

Real estate litigation update

Seeing Sense – Section 17, Landlord & Tenant (Covenants) Act 1995

The recent House of Lords decision in *Scottish & Newcastle Plc -v- Raguz* has confirmed that it is not necessary for landlords to serve Section 17 Notices on tenants where there is an outstanding rent review but no actual rent arrears. This reverses the earlier (and somewhat impractical) decision of the Court of Appeal and removes this onerous administrative burden for landlords. The decision means that any additional rent payable as the result of a rent review only “becomes due” when the increase has actually been agreed or determined.

How does a Section 17 Notice work?

If a tenant fails to make a payment due under his lease, such as rent and service charge, a landlord may be able to recover unpaid sums from a former tenant/guarantor as long as a notice under Section 17 of the Landlord & Tenant (Covenants) Act 1995 (a “Section 17 Notice”), specifying those sums and any interest due, is served upon the former tenant/guarantor within six months of the date the sums fell due.

What happens when there is an outstanding rent review?

In 2006 the Court of Appeal decided that a landlord was not entitled to recover an increased back rent from a former tenant unless that tenant had been warned of the possibility that the amount may increase. The Court of Appeal decided that the additional rent “became due” on the actual rent payment date, even though, as at that date, the reviewed rent had not yet been determined. This meant that the relevant time to warn the former tenant was within six months of the actual rent payment date. This impractical decision meant that, during a rent review, landlords who wished to preserve their rights to recover back rent from former tenants had to serve successive Section 17 Notices on former tenants within six months of each quarter day, notwithstanding the fact that the current tenant had continued to pay the rent due under the lease.

The House of Lords decision that the back rent does not “become due” until it is agreed or determined will be welcomed by landlords who, since March 2007, have had to balance the risk of not being able to recover back dated rent in the process of review against the administrative costs of preparing protective Section 17 Notices following each quarter day, whether or not the current tenant is in default.

Should you wish to discuss any aspect of this decision, or Section 17 requirements generally, please do not hesitate to contact Real Estate Litigation Team at BSDR.

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November 2008

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