

**THE LAW OF FORFEITURE**

*The information in this Factsheet is primarily aimed at landlords of commercial premises as opposed to residential premises.*

A landlord has the right to forfeit a lease of premises by bringing the lease to an end before its natural term. Such can occur in the event of some default by the tenant. However, landlords should be aware that forfeiture is one of the more complex areas of law in the and therefore, any forfeiture of the lease should be exercised with considerable caution and certainly upon taking legal advice from a suitably qualified expert in this area of law.

The main problem which arises in respect of forfeiture is the actual method to be deployed by the landlord. There are two main methods, one which involves peaceable re-entry and the other by way of an application to the local county court. Both methods have their advantages and disadvantages and each one will be considered separately.

**Peaceable Re-entry**

Most leases contain an express provision which permits the landlord to re-enter the premises and change the lock in the event of a tenant's default, the most common one being non-payment of rent. A lease may, however, also be forfeited without any express provision for re-entry in it.

In the case of re-entry, the first issue a landlord should consider is whether forfeiture is desirable. Terminating the lease when the property market is generally depressed could lead to empty premises for a landlord and thus may not provide the best solution.

Whilst forfeiture by re-entry has its advantages, such being a speedy way of entering the premises and changing the locks, there are also a number of inherent risks. The most common risk to a landlord of peaceable re-entry is if the forfeiture is wrongful, as this could lead to a claim for damages by the tenant against the landlord for trespass. A situation such as this could arise if the tenant is able to provide evidence showing that the landlord was not entitled to forfeiture.

There are also risks involved if the commercial premises hold stock, equipment and other commercial belongings of the tenant. The landlord could find itself an involuntary bailee responsible for the tenant's goods, which could also give rise to a claim for damages, if such goods are lost, damaged or stolen.

Many commercial premises enjoy a mixed use because it is common to find commercial premises which also include a flat which can be occupied by an employee of the business, or a separate tenant through the consent of the landlord. This, therefore, means that if there has been a lawful subletting of the residential aspect of the premises and the lease is forfeit, the sub-tenant could bring a claim for damages against the landlord for unlawful eviction and would be entitled to have the tenancy continued in respect of the residential part of the premises.

Because of all of the above-mentioned risks, any landlord considering forfeiture by means of peaceable re-entry should proceed with caution, taking into account the above-mentioned matters. It is important to ensure that an innocent third party, such as a subtenant, will not be affected by the peaceable re-entry. It is for this reason that specialist advice is always recommended in these cases.

## **Court Proceedings**

The method many solicitors advise clients on forfeiture is an application to the local county court. Although it involves more cost and can take longer than the method of peaceable re-entry, this is the preferable route because of the risks described. The court will only make an order for forfeiture if it is satisfied that the landlord has exercised its right in accordance with the law. Therefore, any risks that there might be would be considered during the process. An order from the court would enable the landlord to forfeit the lease with a clear conscience.

## **Relief from Forfeiture**

Many landlords are concerned with what the rights of the tenant are in the instance of forfeiture. A tenant could only obtain relief from forfeiture by an application to the court. If the court finds that forfeiture by the landlord was lawful, the tenant could only be restored to his original position by payment of all the outstanding arrears of rent (if forfeiture has resulted because of non-payment of rent) and the landlord's legal costs. The tenant in such an instance would usually have six months from the date of forfeiture to make an application to the court. However, on the positive side for a landlord, the longer the tenant takes to apply for relief, the less likely the court is to grant relief if the tenant has taken an undue and unjustifiable length of time. If by such time the landlord has been fortunate enough to re-let the premises, then even full payment by the former tenant will not enable the tenant to be restored to his former tenancy.

In conclusion, landlords should carefully consider the termination of a commercial lease. It should also be noted that the information given above is not intended in any way to be a detailed guide to the law of forfeiture, which is a complex part of the relations between landlord and tenant.

Any law cited above has been considered primarily in respect of non-payment of rent by a tenant. Landlords should note that there are a number of other kinds of default and breach committed by a tenant. In such instances where breaches occur, the landlord can only forfeit the lease if a Notice under s146 of the Law of Property Act 1925 has been served on the tenant, specifying the breach and giving the tenant the appropriate time to remedy such breach. In some instances, a court would have to endorse the breach, ie the landlord would have to prove that such a breach had been committed by the tenant in order for the breach to be remedied before forfeiture could be effected.

*For further information and advice on forfeiture please contact  
Jean Hendry on: 01722 412141*