



Applications to assign - How the court says they should be dealt with

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A structured approach

In the recent case of *No. 1 West India Quay (Residential) Limited v East Tower Apartments Limited* [2016] EWHC 2438 (Ch), the Court considered applications to assign in the leases of three separate residential apartments. The judgment underlines a number of important practical points.

- Service of the application should be in accordance with the 1988 Act, which will normally mean service on the landlord's address as per the Lease. The landlord is not obliged to consider it until it has been served properly.
- Even where the assignee is paying substantial purchase prices, a bank reference or other similar information still needs to be provided if requested.
- It is reasonable for the landlord to require an inspection of the property by a surveyor to establish there are no breaches of covenant relating to the use or state of the premises, and such costs will normally be recoverable.
- A landlord should ensure that its costs for considering an application for consent are assessed by reference to the things that will need to be done, rather than by reference to a list of all the things that could conceivably be done. On the facts of this case the Court held that a fee of £1250 was excessive and £350 was more appropriate.
- A landlord may be held to have refused consent unreasonably if it requests an undertaking for an unreasonable sum in respect of its costs, and indicates that it will not consider the application unless the undertaking is given. This will be the case even if the landlord has good reasons for withholding consent.

What does this mean for you?

The decision is a reminder of the need for both landlords and tenants to follow the formal procedures set out in the 1988 Act. This is particularly important for landlords, to prevent applications being unreasonably refused or delayed.



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Tenants should ensure that all applications for consent are addressed and served properly.

Landlords should ensure that, once a valid application has been received, it is dealt with swiftly. Any requests for further information or inspections should be made promptly, and fees charged should reflect the work that will be done considering the application.

Framework for applications to assign - a reminder

In the majority of lettings, a lease may not be assigned without the prior consent of the landlord. Where this is the case, the Landlord and Tenant Act 1988 imposes a statutory duty on the landlord to respond to the tenant's application in writing within a reasonable time, and to give consent unless it is reasonable not to. A failure by the landlord to meet its duty under the 1988 Act entitles the tenant to:

- proceed with the transaction without consent; or
- apply to Court for a declaration that consent has been unreasonably withheld and an award of any damages it may have suffered as a result of the breach.

In view of the potentially serious consequences for a landlord, the 1988 Act requires tenants to:

- make their application for consent to assign in writing; and
- serve it on the landlord either in the manner provided for in the lease or, where the lease does not specify how notices or applications should be served, in accordance with section 23 of the Landlord and Tenant Act 1927.

If the tenant does not meet these requirements, the landlord's duty is not engaged.



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