

Key Considerations Before Forfeiting a Commercial Lease

Reviewing the lease, the breach and the landlord's objectives before taking action can help avoid an invalid or commercially damaging forfeiture.



The Forfeiture Clause

Check that the lease contains an express forfeiture or re-entry provision and that the circumstances required to activate it have occurred. A landlord cannot simply terminate a fixed-term commercial lease because it wishes to recover the premises.



The Nature of the Breach

Identify precisely which lease obligation has been breached. The required procedure may differ depending on whether the issue concerns unpaid rent, disrepair, unauthorised alterations, unlawful use or another covenant.



Rent Arrears

Review the lease to establish when the right of re-entry arises and whether any formal demand is required. The amount and period of arrears should be confirmed before action is taken.



Section 146 Notice

For breaches other than non-payment of rent, the landlord will generally need to serve a notice under Section 146 of the Law of Property Act 1925. The notice must identify the breach, require it to be remedied where possible and request compensation where appropriate.



Time to Remedy the Breach

Where a breach is capable of remedy, the tenant must be given a reasonable opportunity to put matters right. What amounts to a reasonable period will depend on the nature and extent of the breach.



Waiver

Consider whether the landlord has acted in a way that recognises the lease as continuing after becoming aware of the breach. Demanding or accepting rent arising after the breach may waive the right to forfeit for that particular breach.



Peaceable Re-entry or Court Proceedings

A commercial landlord may be able to forfeit through peaceable re-entry or by obtaining a court order. The appropriate route will depend on the occupation of the premises, the likelihood of a dispute and the practical risks involved.



Tenant Insolvency

Additional restrictions may apply where the tenant is in administration or subject to another formal insolvency process. For example, peaceable re-entry against a company in administration requires the consent of the administrator or the court.



Relief from Forfeiture

A tenant, undertenant or another interested party may be entitled to ask the court to restore the lease. The court can consider the circumstances of the breach, whether it has been remedied and the terms on which relief should be granted.



Underleases and Registered Titles

Forfeiture of a headlease will normally determine inferior leases granted from it. The landlord may also need to update the registered titles at HM Land Registry and respond to applications for relief from undertenants or lenders.



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