

Issues with Insolvent Tenants

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Overview

- When can a landlord present a bankruptcy petition?
- What can a landlord do when an individual tenant is made bankrupt?

Bankruptcy

Do not pass Go,
Do not collect \$200



When can a LL present a bankruptcy petition?

- Section 267(2) of the IA 1986 contains **4 criteria** for bankruptcy petition.
 - a) Debts \geq £5,000
 - b) Debt = “**liquidated sum**” payable immediately or at certain future time
 - c) Debtor “unable to pay”/”no reasonable prospect” (addressed by stat demand)
 - d) No outstanding application to set aside stat demand

Meaning of “Liquidated sum”

- Not defined by the IA 1986 or predecessor legislation. Reflects long established caselaw on what constitutes a good petitioning creditor’s debt.
- Essential question: has/can the amount of the debt been ascertained or does it depend on some future event?
- See ***McGuinness v Norwich and Peterborough Building Society*** [2012] 2 All E.R. (Comm) 265 for summary of cases:
 - Judgment debt = liquidated
 - untaxed solicitors fees = unliquidated
 - Claim for value of shares = unliquidated if value is at trial date.

Application to Landlord & Tenant context

Rent ✓

Service
Charges

- Residential ✗
- Commercial?

Other
claims ✗?

What can a landlord do when an individual tenant is made bankrupt?

- Prove for debts once accrued
- CRAR
- Likely strongest remedy is to recover possession: does LL need consent of court?



Places for People Homes Ltd v Sharples [2011] EWCA Civ 813

- Statutory bar in s.285 IA 1986:
 - No creditor may (without consent of court) either (a) “*have any remedy against the property or person of the bankrupt **in respect of that debt***” or (b) “*commence any action or other legal proceedings against the bankrupt...*”
- Problem: does an action for possession (whether founded on forfeiture or service of statutory notice) fall within either provision?
- Answer: **No** – LL’s do not need consent. However, courts have power to stay (s.285(1) and (2)).

Who should be a party to the claim?



Lease vested in trustee in bankruptcy
⇒ claim against trustee + occupiers



Protected residential lease does not vest (s.283 IA 1986)
⇒ claim against T.

Q&A

We will now answer as many questions as possible.

Please feel free to continue sending any questions you may have via the chat section which can be found along the top or bottom of your screen.

Thank you for listening

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