
Real Estate Tip of the Week: Too vacant to satisfy vacant possession condition!

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A tenant option to break a lease is commonly made conditional on specified requirements being satisfied prior to the relevant break date. For example, a tenant break option may be conditional on there being no arrears of annual rent on the break date to protect a landlord from having to chase rent arrears post break.

In the recent case of *Capitol Park Leeds plc v Global Radio Services Limited* [2020] EWHC 2750 (Ch) the tenant had the right to break its lease if it gave vacant possession of the “Premises”. The Premises were defined as including the original building on the property and landlord’s fixtures (whenever fixed) and all additions and improvements.

After serving notice to break its lease, the tenant stripped out various key features of its demise - e.g. ceiling tiles, lighting and heating - on the basis that the items would be replaced prior to vacating. However the tenant did not replace these features before moving out and, as a result, the High Court held that the break condition requiring the tenant to hand back the property with vacant possession had not been satisfied due to the tenant leaving it in a dysfunctional condition.

Previous case law has considered the requirement for vacant possession in relation to *additional* items being left at premises. This case is of note because it considered the requirement for vacant possession in a situation where essential fixtures and fittings had been *removed*, leaving property unfit for occupation.

The decision in the case centred on the specific facts and an interpretation of particular drafting in the lease and it is understood that permission to appeal has been granted. Whatever the final outcome of the case, it is another example of the difficulties that can arise from break conditions requiring vacant possession.

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