**Covid19 and Commercial Leases**

**Richard Snape, a leading lecturer in Commercial and Residential Conveyancing, gives us his view on some of the current issues affecting Commercial Leases.**

As a consequence of Section S82 of the Coronavirus Act 2020 forfeiture of non-payment of rent in commercial leases has been suspended until 30 June 2020. It is very likely that this period will be extended further. Some tenants seem to be under the impression that this this gives rise to a rent holiday and that the rent has been suspended. This is not so. The rent will still be due and after the moratorium period will once more be available. Commercial Rent Arrears Recovery may also be available although a possibility of obtaining an enforcement officer to enter premises may be difficult in the light of social distancing. It might also be possible to draw down from any rent deposit with the agreement of the tenant that the rent deposit account will be topped up at a later stage, thus alleviating any cash flow problems. Serving a statutory demand as a preliminary to bankruptcy proceedings may also be possible although this may be seen by many landlords as pouring good money after bad due to tenant’s lack of credit worthiness.

Forfeiture other than for non-payment of rent is also still available, for instance for disrepair and for breach of a keep open clause. It seems highly likely that in these circumstances a court would be prepared to grant relief from forfeiture, at least temporarily, in view of the difficulty in vacating a property. This would once more be due to social distancing.

It might be suspected that the biggest problem in relation to forfeiture for non-payment of rent when it becomes available, or for other breaches might be the difficulty in finding the new tenant, especially at the same rent, in the current climate. In addition, there are major issues in relation to business rates liability. For the year 2020/21 the retail, hospitality, and leisure sectors can claim full business rates relief regardless of the Rateable Value of the premises. However, if the premises are empty for more than three months (or six months for industrial units and warehousing) then with exceptions full business rates liability will once more be due. A landlord may think it expedient to at least temporarily forego rent rather than effect forfeiture due to the business rates implications.

Alternatively, the tenant may wish to exercise a break clause. Many breaks will have a condition precedent that the tenant must give up vacant possession. With social distancing this may not be possible. What the attitude of the courts may be in this circumstance is yet to be seen.

These are just some of the issues in relation to the Coronavirus pandemic and commercial leases. It is to be expected that over the forthcoming months and years many more will arise.

**Richard Snape**

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