

Landlords Beware of “Accidentally” Granting Consent to Tenants

The Case Of *Alchemy Estates Limited v Astor [2008]* highlights the risk that a landlord may inadvertently grant consent to a proposed assignment or subletting by entering into correspondence referring to consent “in principle”.

It is common for a lease to provide that if a tenant wishes to assign or sublet, they must seek the landlord’s prior consent. The landlord then usually exchanges correspondence with the tenant to obtain further information to decide whether to grant its consent. Often this correspondence will indicate that consent will be granted subject to a number of conditions.

This approach was followed in the *Alchemy* case. The landlord’s solicitor sent the following email:-

“Our client in principle is prepared to grant its consent to enable the lease to be assigned to Alchemy Estates Ltd... The conditions attached to the grant of such Licence are:

- (i) the payment of our client’s reasonable costs incurred in connection therewith;*
- (ii) and such Licence is documented within the form of the attached draft Licence to Assign...”*

The email also contained a clear statement that consent would only be given on completion of a formal licence to assign.

Although the email may appear clear, the court ruled that consent had been granted, and the email provided the necessary consent to the assignment.

Following *Alchemy*, there are a number of recommendations that landlords should follow:-

- do not state that the landlord has agreed to give licence whether “in principle” or subject to any other qualification;
- mark all correspondence “subject to licence”;
- ensure that initial correspondence states that the landlord has not yet reached a decision in relation to granting consent;
- check to ensure that the lease expressly provides that consent can only be granted byway of a formal licence (the lease in the *Alchemy* case did not contain this provision).

These recommendations should also be followed where a tenant makes an application for subletting, alterations or change of use.

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