

## Opposing business lease renewal for tenant default – what will a court consider?



Continuing a recent run of interesting cases concerning the Landlord and Tenant Act 1954 is *Gill v Lees News Limited* in which the Court of Appeal upheld a lower court decision to allow lease renewals of newsagent premises, notwithstanding opposition from the landlord.

### The background

In the case the landlord Gill sought to oppose the renewals on the three ‘tenant default’ grounds under section 30(1) of the Act, namely ground (a): disrepair to the premises arising from a breach of the tenant’s obligations, ground (b): persistent delay in payment of rent, and ground (c): other substantial breaches of the tenant’s obligations under the lease.

As required under the Act Gill had served counternotices to the tenant’s section 26 requests for new tenancies in which he stated those grounds of opposition. At trial it was established that at the time of the counternotices the tenant Lees News was indeed in substantial breach of its repairing obligations and had persistently delayed paying rent.

However the Act requires the court to decide whether the tenant “ought not” to be granted a new tenancy in view of its default. By the time the case came to trial, a few years later, the tenant had carried out repair works that had brought the premises into substantial repair and the trial judge took that into account. The judge also found the persistent delay in paying rent to have been relatively minor (generally only a few days late), accepted the tenant’s evidence that it would pay on time going forwards, and found other breaches to have been too minor to be ‘substantial’ for the purpose of ground (c). He decided it was not a situation in which the tenant

ought not to be granted a new tenancy under any of the grounds individually, or even considering all three grounds together.

On Gill's appeal the Court of Appeal dealt with the following questions:

- By reference to which point or points in time must a 'tenant default' ground of opposition to renewal be established?
- What can and should the court consider when deciding whether the tenant ought not to be granted a new tenancy?

## The principles confirmed

On the time-related question, the Court of Appeal confirmed that the court's assessment is not limited to any particular point in time, such that it can consider the circumstances leading up to and prevailing at the time of the initial 1954 Act notice or counternotice, at the time of the hearing, and during the period in between. As such the approach taken by the trial judge was correct.

While in this case this principle worked in favour of the tenant, who had remedied disrepair prior to the hearing, it does also mean that a landlord may continue to oppose renewal even if breaches have been remedied – because the court can look at circumstances across the wider period of time.

With regard to the court's evaluation of whether a renewal lease ought not to be granted, the court should consider the matter from the landlord's perspective, and whether having regard to the tenant's behaviour across the full period it would be fair to require the landlord to enter into a further legal relationship with the tenant, but also consider on the other hand the consequences for the tenant of refusing a new tenancy. In addition the Court of Appeal held that in making its decision the court should not limit itself to considering grounds of opposition purely individually, in a compartmentalised approach but, as the trial judge did, should also look at the grounds cumulatively and holistically.

## Our help

This is helpful clarification and guidance for landlords and tenants alike, and for those like us who assist them in preparing claims for new tenancies, or opposition to them, and who advise on related strategy and prospects of success. Our property dispute resolution team is very experienced in this area so do [contact us](#) if you have any questions or would like our help.



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