Are leases and tenancies worth the paper they're written on?

A lease signed on behalf of an organisation binds the organisation whether the person signing it (or anyone else) has read it or not. However, even where the terms of the lease document are fully read and considered, various legal provisions and rules of interpretation may mean that it does not quite mean what it appears to say.

It is always sensible for a tenant to read a lease or other contract before it is signed. Because the costs and risks arising from lease obligations are so great in any event, you would hope that what you read means precisely what it appears to say. This is not always the case, sometimes to your advantage, sometimes to your disadvantage.

Break clauses

It has recently been confirmed that if a tenant serves a break notice and pays rent covering a period after the break notice expires and the lease ends, there will generally be no refund of that rent. The Supreme Court of England and Wales decided this last year *(Marks and Spencer plc v BNP Paribas*).

This can be very unfair because agreed break dates often fall on an anniversary of the lease, which is likely to be a rent payment date, meaning a tenant may end up paying a full quarter's rent for a single day's use of the property. This seems to make little sense and is not always apparent from the wording in the lease except to those with in-depth legal knowledge (and even then it is dubious enough to have been the subject of two appeals).

Notwithstanding their importance, leases are a part of everyday business and it is odd that the court appears to think that you should need a legal qualification to understand them.

'Keeping' property in repair

One of the principal areas of concern under leases is the repairing obligation that the tenant must satisfy. Tenants often believe that they are only required to maintain property in the state in which it is when they sign the lease. This is often incorrect because the lease specifies a higher standard of repair.

Since the middle of the 19th century there has been a rule of interpretation that where a lease states that a tenant must 'keep' the property in repair, it means that if it is in disrepair at the start of the lease, the tenant must put it into a state of repair. In practice, many tenants are confused by this, which again raises the question of whether it is sensible for this to be the legal position.

Quirks in the literal meaning of leases do not however always disadvantage tenants.

Landlord and Tenant Act 1954

Tenants' protection under sections 24 to 28 of the Landlord and Tenant Act 1954 is intended to protect tenants of non-residential leases, but can have a severely detrimental effect on unwary landlords. The provisions were designed to prevent undue pressure from landlords on tenants in negotiations for lease renewal, but the result is not always fair.

If the provisions do apply, the landlord cannot eject the tenant at the end of the lease term without serving a notice which gives the tenant the right to apply to the court for a new lease on similar terms at a market rent. If the landlord can establish a statutory ground to object to such a renewal (e.g. on the basis that the landlord wishes to redevelop the property) then the landlord must still pay compensation to the tenant, on the basis of rateable value.

The landlord and the tenant can agree that the provisions will not apply to the lease using a notice and declaration procedure, but that depends on the landlord being aware of the legal position in the first place.

Informal tenancies simply arising from the tenant's occupation of the property in exchange for periodical payments of rent will be subject to the terms of the Act, and cannot be excluded by agreement. A landlord may be unaware that letting a tenant into property even without a written agreement may have the consequence that the tenant can refuse to go at the end of the lease term, or otherwise entitle the tenant to compensation.

Generally

Taking leases is therefore not a straightforward matter, and organisations may well need external legal advice. However, it is sensible for trustees and managers to have a broad understanding of the legal issues that may affect a lease negotiation, because in the end it is the organisation itself that must decide whether to sign up to the lease and will be bound by the obligations in it.

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