

## CAN THE LANDLORD OBJECT TO THE ASSIGNMENT OF A LEASE TO A BRAND NEW COMPANY?

The landlord is entitled to consider the financial strength of a proposed assignee. In a recent case Royal Bank of Scotland v Victoria Street (No 3) Limited RBS wanted to assign a lease due to expire in three years' time. The lease rent was £400K pa and there was a liability for dilapidations that had already been costed at £700K. RBS wanted to assign to a newly incorporated company; it said that references would be provided for the directors and offered a three month rent deposit. The lease was an "old" lease granted in 1970 so an Authorised Guarantee Agreement was not a pre-condition of assignment. RBS did not offer to guarantee the lease but argued that it remained liable as the original tenant and therefore the landlord had the benefit of its covenant strength.

The landlord refused consent to the assignment and the High Court agreed with the landlord. The offer of director references was held irrelevant since it was the company (not the directors) that was to be the tenant. A three month rent deposit was inadequate given the potential liabilities under the lease. The remaining liability of RBS was not as good as performance and observance in the first place by the assignee. It would not be satisfactory for the landlord to have to wait for the tenant to default and then to chase up the original tenant, perhaps quarter after quarter, in order to secure payment of the rent. Therefore the landlord was held to have acted reasonably in refusing consent.

If you wish to discuss any of the issues raised in this article, or for information on any other commercial property matters, please contact Jenny Harbord on 01872 226994, or by email: [jenny@murrellashworth.co.uk](mailto:jenny@murrellashworth.co.uk).



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