

Break Clauses

Meeting the Pre-Conditions

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Break Clauses

- ▶ What are the secrets of favourable pre-conditions?
- ▶ When does the landlord effectively waive compliance with the pre-conditions?

Key Requirements

- ▶ Rent(s) paid up to date
- ▶ Compliance with covenants
- ▶ Vacant possession

Rent

Marks & Spencer Plc v BNP Paribas

Securities Services Trust Co

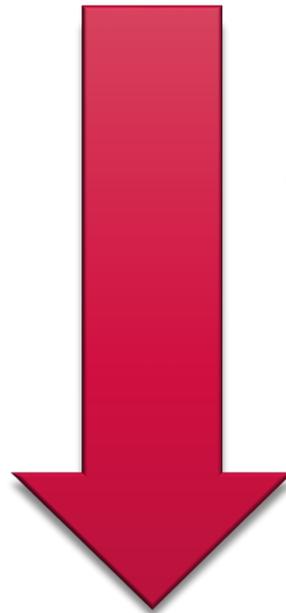
(Jersey) Ltd & Anr [2016]

Rent

- ▶ Condition: “no arrears of Basic Rent”
- ▶ Implied term as to apportionment?
- ▶ Refund of service charges

Rent Payable in Advance on Quarter Days

25 December 2011



Break date
24 January 2012



25 March 2012

Lessons Learnt

- ▶ Make the break date the day **before** the rent payment day
- ▶ Make express provision for apportionment in the break clause
- ▶ Ensure tenant can comply in sufficient time

Compliance with Covenants

- ▶ Extent and standard of repairs
- ▶ Reinstatement
- ▶ Cost/benefit
- ▶ Timing

Vacant Possession – use

NYK Logistics (UK) Ltd v Ibrend Estates BV [2011]

- ▶ Tenant's contractors still carrying out repairs 6 days after date for VP.
- ▶ Maintained security guard
- ▶ Empty of people
- ▶ Empty of chattels – subject to *de minimis* rule

Vacant Possession - impediments

Riverside Park Ltd v NHS Property Services Ltd [2016]

- ▶ Demountable stud partitioning
- ▶ Kitchen units
- ▶ Activated alarm system & fobs

Classification of Objects



What does VP mean in practice?

- ▶ Chattels?
- ▶ Tenant's fixtures?

Lessons Learnt

- ▶ Absence of 'material breach'
- ▶ Re-consider what fixtures need to be removed
- ▶ Written schedule of what needs to be done &, where necessary, an agreed method of repair
- ▶ Ensure tenant can comply in sufficient time

Waiving Pre-Conditions

Avocet Industrial Estates LLP v Merol Ltd [2011]

- ▶ Default interest
- ▶ T expressed belief that it was not in breach of any of the pre-conditions
- ▶ L did not correct this belief or demand interest
- ▶ L did not know that belief was incorrect

Waiving Pre-Conditions

MW Trustees Ltd v Telular Corporation [2011]

- ▶ 10 August 2009 invalid notice served
- ▶ 17 August 2009 MA's email: "We accept the attached letter and can confirm we are happy for you to break the Lease..."
- ▶ Concession could have been withdrawn
- ▶ No duty to inform that has not been validly served.

Lessons Learnt

- ▶ Check what sums are due even if not demanded
- ▶ Overpay, if necessary, with right to refund
- ▶ Confirm compliance
- ▶ Control managing agents & surveyors!

Any Questions?

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