



Impact of Covid-19 on break clauses and lease termination

Liz Ganderton, Partner, Commercial Property

Nicola Lawrence, Partner, Property Dispute Resolution

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5 Key questions for today

1. Update on recovering rent and service charges
2. How do we ensure notices are properly served?
3. How do you satisfy a requirement for vacant possession in break clauses and at the end of the term?
4. Will a tenant lose protection of the L & T Act 1954 if he is absent from the premises on expiry of the lease?
5. Can a break notice be withdrawn?

1. Update on recovery of rent and service charges

- Corporate Insolvency and Governance Bill:
- Temporary measures to safeguard the UK high street against aggressive debt recovery actions.
- Statutory demands and winding up petitions to be temporarily voided
- Changes to the use of CRAR
- Landlords and investors asked to be collaborative

1. Update on recovery of rent and service charges

- What services must the Landlord provide?
- What services must the Tenant pay for?
- What if the Tenant doesn't pay?

2. How do we ensure notices are properly served?

- **Express notice clauses** in the Lease
- **Statutory provisions** dealing with the service of notices:
 - Companies Act 2006 (see sections 1139 and 1046)
 - Law of Property Act 1925 (s.196)
 - Landlord and Tenant Act 1927 (s.23 – applies to any notice under the LTA 1954 amongst others)
 - Personal Service
 - Left at the last known place of abode in England and Wales (includes by ordinary post).
 - Posted in a registered letter to the last known place of abode in England and Wales

2. How do we ensure notices are served

- What is the last known place of abode or business?
- How should you leave it?
- When is the notice served?
 - “given and received”
 - Beanby Estates Ltd v Egg Stores (Stamford Hill) Ltd
[2003] EWCA Civ 1167

3. How do you satisfy a requirement for vacant possession in break clauses and at the end of the term?

- “vacant possession” requires that the property is empty of people and that the [landlord] is able to assume and enjoy immediate and exclusive possession, occupation and control of it. It must also be empty of chattels, although the obligation in this respect is likely only to be breached if any chattels left in the property substantially prevent or interfere with the enjoyment of the right of possession of a substantial part of the property.”

3. How do you satisfy a requirement for vacant possession in break clauses and at the end of the term?

- What is the “property”?
- What if it is impossible to clear the property in time due to current restrictions?
- Lease expiry – tenant may need to give three months’ notice to end the lease
- Break – conditions are strictly imposed – break will fail

4. Will a tenant lose protection of the L & T Act 1954 if he is absent from the premises on expiry of the lease?

- S.23(1) – in order to be able to claim a new tenancy under Part II LTA 1954, tenant must show that its premises “are occupied by the tenant... for the purposes of a business carried on by him or for those and other purposes.
- What is ‘occupation’?
 - The physical element and the intention.
 - (Morrisons Holdings Ltd v Manders Property (Wolverhampton) Ltd
- What is the position of tenant is unable to occupy because of the effect of the Coronavirus Restrictions?

5. Can a break notice be withdrawn?

- Can't be withdrawn unilaterally
- Withdrawal by agreement – deemed to be creation of a new lease with effect from the break date. Consequences:
 - 1954 Act protection
 - Loss of guarantors
 - Breach of superior landlord/mortgagee consent requirements

Any questions



Contact details



Liz Ganderton

Partner

+44 (0) 29 2039 1743

liz.ganderton@geldards.com



Nicola Lawrence

Partner

+44 (0) 29 2039 1764

nicola.lawrence@geldards.com

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