

Break Clauses and Vacant Possession

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Break clause conditions

- Strict compliance required
- **Mannai Investment v Eagle Star Life** [1997], per Lord Hoffman:

“If the clause had said that the notice had to be on blue paper, it would have been no good serving a notice on pink paper, however clear it might have been that the tenant wanted to terminate the lease.”

- **Siemens Hearing Instruments Ltd v Friends Life Ltd** [2014], per Lewison LJ:

*“The clear moral is: if you want to avoid expensive litigation, and the possible loss of a valuable right to break, you must pay close attention to all the requirements of the clause, including the formal requirements, and follow them **precisely**.”*

What does ‘Vacant Possession’ mean?

NYK Logistics (UK) Ltd v Ibrend Estates BV [2011] 2 P & CR 9, Rimer LJ :

*“The concept of “vacant possession” ... is not complicated. It means that at the moment that “vacant possession” is required to be given, the property is **empty of people** and that the purchaser is **able to assume and enjoy immediate and exclusive possession, occupation and control**. It must also be **empty of chattels**, [which] **substantially prevent or interfere** with the enjoyment of the right of possession of a substantial part of the property.”*

- “*Ordinary meaning*” = premises to be returned free of “*trilogy of people, chattels and interests*”: **Goldman Sachs International v Procession House Trustee** [2018] EWHC 1523, Nugee J.

(1) Vacant possession of what: the “demised premises”?

- Chattels are not always loose items: *Riverside Park v NHS Property Services* [2016] EWHC 1313

- Fixtures:

“... the premises will include anything which in law have become part of the premises by annexation. A fixture installed by the tenant for the purposes of his trade becomes part of the premises as soon as it is installed, although the tenant retains a right to sever the fixture on termination of the tenancy. Whether something is a fixture depends on the degree and purpose of annexation; in each case looked at objectively. If something has become part of the premises by annexation then it is part of a thing of which vacant possession has to be given. Its presence does not amount to an impediment to vacant possession itself.”

– *L&G Ltd v Expeditors* [2006] EWHC 1008, per Lewison J.

- How does the lease treat tenant’s fixtures?
- Alterations additions or improvements?

(2) Inter-relation with reinstatement?

Goldman Sachs International v Procession House Trustee Ltd [2018] EWHC 1523:

- Clause 23.1: *break option “subject to the Tenant being able to yield up the Premises with vacant possession as provided in Clause 23.2.”*
- Clause 23.2: *“On expiration of such notice, the Term shall cease and determine (and the Tenant shall yield up the Premises in accordance with clause 11 **and** with full vacant possession) without prejudice to the rights of the parties in respect of any antecedent claim or breach of covenant.”*
- Clause 11: *“remove any alterations or additions made to the Premises (and make good any damage caused by that removal **to the reasonable satisfaction of the Landlord**) and reinstate the Premises to their original layout and to no less a condition than as described in the Works Specification.”*

(3) How much / little to remove?

- Nothing that substantially prevents or interferes with the enjoyment of the right of possession of a substantial part of the property
- **Secretary of State for Communities v South Essex College** [2016] 7 WLUK 780:
 - Removing too little
- **Capitol Park Leeds plc v Global Radio Services Ltd** [2020] EGLR 38:
 - Removing too much
 - “*An empty shell of a building which was dysfunctional and unoccupiable*”
 - Appeal pending ...!

Thank you for listening

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