

Forfeiture of the Lease

The Commonhold and Leasehold Reform Act 2002 tightened the rules governing when a freeholder can issue forfeiture proceedings against a lessee for non-payment of service charge or rent. When non-payment of these amounts force a freeholder to consider bringing a lease to an early end there are a number of matters that must be taken into account.

Firstly one must consider the period that the amounts have been outstanding, as the law states that arrears of a certain age are not recoverable. There can be no recovery of rent after the expiry of six years from the date upon which the arrears become due. In relation to service charge, there can be no recovery after the expiry of twelve years from the date upon which it became due unless it is reserved in the lease as rent.

Secondly, the new legislation has determined that there can be no forfeiture proceedings for non-payment of 'small amounts' of rent, service charge or administration fees or those amounts that have been outstanding for a 'small period'. A small amount has been defined as £350.00 and a small period as three years. The small amount cannot be made up of pecuniary penalties for non-payment, such as late payment charges, interest or legal costs. **It is clear therefore that in order for forfeiture proceedings to commence for non-payment of service charge or rent the debt must be greater than £350.00 or outstanding for over three years.**

Thirdly a forfeiture notice cannot be served in respect of a breach of covenant or condition of the lease until the breach has been either admitted by the tenant or determined by a Leasehold Valuation Tribunal (LVT).

If a lessee disputes being in breach it may be necessary for the freeholder to pursue the matter through the LVT prior to being able to issue a forfeiture notice.

Finally the legal costs involved in the collection of the arrears have to be considered. In the majority of situations the legal costs incurred by recovery of ground rent or service charge arrears from a lessee are borne by the lessee due to a clause in their lease. It is very common for such a clause to be included in a lease following the logic that it would be unfair to penalise the landlord by making them responsible for the costs incurred in the enforcement of the leaseholder's obligation. A freeholder should read the lease carefully however. If no such clause is included in the lease and legal proceedings are instigated, the freeholder may have to bear the legal costs of recovering the arrears, which is something they will have to consider prior to undertaking legal action.

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