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How to evict a commercial tenant

Litigation & Dispute Resolution



As a landlord of commercial premises there are many reasons why you may want to take back possession of your premises, the most common being where your tenant is in breach of their lease terms; such as, not paying rent, not keeping the premises in good repair, being a nuisance to neighbours or assigning or subletting the premises without your consent.

Steven Partridge (Head of Litigation Dept.) & Charles Stent (Commercial Property Solicitor) at Ware & Kay Solicitors in York & Wetherby advise landlords on their options for claiming back possession of their property.

Claiming possession

Taking back possession of your premises when occupied by a tenant is called 'forfeiture'. However, you can only forfeit the lease if there is a specific clause in the lease enabling you to do so. It is advisable for all commercial leases to contain such a clause as without it your powers as a landlord are severely restricted.

Where you have the right to forfeit, this can be exercised in one of two ways:

- **peaceable re-entry** - this involves you effectively entering the premises and changing the locks. It is considered to be more risky as your tenant could apply to court for 'relief from forfeiture', where the tenant takes back possession and claims compensation for losses incurred as a result of wrongful eviction; or
- **applying to court for possession** - this is usually the preferred route although, as with any court proceedings, it can be costly and lengthy so should only be considered as a last resort.

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Financial Advice

Email law@warekay.co.uk

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The route you choose often depends on the reason for the repossession.

Non-payment of rent

For non-payment of rent you are not required to give any notice of your intention to forfeit; you can simply re-enter the premises.

You must not do anything to acknowledge the continuance of the tenancy, such as remind the tenant of any overdue rent, as this may amount to a waiver of your right to forfeit and you will have to wait until the next rent payment is missed.

It is advisable to leave a notice of repossession on the door of the premises and have a witness to accompany you, such as a locksmith or your solicitor.

Breach of other lease terms

For any other breaches, you must first serve a section 146 notice before you can take possession of the premises. The notice must be served by your solicitor on all interested parties, including the tenant, any mortgagee and any subtenant. It must specify the nature of the breach and whether it requires remedial action within a reasonable time or the payment of compensation. If the breach has not been remedied or the compensation paid as required then you can proceed to forfeit the lease.

Breach of the repair condition

There are additional rules that apply for notices relating to breaches of repair. In some cases you may be obliged to offer the tenant the opportunity to claim statutory protection. If the tenant claims this protection, which they must do within 28 days of receiving a section 146 notice, the landlord must make a preliminary claim for the court's permission before taking any further action.

This can be avoided if the lease contains a clause which entitles the landlord to enter the premises to remedy any defect of repair and claim any costs incurred back from the tenant as a debt.

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The court procedure

The court procedure for forfeiture starts by making an application for possession in the county court. There are standard claim forms that must be completed, which can now be submitted online in some courts. The claim forms must then be served on the tenant, usually by your solicitor, within a strict time-frame. You should always take legal advice on this as it is a complex area of law and mistakes can be costly and delay your repossession.

Tenants' relief from forfeiture

Your tenant can apply to court for relief from forfeiture if certain conditions are met. The tenant does not have an automatic right however; this is a discretionary remedy available to the court, but if granted they may be able to continue to occupy the premises under their existing lease.

The tenant should make an application as soon as they receive a section 146 notice because they will be penalised if they are found to have delayed unnecessarily.

Conclusion

Forfeiture is not to be taken lightly as it can be a lengthy process. You should consider alternatives first and whether there would be any impact on sub-tenancies, assignees and mortgagees.

If you would like advice on forfeiture or any other commercial property problem, contact Head of Litigation Department Steven Partridge or Commercial Property Solicitor Charles Stent at Ware & Kay.

Ware & Kay

Contact us

For advice on any commercial property issue, contact a member of our Commercial Property or Litigation and Dispute Resolution team on York **01904 716000** or Wetherby **01937 583210**.