

Number 18

What is a Reasonable Time to Remedy a Breach of Covenant?

It is well known that when a landlord discovers a tenant's breach of covenant, and serves a S.146 Notice in respect of that breach, the landlord must wait a reasonable time before proceeding under the S.146 notice (where the breach is remediable) to allow the tenant to consider his position and remedy the breach.

However, how long should a landlord allow for the tenant to take any remedial action?

A recent case¹ has provided useful guidance.

Facts

The Defendant Landlords were the freehold owners of property in Lower Regent Street held by the Claimant under a lease including, inter alia, a user covenant restricting the use of the premises to offices. The second floor was used by a college as a computing/language school, pursuant to a Licence Agreement with the tenant. The Licence Agreement also stipulated that the floor should only be used as offices. The use of that floor as a school was a breach of the lease and the Licence Agreement.

When the landlords discovered what the second floor was being used for, a notice was served on the tenant pursuant to S 146 of the Law of Property Act 1925, calling upon the tenant to remedy the breaches within a reasonable time.

Correspondence ensued between the parties, and the tenant ultimately suggested that the period of notice should be two months, which was the time it would take them to terminate the Licence Agreement. That was not acceptable to the landlords.

As the landlords would not agree that they would not proceed under the S.146 Notice, the tenant issued a claim form seeking damages and injunctive relief to restrain the landlords from acting on the S.146 Notice. When the matter came before the Court the landlords contended that as the breach of covenant was still continuing, and that a more than reasonable time for compliance had expired since service of the S 146 Notice, they were entitled to forfeit the Lease. On those grounds, the landlords applied to have the tenant's action struck out as it had no claim against them in respect of which injunctive relief could be sought.

The Court Decision

The S.146 Notice was held to be plainly a valid Notice, since the use by the college of the second floor was in breach of the lease and the Licence Agreement, and the S.146 Notice had specified a reasonable time for compliance. The reasonableness of the time for compliance with S.146 should be

¹ Albany Holdings Limited –v– Crown Estate Commissioners – RadcliffesLeBrasseur acted for the Crown Estate.

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based on the terms agreed between the landlords and the tenant, and not upon terms the tenant had negotiated with third parties. In the circumstances, the Court was satisfied that one month was a reasonable time for the tenant to remedy the breach. It followed that when the tenant issued the claim form it had no realistic prospect of challenging the S.146 Notice. Furthermore, since the tenant could take action to prevent the unlawful use by the college as a contractual right under the Licence Agreement, it was difficult to see how it could have a claim for damages. Accordingly, the Court granted the landlords' application to strike out the claim.

Comment

Previous cases have confirmed that a landlord should wait a reasonable time, usually at least 14 days after service, before proceeding under a S.146 Notice,² even where the breach is a irremediable. Where the breach is a remediable one, this case would suggest that in many cases, one month is sufficient to allow a tenant to remedy a breach.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing.

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² Scala House & District Property Co Ltd –v- Forbes[1974] QB 575