



The Law in  
relation to  
Forfeiture

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## THE LAW IN RELATION TO FORFEITURE

### Introduction

Landlords often experience difficulties with a tenant during the term of a lease. Such difficulties can arise as a result of breach of a covenant or condition in a lease, such as failure to pay rent or to keep the property in good repair. The most appropriate remedy in this situation is forfeiture. 'Forfeiture' literally means the deprivation of a person of his or her property as a penalty for some act or omission. This update outlines the current position in Ireland in relation to forfeiture from the perspective of both landlord and tenant, paying particular attention to the grounds for forfeiture, the enforcement of forfeiture and the reliefs available.

### Grounds

Forfeiture arises in one of three ways:

-  By disclaimer, which arises where a tenant disputes the landlord's title. This generally arises only during ejectment proceedings where in its defence the tenant denies the landlord's title;
-  By re-entry or ejectment for breach of a condition in the lease. Forfeiture can be affected in this situation even if there is no provision made for re-entry in the lease itself; and
-  By re-entry or ejectment where there has been a breach of a covenant in the lease. This may be distinguished from forfeiture for breach of condition, as a lease may be forfeited for breach of a covenant only where a re-entry proviso is included in the lease. Most modern leases should contain comprehensive re-entry provisos to ensure this option is available to the landlords.

## Procedure

Where a landlord believes that the tenant is in breach of a covenant or condition in the lease, it must notify the tenant of this and give the tenant a reasonable opportunity to remedy the breach before the right to forfeiture will arise. The form of notice which must be served on the tenant is set out in Section 14(1) of the Conveyancing Act 1881, as amended by Section 35 of the Landlord and Tenant (Ground Rents) Act 1967. This section states:

“A right of re-entry or forfeiture under any provisions or stipulation in a lease, for a breach of any covenant or condition in the lease, shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice specifying the particular breach complained of and, if the breach is capable of remedy, requiring the lessee to remedy the breach, and, in any case, requiring the lessee to make compensation in money for the breach, and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.”

While Section 14(6) of the Conveyancing Act details the exceptions to the requirement of serving notice on a tenant (e.g. for non-payment of rent), following the decision of *FG Sweeney Limited v Powerscourt Shopping Centre Limited* (1985) IIRM 442 it is arguably prudent to furnish a Section 14 notice in all situations.

## Form of Forfeiture Notice

As can be seen from the wording of Section 14(1), no set prescribed form of notice is detailed; however, there are certain issues which a forfeiture notice ought to cover. The notice should begin by setting out the relationship between the landlord and the tenant and the principal details of the lease itself. It should then detail the covenants or conditions in the lease of which the tenant is in breach and reasons why the landlord believes the tenant to be in breach of same. The notice should then request the tenant to make good these breaches within a reasonable but specified period of time. While the term 'reasonable' is open to interpretation, common practice is to give between 14 and 28 days to remedy the breach, depending on the severity of the breach. The notice should then state that the landlord will re-enter and take possession of the property if the tenant fails to remedy the breach within the time specified. It is also standard practice to include a clause stating that the notice is served without prejudice to any right of action or remedy of the landlord in respect of any antecedent breach of any of the covenants by the tenant, and that any acceptance by the landlord or rent arrears does not constitute a waiver of the notice.

## Peaceable Re-entry

If the landlord serves a forfeiture notice on the tenant at the leased premises and at the tenant's registered office (if it has one), and the breach is not remedied within the time specified in the notice, then the landlord is entitled to take possession of the premises. If the landlord is entitled to do this, re-entry must be effected peaceably. To effect peaceable re-entry, regard must be had to such issues as timing (e.g. whether it should be by day or by night), whether keys are available and so on. 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 this event, it is vital importance 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 which the landlord will take should they not be collected within the specified timeframe.

## Ejectment Civil Bill on Title

If the landlord is unsuccessful or it is not possible to re-enter peaceably, the remedy available to the landlord is to issue an ejectment civil bill on title based on forfeiture and to seek an order for possession by the court. However, the courts are quite reluctant to grant an order on first hearing and tend to give the tenant further time to remedy the breach before granting the order for possession.

## Relief

There are two forms of relief available to a tenant when served with a forfeiture notice – statutory and equitable.

## Statutory Relief

Section 14(2) of the Conveyancing Act 1881 provides as follows:

“Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry of forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse

relief as the court, having regard to the proceedings and the conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in the case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.”

Application to the court pursuant to Section 14(2) is possible only in the following limited circumstances:

- ▣ Where no re-entry has occurred;
- ▣ Where re-entry has occurred and the landlord re-entered other than on foot of an order for possession; or
- ▣ Where the landlord has brought ejectment proceedings arising from the forfeiture and the tenant is entitled to claim relief either by an application to the court or by a counterclaim to the proceedings brought by the landlord.

As can be seen from the terms of Section 14(2), the court has great discretion in granting the relief and the relevant terms of same. Of particular note in this regard is a recent tendency by the courts to grant relief to tenants in situations where the forfeiture notice is used as a mechanism to secure payment of rent where the delay in discharging the rent has in no way caused the landlord any great grievance.

## Equitable Relief

Where the landlord has effected re-entry to the premises prior to the tenant applying to the court for statutory relief or has forfeited the lease on the grounds of non-payment of the rent, it is open to the tenant to apply to the court for relief on equitable grounds. It would appear from the case law in this area that the court will exercise this equitable jurisdiction to grant relief in a similar way to that under Section 14(2). The courts in these situations have also tended to lean against forfeiture even where non payment of rent is involved.

## Comment

The issue of forfeiture must be approached by both landlords and tenants with due care and attention to correct procedures, as failure to do so can result in the loss of the remedy itself or the loss of the relief against the remedy.

**Date:** September, 2007

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