Dispute Resolution
Case Law Update
Rosling King LLP

Background

The Respondent, Mr Calce acquired an underlease (the "**Underlease**") in 1997 out of a long lease of land. The Appellant, Cheerupmate2 Ltd (the "**Landlord**"), acquired the reversion of the long lease in March 2015 and, in the process, became Mr Calce's landlord.

The Underlease provided for ground rent of £2 per year, payable half-yearly on 15 March and 29 September. On 12 March 2015, the Landlord sent a letter informing Mr Calce that it was his new landlord and enclosed what was intended to be a section 166 notice in respect of unpaid ground rent from 25 March 2010 up to and including 25 March 2015 totalling £11. The Landlord required payment of the unpaid ground rent by 20 April 2015. The unpaid ground rent was not paid by Mr Calce and the Landlord took possession of the property by peaceable re-entry on 21 April 2015.

In the first instance, the First Tier Tribunal found that the purported forfeiture was not valid and the Landlord appealed to the Upper Tribunal ("**UT**")

The Appeal

The UT considered 3 issues on and the Landlord needed to succeed on all 3 for its appeal to be successful.

The First Issue

A tenant with a long residential lease is only liable to pay ground rent if a demand is made in accordance with section 166 Commonhold and Leasehold Reform Act 2002 ("**Demand**"). A Demand must, inter alia, include notes to the tenant as set out in the Schedule to the Tenant (Notice of rent) (England) Regulations 2004.

The Landlord had used old wording which had been amended in 2011. The meaning of this wording is identical but the new wording is much clearer for the tenant to understand the position.

The Second Issue

The Underlease allowed the landlord to forfeit for rent that was in arrears for 2 years or more.

The UT had to consider whether the 2 years ran from the due date as stated in a Demand or from when the amounts were due under the lease

The Third Issue

Section 167 Commonhold and Leasehold Reform Act 2002 provides further protection to tenants from forfeiture. This section provides that forfeiture cannot be obtained unless the arrears are more than £350, or consists of, or includes, an amount that has been outstanding

for more than 3 years.

The Landlord claimed to have forfeited on the second ground that a part of the £11 had been due for more than 3 years. The UT considered whether liability for rent is delayed until a Demand is served and the consequences of non-payment further delayed by 3 years from that date, or whether the statute merely delays the point at which rent is payable but any consequences are left unaffected. So, if the rent was already overdue by 3 years, then the moment the notice is served the rent becomes payable.

The UT's Decision

On the first issue, whilst technical defects in notices should not invalidate them where their meaning remains clear, the notes for the tenant are an important element to understand the position. The use of the old wording was therefore found to render the notice invalid. This was enough to dispose of the appeal, but the UT addressed the remaining issues.

On the second and third issue, the UT found that both the time periods as stated in the lease (2 years) and the statute (3 years) ran from the payment date as specified in a Demand, rather than the due date under the lease. As a result, the Landlord was not permitted to forfeit until 3 years had elapsed from the due date specified in the Demand.

Commentary

This case demonstrates the statutory protection afforded to long residential tenants. It reminds landlords of the need to be fully compliant with the terms of their tenant's lease and statute, should they wish to obtain forfeiture of a tenant's lease.

For further information, please contact Ann Ebberson or the Partner with whom you usually deal.