

# Forfeiture: what is it?

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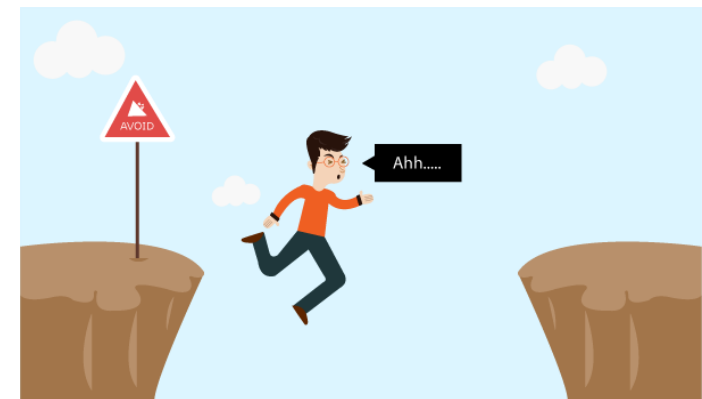
## Nature of forfeiture

- The right of a landlord to terminate a lease prematurely upon the default of the tenant: ***Clays Lane Housing Cooperative Ltd v Patrick*** (1985) 49 P. & C.R. 72
- Subject to numerous statutory restrictions
- Proprietary interest in land
- To be distinguished from surrender
- Forfeiture proviso - makes all covenants conditions: ***Bashir v Commissioner of Lands*** [1960] AC 44.



## Establishing breach - pitfalls

- **Rent:** when is it actually due? Does it have to be demanded? Has it been properly demanded? Set-off?
- **Disrepair:** Is the property out of repair? Whose responsibility is it to put in repair? What standard is required? By reference to what date? Statutory compliance - Landlord and Tenant Act 1927, s.18(2) & Leasehold Property (Repairs) Act 1938, s.1(4)?
- Estoppel? Brikom Investments v Carr [1979] Q.B. 467



## s.146 notices

- To give the tenant an opportunity to remedy the breach or, if irremediable, to consider his position
- Required in respect of breach of any condition or covenant, whether enforcement by action or otherwise (i.e. peaceable re-entry).
- Not required in respect of rent
- Sums “**recoverable** in the same manner as rent” are not rent
- Service charge **reserved** as rent requires a 146 notice: ***Freeholders of 69 Marina v Oram*** [2011] EWCA Civ 1258

## s.146 notices

- Content
  - Specify breach, but not necessarily the covenant. Wrong covenant may invalidate notice (***Anders v Haralambous*** [2013] EWHC 2676 (QB))
  - If capable of remedy, require the tenant to remedy, within a reasonable period, but not the method of remedy (Catch all: “remedy all breaches which are capable of remedy”.)
  - Requirement for compensation
  - Leasehold Property (Repairs) Act 1938



## Methods of forfeiture

- Only one method: re-entry
- Intention to re-enter manifested by:
  - Physically re-entering / re-letting
  - Service of proceedings

**WHICH?**



## Residential leases – failure to pay rent

- 1) Is the rent due? If not, forfeiture unlawful – s.47 & 48 LTA 1987
  - 2) Is notice required? – s.166(1) CLRA 2002
  - 3) Is enough due? – s.167(1) CLRA 2002
- Approached lender.....



## Residential leases – failure to pay service charge

- Properly demanded S/C? - s.47 & 48 LTA 1987
- s.81 final determination required
- After 14 days, serve s146 notice
- Prescribed sum / prescribed period - s.167(1) CLRA 2002
- Approach lender.....





## Residential leases – other breaches

- Final determination (s.168 CLRA02)
- After 14 days, serve s.146 notice

