

Break Clauses – an update

By Brian Noble, Partner at Galloway Hughes LLP.

Break clauses in commercial leases continue to provide a headache for tenants looking to vacate their property, but who have failed to comply with the conditions included within their lease.

To ensure any exit strategy is successful Tenants should be extremely wary of accepting a conditional break clause requiring it to comply with conditions before a Landlord will accept that the break has been exercised correctly.

Where a Tenant agrees to accept a lease which contains a break subject to such conditions, it should be aware that those conditions must be satisfied, and even a trivial breach could prevent the Tenant from exercising the break. A Tenant who accepts such clauses should be fully aware of the risks.

Two recent cases have provided a timely reminder that tenants may wish to negotiate conditions which limit a landlord's ability to rely on the Tenant having failed to satisfy the condition as a way of preventing the lease from ending, and better still, to negotiate an unconditional break clause.

In *Quirko Investments Limited v Asprey Transport Limited*, the tenant was obliged to have paid all sums due to the Landlord up to the break date. In failing to have reimbursed to the landlord the insurance premium, as required under the terms of the lease, the landlord disputed that condition had not been satisfied. The Court confirmed that where a break clause contains conditions, they are absolute, and must be satisfied.

This was followed by *Avocet Industrial Estates LLP v Merol Limited* where the break clause had created a trap for the unwary tenant who again had agreed to a condition to have paid all sums to the Landlord up to the break date. Here, the Court decided that this included default interest on late payments of rent which had occurred a few years before – and even though the interest had never been demanded by the landlord. This was enough to prevent the lease from ending.

There is guidance which suggests that there are only limited pre-conditions that should be accepted by a Tenant to exercising its break rights. Tenants should obtain legal advice to ensure that they are either happy with risks involved in agreeing to any conditions, or to ensure that the break is unconditional.

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If you have any questions in relation to this article or would like to discuss your commercial property matter please contact Brian Noble on 01372 237075 or by email at brian@gallowayhughes.co.uk