

Number 11

Beware Forbearance!

When opposing the grant of a new Lease under the Landlord & Tenant Act 1954 Part II, one of the grounds is persistent delay in paying rent. However, a recent case¹ has highlighted the dangers of failing to insist that a Tenant strictly complies with the requirements to pay the rent on time.

Facts

A Lease of business premises contained the usual covenants to pay the rent on the quarter days. The grant of a new Lease was opposed by the Landlord on the basis of persistent delay in paying rent. At the trial, the Judge accepted that there had been persistent delays and dismissed the Tenant's claim for a new Lease. The rent had consistently been paid late throughout the period 1997 to 2000. Payments had been made by cheque which had itself incurred additional delay while the cheques were cleared.

The Tenant appealed on the basis that the late payment of rent had been acceptable to the previous Landlord, notwithstanding that it had involved minor repeated breaches of the Lease. The competent Landlord for the 1954 Act proceedings had purchased the reversion only recently and the Court of Appeal held that the practice of the previous Landlord estopped the current Landlord from insisting that the Tenant should revert to strict compliance with the Lease without first having given the Tenant reasonable notice to that effect. Once there had been recognition as to both method and date of payment (i.e. late and by cheque) the Landlord could not rely on strict compliance without having first given the Tenant reasonable notice of his requirement to do so. In the circumstances, the Landlord was not entitled to oppose the grant of a new Lease on the ground of persistent delay in paying rent.

Comment

The lesson to be learned from this is clear. Where tenants are late in making payments, landlords should take steps to insist payments are made on the due date and if they are not, to make it plain that this is unacceptable. Where arrangements are put in place to vary the method or time of payment of either periodic rent or accrued arrears (perhaps following a rent review), these should be clearly documented and their effect recorded. It will be important to state, for example, if they are only an arrangement for a fixed period, perhaps whilst the tenant is facing temporary cashflow problems. It is important that compromise agreements are always clearly and expressly set out in writing² so that there is no ambiguity as to the terms and effect of any agreement.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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¹ Hazel –v- Akhtar and Another [2002]07EG124

² RadcliffesLeBrasseur can assist with the drafting of such documentation