

# Real Estate Tip of the Week: A Case Re-visited

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Current market conditions are some of the most challenging faced by landlords and tenants, creating greater disparity during lease renewal negotiations. In such circumstances, it is worth reminding ourselves of the principles followed in the County Court case of *Dukeminster Limited v West End Investments (Cowell Group) Limited*.

## Renewal Terms

The landlord wanted a 12-year term, without a break, and upwards-only rent reviews. Conversely, the tenant wanted a 5-year term, with a break, and, in the event the court ordered a term of 10 years or more, a 5-year upwards and downwards rent review.

The Court decided the following:

### Term

- The tenant's evidence was insufficient and the court was persuaded by the landlord's evidence of the market norm. 10 years was ordered.

### Break Clause

- The tenant's evidence to support a break centred on a neighbouring property's planned renovation scheme. The court thought the tenant's concerns (over continuing use and disturbance) speculative. No tenant break was awarded.

### Rent Review

- There was no review clause in the existing lease, and while the court accepted normal commercial practice might dictate a review, that did not mean that imposing one was necessarily fair. The court acknowledged that most review provisions were upwards only but also that s.34 of the 1954 Act did not give precedence to market forces in determining what type of rent review clauses should be awarded. The court determined that it was only fair for the lease to contain an upwards or downwards rent review at the fifth year to account for changes in either direction.

## Conclusion

Though this case is not binding, few 1954 Act renewal cases go all the way to trial. There is good reason for that fact. This decision is a timely reminder that neither party is likely to be happy with the court's judgment and that any victory risks being pyrrhic. Notwithstanding challenging market conditions, if the parties' appetite is to renew, every effort should be made to do so through negotiations.

## Authors



**Kai Ricciardiello**

*Leeds*

+44 (0)113 251 4886

[kricciardiello@dacbeachcroft.com](mailto:kricciardiello@dacbeachcroft.com)