

Balancing Acceptance of Rent and Forfeiture

Although in current market conditions Landlords will be considering whether to forfeit a lease, it remains even more important for them to know how to preserve forfeiture rights that may have arisen.

One question raised by a recent case was whether the payment in of a cheque that includes some rent arrears amounts to a waiver of rent ?

In the case of Seahive Investments Ltd v Osibanjo [2008]

- The Landlord made a statutory demand for rent owing up to 29th September 2005. The demand was not satisfied and on 5th January 2006, a bankruptcy petition was presented to Mr O (the Tenant).
- On 19th June 2006 the Landlord became aware that the Tenants were breaching some covenants. On 24th October 2006 Mr O sent a cheque for £10,000 to the Landlords solicitor. A covering letter with the cheque explained this *was to discharge the outstanding bankruptcy sum and part payment for arrears of rent.*
- Solicitor retained £3,500 to pay off the *bankruptcy debt* but returned the balance.
- On 1 November 2006 the bankruptcy petition was duly dismissed.
- On 24th November 2006 the appellants sent a further cheque for £18,750. This was not banked and returned.

- On 20th December 2007 Forfeiture proceedings were issued and an order for possession was granted on 20th December 2007 by the County Court

The above case reached the Court of Appeal where the issue raised was whether the Landlord had waived its right to forfeit by acceptance of part of the cheque.

The COA seem to have suggested that processing a cheque may be evidence of payment to the landlord but it is not evidence of acceptance. Part of the sum was accepted as payment of a bankruptcy debt ; this did not indicate acceptance of the balance as rent.

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