

## LANDLORDS UNDER NO DUTY TO MITIGATE RE RENT ARREARS

**The Message:** Tenants who no longer occupy or require let premises cannot force their landlords to take them back before the end of their leases.

**The Case:** In an important case for landlords, the Court of Appeal has rejected a claim by tenants that leases are no different to any other form of contract and that, where the tenants have vacated, landlords cannot simply continue demanding rent but should be obliged to take steps to mitigate their losses by re-letting the premises (Reichman & Dunn-v-Beveridge & Gauntlett (13/12/2006)).

The Defendants were tenants of premises in Yateley, Hampshire under a lease for a term of 5 years from 26 January 2000. They ceased trading from the premises in February 2003 and abandoned the premises and paid no further rent thereafter. The Claimants commenced proceedings in 2004 to recover the arrears to date.

In their Defences, the Defendants raised a novel point so far as recent English case law is concerned. They claimed that the landlords were under a duty to reduce their loss by accepting proposals for a surrender or assignment or otherwise taking steps to market or deal with the premises.

It is a general principle of contract law that a party who suffers any loss due to a breach by another party should take steps to mitigate his loss insofar as it can do so. The Defendants argued that this principle should apply to leases and that landlords of abandoned or unwanted premises should be obliged to seek to re-let them and their only remedy should be to recover damages if they could not re-let them at the same rent, or any higher rent, as before. They urged the Court to adopt a much more modern approach in this respect so as to avoid premises being left standing empty for years by requiring the landlord to ensure they are put to beneficial use.

The Court of Appeal first pointed out that there is no general principle of contract law that an innocent party has to accept the conduct of the guilty party as having terminated the contract. Save in some exceptional cases, the innocent party can hold the other party liable to continue to comply with the contract. There is clearly nothing unreasonable in landlords so doing as it is quite open to the tenants to take steps to reduce their own liabilities by transferring, sub-letting or otherwise dealing with their lease of any unwanted premises.

Secondly, the Court of Appeal made it clear that damages would not be an adequate remedy for landlords. Whilst noting that it has been held in Canada and Australia that damages can be awarded for loss of future rent, there is no English case where it has been held that, if a landlord terminates a tenancy, he can still recover from the tenant any rent or other sums for any period after the termination date. Accordingly, a landlord would face a very difficult battle trying to recover any compensation from any tenant if it did terminate the lease.

The Court saw nothing unfair in tenants being held liable for the bargains they had made. Nowadays, tenants often take much shorter leases or require break rights so as to try to ensure that they are not left paying rent for empty premises. The onus is clearly on the tenant to deal with the premises during the currency of the lease and there is nothing at all unreasonable in the landlord not being under any duty in this regard.