



July 2021

Forfeiture of Commercial Tenancies

Disputes often arise between landlords and tenants during the term of a lease, the most common of which is where one party alleges there has been a breach of a covenant or a condition in the lease, such as a failure to pay rent. The most commonly applied remedy in those situations, particularly for commercial leases, is forfeiture.

Forfeiture allows a landlord to terminate a lease prematurely as a penalty for some act or omission by the tenant resulting in a breach of a covenant or a condition of the lease. This update outlines the current position of the law in Ireland in relation to forfeiture from the perspective of the landlord and tenant, paying particular attention to the impact that COVID-19 has had on the process.

Forfeiture may arise in one of three ways:

- ❑ Disclaimer by the tenant of the landlord's title, generally arising during ejectment proceedings against a tenant;
- ❑ Re-entry or ejectment where there has been a breach of a condition in the lease; or
- ❑ Re-entry or ejectment where there has been a breach of covenant by the tenant, if the lease contains a provision for re-entry.

Procedure

Where a landlord believes that the tenant is in breach of a covenant or a condition of the lease, it must notify the tenant, setting out particulars of the breach, and give the tenant a reasonable opportunity to remedy that breach before a right to forfeiture will arise.

For further information on any of the issues discussed in this article please contact:



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While there is an exception under the applicable legislation to the requirement of serving notice on a tenant for non-payment of rent, forfeiture is a remedy that the courts tend to lean against granting, even where non-payment of rent is involved, and as a result it is generally advisable to furnish a notice to tenants in all situations.

Form of Forfeiture Notice

As with notices to quit, there is no prescribed form which a forfeiture notice must take. However there are certain features which it ought to include:

- ▣ Details of the relationship between the landlord and the tenant and the main details of the lease;
- ▣ Details of any covenants or conditions which the tenant is alleged to be in breach of and the reasons why the landlord believes the tenant is in breach of those obligations;
- ▣ A request that the tenant rectifies the breaches within a 'reasonable' and specified timeframe, generally between 14 and 28 days; and
- ▣ A statement that the landlord will re-enter and take possession of the property if the tenant fails to remedy the breach within the time specified.

Peaceable Re-entry

If the landlord serves a forfeiture notice on the tenant and the breach is not remedied within the time specified in the notice, then the landlord is entitled to take possession of the premises. It is important to keep in mind, however, that the re-entry by the landlord must be effected peaceably. To achieve this, factors including the time of re-entry (e.g. whether it should be by day or by night), whether keys are available and so on should be kept in mind. In the event that the landlord encounters resistance by the tenant during an attempt to re-enter, the attempt must be abandoned.

If the landlord's re-entry is successful, it is likely that the tenant's possessions / stock will remain on the premises. In those circumstances it is important that a detailed inventory of all remaining items on the premises be prepared and a letter written to the tenant advising it that its belongings will be held for a specified period and stating the action the landlord will take if they not be collected within the specified timeframe.

Reliefs Available to a Tenant

Relief comes in two forms for a tenant when served with a forfeiture notice - statutory and equitable.

Statutory

Where a landlord is looking for forfeiture the tenant can apply to court for relief. The decision of the court to grant relief will take into account the particular facts of the case, the relevant pleadings, the conduct of the parties and any other relevant circumstances.

An application to the court by the tenant is only possible where re-entry by the landlord has not occurred; where re-entry by the landlord has occurred and the landlord did not enter on foot of an order for possession; and where the landlord has brought ejectment proceedings and the tenant is entitled to claim relief through the courts.

Equitable

Statutory relief against forfeiture will not be available to a tenant where re-entry by the landlord has occurred prior to the tenant applying to the court for statutory relief and where the landlord has forfeited the lease by reason of non-payment of rent by the tenant. In those circumstances a court may still exercise its equitable jurisdiction to grant relief where the court is of the view that it is just to do so and on such terms as it thinks fit.

Comment

The COVID-19 pandemic has placed unprecedented strain on both commercial landlords and tenants. If forfeiture is being considered as an option by a landlord, or if a tenant is met with a forfeiture claim, it is important that the process is addressed with due care and attention to the correct procedures, as failure to do so can result in either the loss of the remedy itself or the removal of a tenant.

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