

When is a delay a bar to relief from forfeiture?

Many property litigators will hold their hands up in horror following the recent decision in *Pinecourt Limited v. Grange Glen Limited* [2016] EWHC 1318 when a tenant applied for relief from forfeiture some 14 months after the date the lease was forfeited by peaceful re-entry and the Court granted relief from forfeiture.

In April 2014, the landlord forfeited the lease due to unpaid rent amounting to £2,155. A claim for relief from forfeiture was issued on 23 June 2015 (some 14 months later). One of the reasons for the delay given was because one of the directors of the tenant company was serving a prison sentence for MOT fraud carried out at the subject property. He was also suffering from ill health (depression) and the Court held that he did not understand the risk of allowing an asset of such value to be forfeited for such a small sum.

The Court heard evidence from the tenant's brother and was satisfied that there was a reasonable prospect that the original and subsequent arrears together with additional amounts such as business rates totalling £23,000 could be paid to the landlord within 12 weeks of the hearing, payment being a condition of the tenant obtaining relief. One of the factors which the Court took into account was that following the forfeiture the landlord did not attempt to re-let the premises. The Court held that the issue of relief from forfeiture should not be dealt with in isolation and when determining whether relief should be granted the Court needed to consider all of the circumstances. In this case the Court decided that the tenant had sufficient explanation for the delay in making the application added to the fact that the landlord had not re-let the premises.

This case clearly demonstrates how the Court exercises its discretion in determining a relief from forfeiture application. Landlords are often of the opinion (quite rightly) that once six months has passed if the tenant has not made an application for relief from forfeiture any application is likely to fail. This case highlights that the Court will take into account all of the circumstances when exercising its discretion and delaying applying for relief from forfeiture may not be a bar to relief being granted.

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