

Forfeiture: what is it?

Rupert Cohen

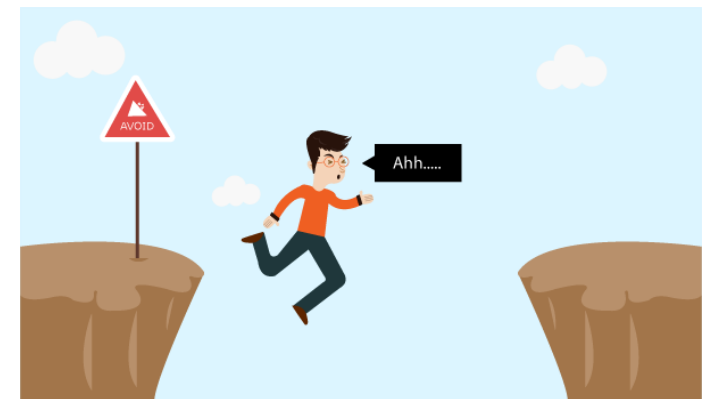
Nature of forfeiture

- 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



Thank you for listening
Rupert Cohen
rcohen@landmarkchambers.co.uk

© Copyright Landmark Chambers 2019

Disclaimer: The contents of this presentation do not constitute legal advice and should not be relied upon as a substitute for legal counsel.

London

180 Fleet Street
London, EC4A 2HG
+44 (0)20 7430 1221

Birmingham

4th Floor, 2 Cornwall Street
Birmingham, B3 2DL
+44 (0)121 752 0800

Contact us

 clerks@landmarkchambers.co.uk

 www.landmarkchambers.co.uk

Follow us

 [Landmark_LC](https://twitter.com/Landmark_LC)

 [Landmark Chambers](https://www.linkedin.com/company/landmark-chambers)