

RENT REVIEW- TWO RECENT COURT OF APPEAL CASES



Arundel Corporation v Khoker [2003]EWCA Civ 1784

The case of Arundel v Khoker, heard by the Court of Appeal in December last year, demonstrates the urgent need for Landlords and Tenants to ensure that their records are kept up to date when serving rent review notices.

In that case, the lease required that Counter Notices should be served by the tenant at the landlord's last known place of abode or business. A Counter Notice was served at the address given in the lease, although the tenant's solicitors had been previously informed of a change in the location of the Landlord's registered office. The court considered whether the Counter Notice was validly served and decided that it was not. The tenant was deemed to have notice of information given to his solicitors as regards change of address.

The case highlights the need for all those responsible for leasehold premises to ensure that their records are regularly updated, and to check for any notifications of change of address before notices are served. Failure to do so could have disastrous results, and could, for example, preclude a legitimate challenge to the level of rent sought on review.

Burford UK Properties v Forte Hotels (UK) Ltd ([2003])

The case of Burford UK Properties concerned the interpretation of rent review provisions in a lease which directed that the rent on review was to be calculated with reference to the "Net Bedroom Revenue." The clause contained a proviso that "the tenant shall at all times use its best endeavours to obtain maximum revenue from the use of the bedrooms." The court was asked to consider whether this proviso would give rise to a claim in damages if it could be shown that the tenant had failed to achieve the maximum revenue.

The majority in the Court of Appeal decided that it could not. The proviso related to the rent review provisions only and did not impose a separate liability on the tenant for breach of covenant. **All rent review provisions must be construed on their own precise wording, but clearer words would have been necessary to create a covenant giving rise to damages for breach.**

This Newsflash is issued by the Leisure and Property Management Law Group should you have any queries arising from the new changes please contact

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