

LANDLORD WINS RENT DISPUTE DESPITE COVID DEFENCE



A commercial landlord has won a dispute over unpaid rent of more than £166,000 despite the tenant citing Covid-19 as the reason for its failure to pay.

The case involved Commerz Real Investmentgesellschaft MBH and TFS Stores Ltd.

Commerz was the leasehold owner of the Westfield Shopping Centre; TFS was of its tenants.

As a result of the Covid-19 pandemic, TFS had been obliged to close its shop for several months during lockdown periods.

It had not paid any rent since April 2020 and the monthly service charge for April, May and June 2020 was also outstanding.

Commerz sought judgment for rent amounting to £166,884.82 plus interest.

TFS argued that the claim was issued prematurely, contrary to the Code of Practice for Commercial Property Relationships during the Covid-19 Pandemic and was a means of circumventing measures put in place to prevent forfeiture, winding up and recovery.

It further submitted that Commerz was trying to exploit a “loophole” in the restrictions placed upon the recovery of rent put in place by the Government because of Covid.

The High Court found in favour of Commerz.

It held that it was clear from the first

paragraph of the Code that it did not affect the legal relationship between landlord and tenant. It was also clear that the Code encouraged landlords and tenants to take a balanced view.

The Code was not a charter for tenants declining to pay any rent.

The government had placed restrictions upon some, but not all remedies that were open to landlords as part of the measures taken to protect the economy.

However, there was no legal restriction placed upon a landlord bringing a claim for rents and seeking judgment upon that claim.

Please contact us for more information about the issues raised in this article or any aspect of commercial property law.

ARE EXTERNAL DOORS IN LEASEHOLD FLATS LANDLORDS' FIXTURES?

The Court of Appeal has clarified whether external doors are landlords' fixtures and so subject to landlord control.

The case involved a tenant who was the registered proprietor of two long-leasehold flats. The leases included a covenant by the tenant at cl.3(4) not to “remove any of the landlord's fixtures” without the landlord's consent.

In 2014 the tenant replaced the entrance doors to both of his flats. He did not seek the landlord's consent to do so.

The First-tier Tribunal held that the doors were “landlord's fixtures” and that the tenant had acted in breach of the covenant by replacing them. However, the Upper



Tribunal reversed that decision, concluding that the doors were part of the land demised to the tenant.

The case went all the way to the Court of Appeal, which upheld the Upper Tribunal's decision.

It held that the entrance doors were part of the original structure of the flats.

The relevant part of cl.3(4) was the promise not “to remove any of the landlord's fixtures”. Its purpose was limited to preventing the removal of landlord's fixtures without the landlord's consent.

While the landlord might wish to have control over the replacement of external doors, that part of cl.3(4) was not apt for that purpose once it was concluded that an external door was part of the demised property, and not a fixture.

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TENANTS TO GET HELP TO PAY RENT FROM £65M FUND



Vulnerable tenants struggling to pay their rent are to get government help in a move that will protect the income of thousands of private landlords.

The government is making £65 million available to councils in England to support low-income earners in rent arrears.

It will be for councils to determine the best way to support each household on a case-by-case basis.

Any payment is likely to be paid directly to the existing landlord, or a new landlord if the money is being used to support a household to find a new home.

Ministers say they are grateful to landlords for their support and the funding will mean more of them will be able to reach agreements with their existing tenants.

The £65 million comes on top of the £500 million Household Support Fund, which was announced by the government in September and is helping vulnerable households across the country with the cost of food, energy, water and other essentials.

The Minister for Rough Sleeping and Housing, Eddie Hughes, said: "This new funding will support families that are struggling and help to get them back on

their feet as we begin to recover from the Covid-19 pandemic.

"The £65 million will be available through the winter months and households at risk of eviction or homelessness should contact their local council if they require support.

The fund recognises the impact the pandemic has had on households in the private rented sector with the lowest income."

Please contact us if you would like more information about the issues raised in this article.

NEW CLAMPDOWN ON LANDLORDS OVER ENERGY RATING

Local authorities are to receive extra funding to tackle landlords who fail to comply with energy rating standards on their properties.

Since April 2020, privately rented homes have had to meet a minimum energy performance rating of EPC Band E, making it illegal to rent out homes below that unless landlords have a limited exemption.

Landlords caught failing to fulfil their obligations can be fined up to £5,000 per property and per breach.

The rule change is expected to see energy efficiency upgrades such as loft insulation, double glazing and cavity wall insulation



being installed by landlords in around 290,000 properties - with an estimated average bill saving of £180 a year for each tenant.

The £4.3 million of extra funding from the Department for Business Energy and

Industrial Strategy (BEIS) to councils across the country is designed to support them make an extra 100,000 engagements with the most difficult to reach landlords with the worst performing properties.

The money will support measures including local radio ads, roadshows and workshops with landlords to raise awareness of the rules, free property surveys, as well as enhanced and targeted mail reminders and translation services to reach those not currently complying.

Please contact us if you would like advice about commercial property law or landlord and tenant issues.

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