

Real Estate & Retail

Sense finally prevails in Raguz – resolution at last

House of Lords decision today in *Scottish & Newcastle plc v. Raguz* removes "ridiculous" and "silly" bureaucratic burdens for both landlords and former tenants

Section 17 notices

A landlord cannot recover a current tenant's arrears from a former tenant (or the former tenant's guarantor) unless it has first served a prescribed form of notice. Section 17(2) Landlord & Tenant (Covenants) Act 1995 requires that notice be served within six months of the date the debt "becomes due". The notice must contain a schedule setting out the fixed amounts that are being claimed from the former tenant.

The prescribed form of notice contains a clause warning the former tenant there is a possibility that the amount being claimed might increase (e.g. because the rent is currently under review). If the amount due does later increase, the landlord must serve a further notice, under section 17(4), within three months of the increase being determined.

The Raguz facts

Scottish & Newcastle (S&N) was the original tenant of two leases granted in the 1960s. It assigned them both to Raguz in 1982, which in turn assigned them in 1983 to Hotel St James Ltd. In 1999 Hotel St James went into administrative receivership, when the landlord was NCP Car Parks Ltd. From 1999 onwards, NCP started serving section 17(2) notices on S&N requiring payment of the accruing arrears.

The leases had rent reviews due in 1995 and 1996 respectively, when Hotel St James was not in any arrears. Those reviews were concluded in 2000 and

2001. In March and July 2001 NCP then served section 17(2) notices seeking repayment of the backdated rent (totalling over £330,000) from the two review dates, which S&N paid. In turn, S&N sought to recover the money from Raguz.

High Court & Court of Appeal

Raguz argued that S&N should not have paid the money as NCP had failed to comply with the proper requirements of section 17. Section 17(2) requires the notice to be served within six months of the date when the debt "becomes due". Raguz argued that, because the reviewed rent is backdated to the review date, the date the increased rent "becomes due" is the review date itself and not when the review is decided.

Both the High Court and the Court of Appeal agreed. Since then, landlords have had to serve section 17 notices on former tenants/their guarantors during the rent review / service charge balancing process (even if the current tenant was not in arrears), just in case they later needed to recover any backdated moneys from a former tenant. In essence, landlords were having to serve notices on former tenants saying "there is nothing due at the moment but there might be later on". For ongoing rent reviews, this meant that notices had to be served within six months after each and every rent payment date during the review process, until the rent review was finalised.

S&N appealed to the House of Lords.



The Law Lords

By a majority of three to two, the Law Lords have today overturned the lower courts' decisions, describing them as ones that produced "some remarkably silly consequences".

As a result, there is no longer any need for landlords to serve section 17(2) notices just to keep alive their right to recover an as yet unreviewed rent or unbalanced service charge. Only if the current tenant fails to pay the backdated rent / balancing service charge does a landlord then have to serve a section 17(2) notice on its former tenant/guarantor. That notice must still be served within six months of the date on which the moneys fell due (i.e. the date on which the rent review is decided / the service charge is balanced).

Contacts

If you would like further information on this subject please get in touch with your usual contact or:

Julian Cridge

Partner, Real Estate & Retail

T: +44 (0)20 7320 5510

julian.cridge@dentonwildesapte.com

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Denton Wilde Sapte LLP

One Fleet Place
London EC4M 7WS
United Kingdom
T +44 (0)20 7242 1212
F +44 (0)20 7246 7777
Telex 887793
DX 242
www.dentonwildesapte.com

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