

# ARE YOU APPORTIONING RENT CORRECTLY?

## RENT PAYABLE IN ARREARS

Rent payable in arrears is not generally found in commercial leases but if it is:

- By virtue of section 2 of the Apportionment Act 1870, all rents, annuities, dividends and other payments in the nature of income are considered as accruing from day to day and are apportionable in respect of time. Therefore any rent payable in arrears can be apportioned.

## RENT PAYABLE IN ADVANCE

The Apportionment Act 1870 does not apply to rent payable in advance. If the lease does not contain an express apportionment provision, the position is as follows:

### • Forfeiture

Where the lease is forfeited in the middle of a rental period, the landlord is entitled to the full instalment of rent that fell due before the date of forfeiture. There is no requirement to refund the tenant for rent in respect of the period after the date of re-entry.

### • Surrender

As above, if the lease is surrendered between rent days, the tenant is not entitled to any refund of rent that fell due for payment prior to the date of the surrender in respect of the period after the surrender, unless the parties agree otherwise.

### Break Clauses

Recent case law has confirmed that if the tenant exercises a break option so as to terminate the lease in between rent days the full instalment of rent will be payable.

In view of this, tenants should ensure that break dates are at the end of a quarter and, in the case of break options conditional upon the payment of rent, that they pay the rent for the full rental period and not just up to the break date.

### • Landlord and Tenant Act 1954

If a tenant serves a notice pursuant to section 27(2) of the Landlord and Tenant Act 1954 bringing the lease to an end after expiry of the fixed term, the tenant is only required to pay up to the date on which the notice expires or is entitled to an apportionment if rent has been paid in advance.

## APPORTIONMENT PROVISIONS

- To avoid liability for a full instalment's rent in the scenarios set out above, the lease must contain a clearly worded apportionment provision.
- The words often used 'proportionately for any part of a year' and 'or a proportionate part thereof' in the context of rental payments will not support a case for apportionment in the case of a conditional break date, surrender or forfeiture, although they will be effective for apportionment up to the contractual expiry date.
- Specific wording must be used to allow for an apportionment in the case of a conditional break date, surrender or forfeiture.

For further information, please contact:



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This fact sheet offers general guidance only. The circumstances of each case vary and this article should not be relied upon in place of specific legal advice.