

Landlords guide to Lease Forfeiture

Vicks Enforcement



LANDLORDS GUIDE TO LEASE FORFEITURE

When a business tenant is in rent arrears or is in breach of the terms of the lease, then the Landlord has the right to forfeit the commercial lease using Common Law – The right to terminate the lease before the contract end date without the need for court action.

The Landlord does not have the automatic right to forfeit a commercial lease, however virtually all commercial leases contain the right to forfeit.

To forfeit a lease, the Landlord will normally instruct an Enforcement Agent (formally known as a Certificated Bailiff) to attend the property, change the locks and affix the relevant notice to the property.

The effect of forfeiture is that the lease ends from the date the forfeiture takes place, and any future Landlord/tenant obligations cease.

DON'T LET DIFFICULT TENANTS WIN THE BATTLE



NON-PAYMENT OF RENT

Most leases will give the Landlord of commercial premises the right to forfeit the lease if the rent is overdue by a specified period – normally 21 days.

After the 21 days (or time specified in the lease) the Landlord has the right to enter the property and forfeit the lease by peaceful re-entry. Enforcement Agents usually carry out the forfeiture on the Landlords behalf to ensure the process is carried out correctly.

Once the lease has been forfeited the Landlord has the right to let the property to a new tenant.

OTHER BREACHES

If the breach is anything but non-payment of rent, then under section 146 of the Law of Property Act 1925, notice needs to be served prior to exercising the right to forfeit.

The notice must:

- Specify the particular breach complained of
- If the breach is capable of remedy, requiring the lessee to remedy the breach; and
- Require the lessee to make compensation in money for the breach

If the tenant fails within a reasonable time to comply with the section 146 notice, this means that the Landlord can forfeit either by means of peaceable re-entry or court proceedings.

It is important to note that once the notice has been served, if the Landlord acts in such a way that implies the lease is continuing, such as accepting rent, the right to forfeit is waived.

REASONABLE TIME

When serving a section 146 notice, the notice does not have to specify what a reasonable time is, however, if the Landlord tries to forfeit before a reasonable time has passed, or before the tenant has demonstrated that he does not intend to comply with the notice, the forfeiture will be unlawful.

PEACEABLE RE-ENTRY

Peaceable re-entry is where the Enforcement Agent attends the property and changes the locks.

To forfeit the lease by peaceable re-entry means that the Enforcement Agent only has to be peaceable to the person not the property. In other words, the Enforcement Agent can break in if the property is empty, but not where there is a person inside the property who is opposed to the re-entry.

Due to the above, for most commercial premises, the Enforcement Agent will attend to change the locks either early morning or late at night, when no one is present and the business is closed. If the tenant is present during the Enforcement Agents attendance it is possible for the Enforcement Agent to enter the property and evict the tenant provided that the Enforcement Agent did not use force to gain entry.

In circumstances where the commercial property has been let as a dwelling, the right of peaceable re-entry or lease forfeiture is lost. Let as a dwelling is defined as 'let on terms permitting only occupation as a dwelling or other use combined with occupation as a dwelling'. This means that where somebody is living at the property the locks cannot be changed without a court order.

RELIEF FROM FORFEITURE

Tenants have the legal right to apply to the court for relief from forfeiture. If relief is granted, then the lease will be handed back to them as if it was never forfeited.

Relief from forfeiture is usually only granted on certain conditions. These conditions are that the tenant is to remedy the breach, pay all outstanding rent arrears and pay the Landlords legal costs of the forfeiture.

All outstanding rent arrears means that all rent due up to the date of the hearing, including any rent that became due from the date of forfeiture to the date of the relief hearing.

These conditions are designed to put the Landlord back in the position he would have been, should the tenant not have breached the lease.

CRAR

Alternatively, if the Landlord wishes to retain the tenant in the property long term rather than forfeit the lease, then Commercial Rent Arrears Recovery (CRAR) should be used to recover the rent arrears. Landlords appoint a Certificated Enforcement Agent (formally Certificated Bailiff) to carry out this service.

[USEFUL LINKS](#)

- > [Lease forfeiture service](#)
- > [Lease forfeiture instruction form](#)
- > [Law of Property Act 1925](#)
- > [Vicks Enforcement website](#)