

LANDLORD OPPOSES RENEWAL OF BUSINESS LEASE ON REDEVELOPMENT GROUNDS - BUT HIS FRIENDLY COVERING LETTER GETS HIM INTO TROUBLE

In a recent case Inclusive Technology v Williamson a landlord who was on good terms with his tenant warned his tenant that he was thinking of opposing any renewal of the tenant's business lease due to the statutory ground that he intended to demolish or reconstruct the property on the termination of the current lease. This is statutory ground section 30(1)(f) of the Landlord and Tenant Act 1954. In order to rely on this ground, the landlord has to show an intention to start the redevelopment work within a reasonable time after the termination of the lease and show a genuine intention to carry out the works, eg the landlord would generally have to have (or have a reasonable prospect of obtaining) all relevant planning and other consents, any necessary finance and the relevant development skills.

If a tenant with security of tenure is induced not to apply to the court for a new tenancy, or to withdraw its application, because the landlord has misrepresented the statutory ground on which the landlord would oppose the grant of a new lease, then the court can order the landlord to pay compensation to the tenant for such misrepresentation. The compensation should be sufficient to compensate the tenant for any loss sustained as a result of being prevented from acquiring a renewal lease.

In this case, the landlord gave advance warning to the tenant that it might require possession of the property on redevelopment grounds and then served a section 25 notice stating this ground, together with a covering letter referring to his previous advance warnings and stating that he needed possession of the property in order to carry out the development works.

A couple of months later the tenant offered to pay an increased rent (£45K pa instead of the passing rent of £35K pa) in order to stay in occupation, but the landlord refused. A further couple of months later, the market conditions having changed, the landlord decided to delay the works and instructed his agent to remarket the property. The landlord did not inform the tenant of its change of plans and the following month the tenant signed a lease on alternative premises for which it had to pay a rent of £53K pa. Then the tenant became aware that the redevelopment works had not been carried out and started court proceedings claiming compensation for misrepresentation...

The case went all the way to the Court of Appeal. The Court held that the covering letter (rather than the notice itself) should be regarded as a continuing representation of the landlord's intentions which became false; and therefore became a misrepresentation. The Landlord and Tenant Act 1954 did not require the landlord to say anything at all with regard to its intentions, and the letter therefore went further than was required by the section 25 notice.

Although the tenant could have asked for an update from the landlord before signing up to alternative premises, this did not excuse the landlord from failing to disclose its change of plans after it had made a continuing representation which had become false.

The Court of Appeal made it clear that it was the covering letter that was the landlord's problem in this case since it went further than was required by the section 25 notice. Service of a section 25 notice indicating a reliance upon the ground contained section 30(1) (f) cannot, by itself, be capable of amounting to a representation of intention. This is because the section 25 notice is no more than a warning to the tenant of the ground upon which the landlord may seek to rely at the date of the hearing.

Compensation was awarded of 6 x £8K, since the court inferred that the parties would have agreed a rental of £45K pa for a six year lease based on the tenant's offer when it was seeking to remain in occupation, but the tenant ended up paying £53K pa ie £8K more a year.

So the moral of the story for a landlord is to keep communication of intentions to the statutory minimum - ie the notice itself!

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.



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