimes, even the most seemingly remote bits of legislation can prove surprisingly useful.

Obscure legal terminology: **Surrender**

by litigation partner, **Nick Cox**

The word 'surrender' is not so much an obscure term, just one that is much misunderstood, in legal terms at least.

Nothing to do with Napoleon and Waterloo (although it might sometimes seem that way to a beleaguered tenant), the act of surrendering the lease is the tenant's way of attempting to bring it to an end before its contractual end date.

Many a landlord or his agent has turned up at work on a Monday morning to find a key and a scrawled note indicating that the tenant has 'surrendered' the lease. Sometimes they have quietly accepted it and gone on with their business, particularly in more landlord-friendly times. But even then, the smarter or better advised landlords were quick to realise that the act of surrender did not relieve the tenant of any previous obligations.

If there were arrears of rent or items of disrepair, the tenant could not escape liability for them. However, if the offer of the surrender was accepted, it did bring the lease to an end and draw a line under any further responsibilities.

In the current climate, landlords will be reluctant to accept surrenders. But can they do anything about it? Quite simply, they can refuse to accept the return of the keys and make it clear that they do not intend to treat the lease as at an end.

The only effective surrender is one that is agreed by both parties because a lease is a contractual arrangement and can only be varied by agreement. So the tenant cannot ambush the landlord by a midnight key drop, and a landlord who responds promptly to it cannot be faulted.

A tenant may buy out his future liability by payment of a surrender premium, if the landlord agrees ... but that's another story!

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