



The exercise of break clauses has always been fertile ground for litigation, particularly at times when re-letting is likely to be difficult and tenants are keen to dispose of surplus premises.

Cases so far this year include:

Bordcrest Properties v. Development Planning Partnership [2010] EWHC 644 (Ch) which illustrates the risk to a landlord of entering negotiations with the tenant over repairing liability after a break notice was served. By taking a co-operative approach to dilapidations, the landlord may have given the tenant an argument that it had waived the condition that the break was subject to compliance with the tenants covenants in the lease;

Hotgroup Plc v. Royal Bank of Scotland [2010] EWHC 1241 (Ch), where the tenant's chance to break the lease was thwarted by failure to serve break notice on the managing agent as well as the landlord;

Standard Life Investments v. W & J Linney [2010] EWHC 480 (Ch), a situation confused by the grant of an overriding lease and a specific definition of the "Landlord". Break notice was served on the landlord named in the lease rather than the immediate landlord under the overriding lease and so was invalid; and

Hexstone Holdings v AHC Westlink [2010] EWHC 1280 (Ch) in which break notice was given by the tenant's parent company who had been paying rent and conducting all correspondence with the landlord concerning the property. The court held that, as notice was not given by "the Tenant" as required by the lease, it was not valid.

The Government's Efficiency and Reform Group recently announced that no new property leases or lease extensions will be signed on behalf of Government departments or Quangos without Treasury approval. The Group would prefer public sector bodies to exercise any lease break options available to them in the current financial year where possible. Other occupiers will also be reviewing their premises requirements and many landlords might expect to receive a break notice from their tenants this year.

The above decisions all reinforce the need for caution and timely legal advice when giving or receiving notice to break a lease. Break clauses are construed strictly by the courts and either landlord or tenant can easily come unstuck unless they take great care to preserve their rights, whether in exercising a break or in their actions following receipt of a break notice.

Disclaimer: This briefing is not intended to be a complete coverage of the law in this area. Legal advice should always be taken in any particular case.

Burgess Salmon LLP Narrow Quay House Narrow Quay Bristol BS1 4AH
tel: +44 (0) 117 939 2000 fax: +44 (0) 117 902 4400
Chancery Exchange 10 Furnival Street London EC4A 1AB
tel: +44 (0) 20 7685 1200 fax: +44 (0) 20 7685 1266
www.burgess-salmon.com

