Landlord and Tenant Procedures and Remedies

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LANDLORD AND TENANT PROCEDURES AND REMEDIES

Introduction

This update examines the procedures open to landlords facing difficulties where (i) tenants remain in possession beyond the expiration of the stated term of the lease, or (ii) the landlord wishes to terminate the tenancy prior to expiration of the stated term.

The correct procedure for terminating a tenancy when the tenant is overholding is to serve a notice to quit on the tenant. In contrast, the procedure for terminating a tenancy prior to the expiration of the stated term is called 'forfeiture'. A notice to quit is usually used to end a periodic tenancy – that is, year to year or for lesser period. The landlord is entitled to terminate a periodic tenancy without giving any reason. The tenant does not have to be in breach of his/her lease and the motive of the landlord is irrelevant. In contrast, forfeiture will be applied only when the tenant is in breach of a condition or covenant of his/her lease.

Notice

Any person may serve a notice to quit. However, any person other than the landlord who serves the notice must have received prior express authorisation from the landlord to serve the notice. Where the landlord is a company, a director, a company secretary or other authorised officer must have express authorisation to serve the notice. In practice, this authorisation should always be in writing. If the tenant refuses to quit, authorisation will have to be proven in court.

The notice must be in writing in accordance with Section 16 of the Housing (Miscellaneous Provisions) Act 1992. This notice should be clear and unambiguous, and should contain an explicit demand for possession of the premises on expiry of the stated period.

The minimum notice period within which a notice must be served and vacant possession given is four weeks under Section 16 of the Housing (Miscellaneous Provisions) Act. Longer periods are required for certain tenancies. The period of notice for a monthly tenancy is one month expiring on a gale day (i.e. the day on which rent is due). The period of a quarterly tenancy is three months' notice expiring on a gale day. For a year-to-year tenancy, 183 days' notice expiring on the anniversary of the tenancy is required.

The notice must come into the possession of the tenant before the period of notice begins to run. Personal service is best to ensure the tenant actually receives the notice before that time. Notice can also be served on the spouse of the tenant or any person whose duty it would be to inform the tenant. If the home has family home status, then notice should also be served on a non-tenant spouse. This is particularly important where the motivating factor for the landlord is the non-payment of rent.

Notice is deemed to be waived if the landlord demands or accepts rent accrued following the expiration of the notice period. Notice can also be deemed to be waived if the landlord accepts rent, although in either case the courts will look at the intention of the landlord.

In practice it is advisable for landlords not to accept rents in such a situation. In the event that rents are accepted they are to be treated as mesne rents only and marked as such. This is the term given to compensation for trespass caused to the landlord when a former tenant overholds.

Forfeiture

This is the term used when the fixed term of the tenancy is still running and the landlord wishes to terminate the lease prematurely. The most pragmatic situations in which forfeiture will be granted are where the tenant is in breach of a condition of the lease or a covenant of the lease. However, while the right of forfeiture arises automatically upon breach of a condition, it will only arise upon breach of a covenant if there is a provision to that effect in the original lease. In any event, forfeiture is an equitable remedy and the landlord will lose his right to forfeit by not following certain statutory procedures designed to give the tenant a reasonable opportunity to remedy the breach.

If there has been a clear and substantial breach by the tenant, a demand for possession should be made. Re-entry to the premises can then be effected peacefully. Landlords cannot use force to re-enter, as to do so may be considered a criminal offence under Section 2 of the Prohibition of Forcible Entry and Occupation Act 1971.

Statutory Relief

Statutory relief may be afforded to the tenant by the courts pursuant to Section 14(2) of the Conveyancing Act 1881. This may arise if the tenant satisfies the landlord's demands before a demand for vacant possession is made. The courts will look to the conduct of the parties before granting relief. Statutory relief will not be granted if re-entry has already occurred.

Statutory relief may also be afforded to any sub-lessees, as forfeiture of a lease does not necessarily determine all interests arising thereunder. The sub-tenant must apply to the courts for statutory relief before the landlord has re-entered the premises. Such relief will only be afforded if the courts are satisfied that the sub-tenant is blameless and has taken reasonable precautions.

Ejectment

Even if a tenancy has been terminated by a notice to quit or forfeiture, it may still be necessary to go to court to obtain vacant possession if the tenant refuses to vacate. In circumstances where the tenancy is terminated by forfeiture, the landlord should issue an ejectment civil bill on title based on forfeiture and seek an order for possession from the courts.

An ejectment civil bill for non-payment of rent can also be sought. This is based on Section 52 of Deasy's Act, 1860. However, this procedure is not available until one year's rent falls due and the landlord is not entitled to eject until six months have expired after the order was made. The order lapses if payment has been made within that time.

A third procedure for gaining vacant possession is to invoke an ejectment civil bill for overholding. This is based on Section 72 of Deasy's Act, 1860. it is used where the original lease has expired or a notice has been served.

The practical steps for regaining possession in either a forfeiture or notice to quit scenario can be summarised as follows:

- Issue legal proceedings;
- Serve a motion for judgement or set the case down for a full hearing as appropriate;
- Obtain an order for possession;

- Serve the order on the tenant; and

- If the tenant does not vacate, lodge an execution order in the circuit court or FIFA in the High Court with a sheriff or a county registrar, who then ejects the tenant.

The courts retain the discretion to grant an order of restitution or to give relief in equity to a tenant who pays arrears of rent and costs. A tenant who has served a notice to claim relief is entitled to remain in the property until the matter is determined.

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