

Harminder Sandhu, Managing Director and Head of Dispute Resolution considers commercial landlords' rights to forfeiture.

We have recently seen a number of cases where commercial landlords with multiple units on one site have been left with no alternative but to forfeit the lease of a disruptive tenant to avoid a claim by the other tenants occupying units on the same site.

The right to forfeit is a standard clause within most commercial leases where there has been a breach of covenant contained in the lease. A breach of covenant (other than non-payment of rent) requires service on the tenant of a Section 146 Notice under the Law of Property Act 1925. The notice would detail the breach complained of, set out a reasonable time to remedy the breach and specify the landlord's intention to forfeit the lease on failure to remedy. During the interim period the landlord must not take any action which may suggest acceptance of the breach and therefore a waiver of the right to forfeit.

Once the timeframe set by the Section 146 Notice has expired the landlord can make an application to Court to forfeit the lease. If an order is granted the landlord will be able to repossess the property from the tenant. The tenant could seek relief from forfeiture in which case the tenant would agree to remedy the breach and/or pay adequate compensation in respect of the breach in addition to satisfying the Court the tenant will perform its obligations under the lease in the future.

In one of our client's situation there was no alternative to forfeiture however prior to deciding to take this drastic action a commercial landlord should consider the following:-

- Property market conditions – the landlord would be left with a lost income and a vacant property which is difficult to re-let or sell.
- The landlord would become responsible for rates, utilities and maintenance.
- A vacant property is more likely to fall into disrepair or suffer criminal activity, which will reduce its value.

A decision to forfeit a lease must be taken carefully and with the benefit of advice. For further information or advice on forfeiture or dispute resolution contact Harminder Sandhu on 01384 216840 or hsandhu@hawkinshatton.co.uk