

Warning - End of tenancy advice for landlords and tenants

Case Note

It is not just Landlords who need to take care when a tenant holds over after the end of a commercial lease.

The risk that a tenant can face when holding over at the end of a commercial lease was highlighted in the case of ***Barclays Wealth Trustees (Jersey) Limited v Erimus Housing Limited [2013] EWHC 2699***

This recent decision resulted in a tenant finding itself liable for rent over an extended period as a result of the actions of the parties in allowing the negotiations for a lease renewal to drift on. It is usually the Landlord that is alert to not allowing negotiations to drag, to avoid inadvertently permitting the tenant to acquire the protection of the Landlord and Tenant Act 1954, when a previous lease was contracted out.

The normal assumption is that when the parties are in negotiations for renewal following expiry of a contracted out lease and the tenant remains in occupation, the parties would expect that a tenancy-at-will is in place until the new lease is signed. Following on from the findings in this case, this may not always be the correct assumption. As with all cases, the Court must look at what the parties do and say and it may be that a periodic tenancy can be implied.

In this case, prior to the end of the lease, the agents commenced discussions about a renewal on similar terms. Following expiry of the lease in October 2009, it took until June 2011 of stop/start negotiations before new Heads of Terms were agreed. It was also discussed during the negotiations that the tenant needed larger premises and would need the ability to leave at some point, resulting in a further offer being made to the tenant, which was rejected.

Shortly after that, the tenant's agent went so far as to mention to the landlord's agents that the tenant should continue to hold over until new premises were available in about six months' time. There was no response from the landlord's agents to this suggestion. The tenant stayed on paying rent until discussions commenced over the arrangements of the tenants to vacate. The tenant then gave three months' notice to leave, with the first date to vacate being the 31 August 2012. The landlord proceeded to apply to Court for a declaration that the tenant had a secure yearly tenancy to the 31 October 2013 and was

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successful on this application. The Court held that the tenant was under an annual periodic tenancy. This resulted in the tenant having to pay rent at just over £170,000 per annum plus service charge and insurance rents for another 13 months. Also SDLT would be due on that periodic tenancy, which it would not have been payable on a tenancy-at-will.

The Judge commented that the parties' behaviour from a few months following expiry was not consistent with an assumption of a tenancy-at-will.

This case clearly shows that tenants need to be careful as to how they approach their negotiations including the conduct and correspondence of their agents, to ensure that that they are not caught in a tenancy for longer than they ever intended.

If you require advice at the end of a tenancy, please contact:



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