

Can You Get Your Rent Reduced?

Rupert F Sheppard MRICS



Recent Changes

Shorter leases

Until the late 1980's leases of 25 years were not uncommon

Today leases are seldom more than 15 years with 10 year leases more common

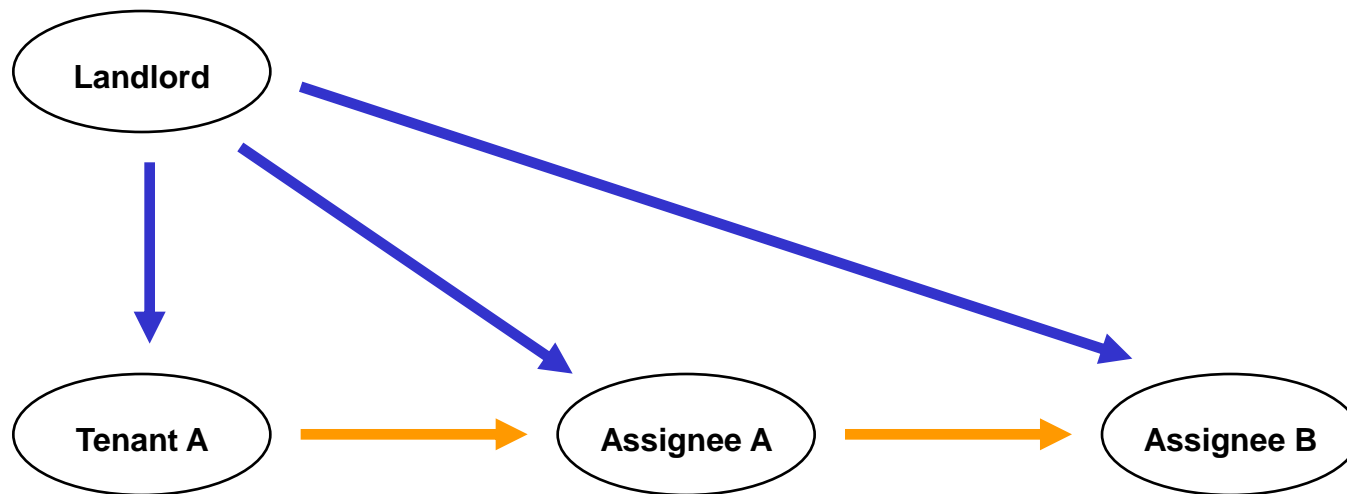
Break clauses are increasingly common



Recent Changes

Pre Landlord and Tenant (Covenants) Act 1995

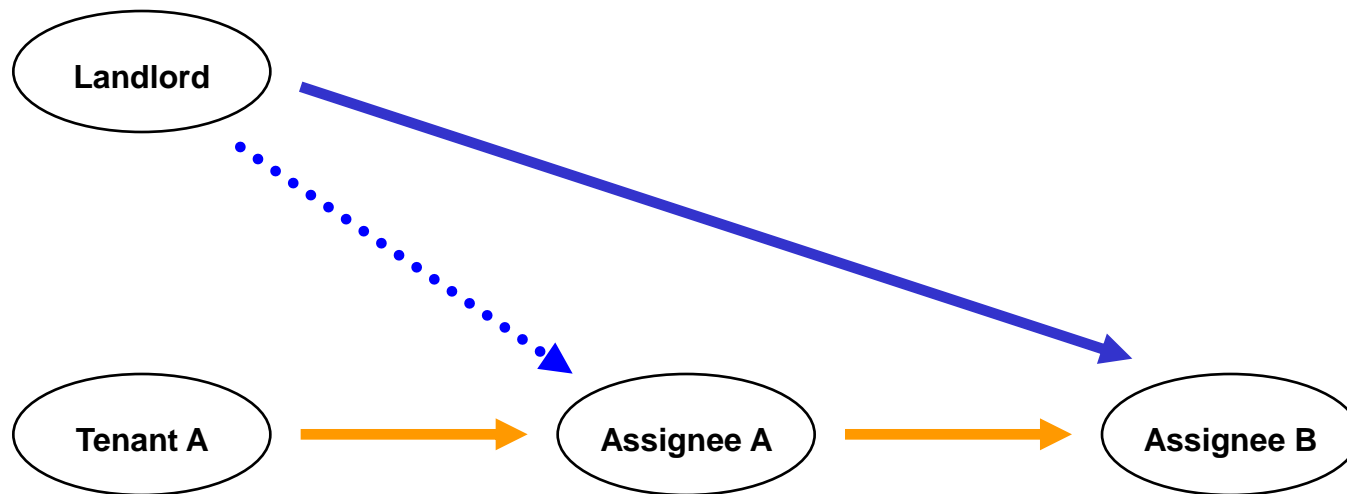
Landlords used to be able to recover arrears from each and every assignee or the original tenant



