

Private law issues for both halls of residence and private tenancies



Justin Bates

Private law issues

- Frustration?
- Breach of contract?

- But be careful what you ask for...

Frustration

What is it?

Where an event occurs *after* the formation of the contract which renders it *physically or commercially impossible* to fulfil the contract or which transforms the obligation into something radically different

Problems for students

- 1) Timing – what is the event that has occurred after the formation of the contract?
 - Cannot be the pandemic *per se*, for obvious reasons
 - Something caused by the various lockdown restrictions? Perhaps

Problems for students

2) Physically or commercially impossible?

- Do the various “lockdown” regs prohibit return?
 - Not that I can see – travel is permissible for any “reasonable excuse”
 - Note that letting property is permissible and housing market is “open”
 - (*cf* Wales and some restrictions on entering Wales from England)
- For Halls of Residence, are they actually open?
 - If not, then an argument for frustration/breach of contract
- But the length of the interruption might be relevant: see *Li Ching Wing v Xuan Yi Xiong* [2003] HKDC 54 (10 day lock out due to SARS did not frustrate 2 year lease)

What would be the effect of frustration?

- Contract ends
- Rental liability ends *but* so does right to use the room
- Do you want that? What if lockdown gets lifted and face-to-face starts again?
What about your property in the room?

Breach of contract

Halls of Residence

Tenant sue the university?!

- If locked out then, if not frustrated, potentially a breach of contract
- If ancillary services are provided as part of the contract (catered Halls) then there is a potential breach of contract
- Could student accept this as a repudiatory breach and walk away? But is that what they want? What happens if lockdown gets lifted and face-to-face starts again? What about your property in the room?

Breach of contract

Private landlords

- Hard to see what breach there would be
- More likely tenant is in breach as it is usually a requirement that you not leave the property unoccupied for more than a set period of time (14/28 days)

Where does this leave us?

Negotiation looks like the only realistic option

Litigation very fact specific and hard to see how a case would be concluded soon enough to make a difference

In the private sector, the obvious risk is LLs go after guarantors.

Thank you for listening

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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

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