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The LTA 1954 - Compensation for Misrepresentation in Business Lease Renewals

This brief article looks at when a tenant might be able to claim compensation from a landlord under the Landlord and Tenant Act 1954 when its lease comes to an end.

The Landlord and Tenant Act 1954 protects business tenants by giving them a right of first refusal to a new business lease when their current lease comes to an end. In the last few years, new provisions have been introduced into the Act. One of those provisions, which gives tenants still further rights and creates a possible trap for unwary landlords, has been considered by the Court of Appeal in *Inclusive Technology –v- Williamson.*

The effect of the 1954 Act is that a landlord will only be able to oppose a tenant's claim for a new business tenancy if it can prove to a court that it can meet at least one of the 7 statutory grounds in the Act. At least two of those grounds relate to the landlord's intention in the future, i.e. that the landlord intends to demolish the property or to occupy the property itself. In the course of resisting a claim for a new lease by a tenant, a landlord will need to provide evidence in support of its claimed intention.

It is possible that a landlord could mislead either a tenant or the court about its intention, perhaps because the landlord in fact wishes to do something else with the property which does not relate to the 7 statutory grounds, such as selling the property with vacant possession. To try to provide a sanction to prevent this happening, Section 37A was inserted into the 1954 Act in 2004. Section 37A states that a tenant will be entitled to compensation from a landlord where the tenant has not pursued a claim for a new tenancy because of a misrepresentation by the landlord about its intention. In Inclusive Technology, the Court of Appeal has shown how widely that can be interpreted.

The landlord in Inclusive Technology served a statutory notice terminating the business tenancy (a section 25 notice) in June 2006 and, in a covering letter, gave an indication of the nature of the works it intended to carry out at the end of the tenancy. In August 2006, the landlord repeated its intention. However, by about September 2006, the landlord had changed its mind, apparently because it was concerned about the costs of doing the works at that stage.

The landlord did not tell the tenant about its change of mind. The tenant therefore vacated the property and rented other premises because it believed (based upon the landlord's plans) it had no chance of securing a new tenancy. Having moved out, the tenant then noticed that the landlord was not carrying out any of the works it had indicated in June and August 2006. The tenant therefore brought a claim for compensation under section 37A.

The Court of Appeal awarded the tenant compensation. It held that the statutory notice and supporting covering letter amounted to a "continuing representation" that the landlord intended to carry out those works. By not telling the tenant that it had changed its mind, the landlord has therefore made a misrepresentation. The tenant was entitled to compensation reflecting the increased cost of finding alternative accommodation.

The decision in Inclusive Technology identifies two traps for landlords. Firstly, the Court of Appeal held that if the landlord had merely served the Section 25 Notice without any supporting details of its plans, it would not have made a representation. It was the fact that the landlord had given details of a specific scheme it intended to carry out which created the representation. Landlords will therefore need to take advice in future about how much, if any, details they should give about their future plans when serving a Section 25 Notice.

Secondly, the landlord did not communicate its change of plans to the tenant. To have done so would have defeated any claim that there had been a misrepresentation. The important point for landlords and their advisers is to ensure that tenants in that situation are kept informed of developments.

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