Recent Changes

Post Landlord and Tenant (Covenants) Act 1995

Assignee A only has obligations to the landlord if an AGA is in place



Recent Changes

Impact of Landlord and Tenant (Covenants) Act 1995

The balance of advantage has shifted towards tenants

Landlords should have a clear understanding of:

- the current tenant;

- the market for the property; and

- the prospects of re-letting the property

Landlords should weigh up the threats faced against the opportunities presented



Considerations

1. There is a lease
2. The request is a departure from the lease
3. Any agreement should be documented...
4. ...without compromising the other lease terms
5. Lawyers should be involved



Costs

Surveyors fees

Legal advisors fees

It is normal for the tenant to give an undertaking to pay the landlord's costs upon making a request...

...but the landlord should be prepared to pay



Request for a Rent Reduction

What is the landlord going to do?

Three questions should be asked...

1. Why?
 - Seek proof though last three years' audited accounts
2. What other measures has the tenant taken?
 - The landlord is only one of a number of suppliers
3. What is the tenant asking from other landlords and how are they reacting?



Case Study 1 – The Problem

A letter from a tenant is received on 15 Dec 2008 describing plans to ‘put us on a firm footing to underpin our success in these uncertain times’ before describing:

- Seven figure operating losses past and projected

- A comprehensive summary of the steps being taken to put things right



Case Study 1 – The Request

The tenant proposed to pay half rent for six months with provisions for repayment if percentage improvements in like for like sales are achieved within specified time limits

The tenant wanted to pay half the rent due on 25 December



Case Study 1 – The Response

The landlord makes an immediate written response requesting:

- Last three years' accounts

- Up-to-date management accounts

- A statement of profitability of the store in question

The landlord seeks clarification on the issue of costs and warns that the rent falling due is payable in full



Case Study 1 – Considerations

The accounts showed heavy losses from 2006/7

The company had over 400 outlets – a quarter's rent would make little difference

The prospects for re-letting the property were good

The tenant had made little effort to sub-let empty self contained offices above the shop

The property was occupied under a lease granted in the 1970's and not therefore subject to the effects of the Landlord and Tenant (Covenants) Act 1995

The company could be heading for insolvency



Case Study 1 – The Outcome

The landlord did not agree to the rent holiday...
...but did agree to monthly rental payments for a limited period

Agreement was formally documented

The tenant paid the landlord's costs

The tenant is still in business and paying the full rent when due



Case Study 2 – The Problem

The tenant renewed its lease shortly before its parent company was placed into a pre-packaged administration
A landlord client was approached by the buy-out company proposing to take an assignment of the lease on the following terms:

- Payment of rent monthly

- No guarantee/rent deposits

- No undertakings for legal/professional costs

- 6 month rent free period from the date of assignment

- Threat of disclaimer



Case Study 2 – Considerations

There was no previous tenant to which to turn to for unpaid rent

Could the landlord do better by letting the shop on the open market?

Was the request a bluff?

Were similar requests being made of other landlords?



Case Study 2 – Considerations

A significant number of other branches were being closed

The profitability of this branch was marginal

Landlords of shops in the locality occupied by other brands within the group were being asked for larger concessions



Case Study 2 – The Outcome

The assignment proceeded

A rent holiday of four months was agreed but spread over a twelve month period

The landlord paid his own costs

The tenant continues to trade, paying the rent as agreed



Summary

No two situations are the same

Other solutions may be available to landlords depending on the circumstances



From the Tenant's Point of View

What should the tenant do?

Make audited accounts and management accounts available

Be clear about the size and duration of the concession

State other measures that are being taken



Conclusion

There is no obligation on landlords to grant a rent concession

A rent concession is a temporary alleviation to be used in conjunction with other measures

Deep seated problems will require more fundamental solutions



Above all...

A landlord/tenant relationship is ongoing and usually long term and as such should be mutually profitable and essentially co-operative.

No relationship can prosper where one party or the other, or both, have unrealistic expectations and the attitudes of both landlords and tenants to rent concessions should above all be realistic.



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