

LANDLORDS RIGHTS IN RELATION TO BREACH OF LEASE

Enforcement Options

When a tenant is in breach of his obligations under a lease, the landlord will have a number of means of legal enforcement.

Arrears of rent can be sued for through the County Court as a debt collection claim. There would generally be no defence to the claim by the landlord. The tenant cannot generally refuse to pay rent, even if he alleges that the landlord is not in full compliance with his own obligations.

Distress was the ancient right of the landlord to seize goods on the property and impound them for payment of rent. The Tribunals, Courts and Enforcement Act 2007 replaced the common law right of “distress”. This new procedure allows the “commercial rent arrears recovery procedure”. It allows commercial landlords to employ an authorised enforcement agent to recover and sell tenant's goods if the rent arrears exceed the prescribed amount. It also allows the landlord to recover rent arrears from a sub-tenant of the defaulting tenant. The detailed implementing regulations should be made in the near future.

As a lease is a contract, a landlord can sue a tenant for loss which may fairly and reasonably be considered as arising from a breach of the lease terms by the tenant. Therefore, a landlord can sue for the damages for the consequence of the breach. He is entitled to compensation so that he is put into the position (financially) that he would be in, if the lease was performed. The rights to recover rent as a debt and sue for damages are additional to the rights to forfeit. The rights may be exercised together with, separately or indeed after a forfeiture.

Before taking legal action to recover fixed amounts such as rents, service charge or other sums against a third party such as a guarantor or a former tenant who continues to

be liable, notice of the current tenant's default must be given within six months. Failure to do so will mean that the landlord is unable to claim the sum due from that person. This applies to all leases and is an important difference from Irish practice. Procedures are strict in relation to the notice.

Forfeiture

Forfeiture is the landlord's right to terminate a lease for breach of its terms and conditions. When forfeiture takes place, the landlord re-enters the premises and terminates the lease. The right must be specified in the lease. Nearly all leases allow the landlord to forfeit the event of non payment of rent, breach of covenants or the bankruptcy or insolvency of the tenant.

As in Ireland, forfeiture can happen in two ways. The landlord may issue and serve proceedings for a court order for recovery of possession. Alternatively the landlord may re-enter the premises peaceably. A landlord needs to take care in re-entering without a court order because an offence may be committed if any violence is threatened or there is any element of breaking in the entry. The right of entry only applies in commercial cases and it is felt that it may be contrary to the Human Rights Act Protection in case of dwellinghouses.

In the case of non payment of rent, a demand for rent must be made before forfeiting unless this is changed by the lease. In the case of breach of other covenants, a notice must be served by the landlord specifying the breach, requiring it to be remedied in a reasonable time or for this not capable of requiring the tenant to pay compensation for the breach if required. This is not required in the case of rent arrears.

A tenant has a right to seek "relief against forfeiture". A Court will have regard to the circumstances and the conduct of the parties. Generally, the Court will not wish to forfeit a valuable lease on account of a relatively minor breach. It would more typically give the tenant a further opportunity to remedy any breach. There are special provisions (of which there are no counterpart in Ireland) where forfeiture is based on non repair where the lease was granted for seven years or more and has still three years or more to run. The lease can not be forfeited without leave of Court in these cases.

Court Procedures

Litigation in England and Wales was reformed 10 years ago to provide for more streamlined and efficient procedures.

There are various forms of proceedings for claiming possession of property. The appropriate format and procedure will depend on the type of property (residential or commercial) the basis of the claim, the rent and certain other circumstances. In certain circumstances, an accelerated procedure may be available.

The proceedings must be issued in the County Court for the area in which the property is situate. The claim form must set out the basis for the claim and particulars of claim must also be filed and served.

In a possession claim, the standard period between the issue of claim and the hearing is to be not more than eight weeks. At a hearing the Court may decide a claim or give directions. Where the claim is genuinely disputed, on substantial grounds it may be allocated to a particular track. There are different tracks in the County Court which provide different speeds to the overall proceedings.

This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

This Guide should not be relied on as a substitute for comprehensive legal advice with reference to the particular circumstances.

While we have taken due care in the preparation of this publication, we do not accept legal liability as a result of any reliance placed on anything in this Guide. The reader should rely only on specific legal or taxation advice.