



NEIL GILBERT, SEPTEMBER 2016

RIVERSIDE PARK LIMITED V NHS PROPERTY SERVICES LIMITED
NEW GUIDANCE ON WHETHER INTERNAL PARTITIONS AND OTHER TENANT
WORKS ARE CHATTELS OR FIXTURES





The High Court's recent decision in the Riverside Park Limited v NHS Property Services Limited (2016) case provides useful guidance to tenants when exercising the right to break a lease. This follows a number of similar high profile cases in recent years.

Riverside Park Limited let the premises, an open plan work space known as Suite 4, Unit 2, Riverside Park, Bromborough, Wirral to the defendant (NHS Property Services Limited) for a period of 10 years from 24 September 2008. The lease was signed with a tenant option to break at year 5, provided that 'the Tenant gives vacant possession of the Premises' before this date.

The tenant decided to exercise their right to break the lease and served notice to the landlord on 18th March 2013. However, upon vacating the property the tenant had left behind a number of items including a large amount of partitioning, kitchen units, floor coverings, window blinds, an intruder alarm (which remained activated) and water pipes – these are referred to throughout as 'the works'. Furthermore, the tenant had not returned a number of key fobs to the landlord which provide access to the property.

It was, therefore, the landlords claim that, due to the excessive volume of tenant's chattels remaining within the property, coupled with the activated alarm system and failure to return key fobs, the tenant had failed to comply with the break conditions set out in the lease. The landlord argued that the break was not effective, the lease continued and the tenant must consequently adhere with all obligations arising, including the payment of rent.

The tenant argued that the items left within the property were not in fact chattels but rather that they were tenant fixtures for which a license had been obtained from the landlord. This eliminated the tenant's liability to remove the items as they were now classified as being a permanent part of the premises. Additionally, the defence argued that the lack of return of all key fobs did not affect the landlord's enjoyment and right to occupy the premises, as these could be deactivated with relative ease.

An independent surveyor was asked to establish the extent of 'the works'. They concluded that the partitions, with the exception of the folding partition, "do not extend from the structural slab to the structural soffit and are in no way fixed to the structure in these areas". This is in contrast to the license to alter which states that the partitions to be constructed "will be fixed to the structural slabs below the raised floor and above the suspended ceiling".

The judge was left to draw parallels from previous cases dealing with similar issues in order to establish the status of 'the works' in this instance. *Hellawell v Eastwood* (1851) 6 EX 295 at 311 claimed that the status of items depended on the degree in which they were affixed to the premises, the amount of damage which would be suffered to the premises or item as a result of removal and the purpose for which the item was installed. Secondly, and perhaps more significantly, partitions are directly considered in "Dowding and Reynolds on Dilapidations: The Modern Law and Practice 2013-14" paragraph 25-13 which clarifies the difference between 'substantial' connections which constitute fixtures and 'lighter' connections which remain chattels.

The judge's decision was that the partitions remain chattels as they are easily removed and are not attached to the main structure of the building.

The conclusion of the ruling is that due to the sheer volume of chattels remaining in the premises at the lease break date, the tenant did not yield up with vacant possession. Therefore, the break was ineffective.

This is a costly ruling to the defendant who now has an obligation to pay the landlord for all rent monies due up



until the ruling – which, at the date of issue was £111,766.50, plus all rent due until the lease expires in 2018. This case should serve as a reminder to tenants to be cautious when exercising their right to break a lease. Failure to comply with the obligations set out in the lease could prove fatal for the tenant and leave the landlord in a strong position and able to refute the break.

Tenants must take early expert dilapidations advice to identify the full extent of the works required for them to comply with the specific break provisions of their particular lease. As demonstrated by this case, the failure to do so can have significant financial implications.

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