

## ENGLAND AND WALES

# Don't waive goodbye to the rent

## WAIVER OF RIGHT TO FORFEIT A LEASE

The recent decision of the Court of Appeal in *Faiz and Others -v- Burnley Borough Council* (22 January 2021) has brought welcome clarification for landlords as to when they can and cannot demand or collect rent arrears from a tenant in default whose tenancy they wish to terminate by forfeiture. Demanding or collecting rent at the wrong time can waive the right to forfeit.

Until this decision, it was not clear which was the relevant date for a waiver; was it the date of knowledge of the breach by the landlord or the date of the breach itself? The Court of Appeal held it was the latter but there could be no waiver until the landlord was fully aware there had been a breach.

## EXAMPLES OF HOW TO NOW AVOID A WAIVER BY DEMANDING OR ACCEPTING RENT OR OTHER SUMS DUE

- Rent outstanding for quarters commencing 25 March and 24 June and breach by unlawful sub-letting on 1 June and landlord aware by 1 August.  
*Landlord can collect rent due on 24 March as fell due prior to the breach but cannot accept rent due on 24 June or any other sums that fell due after 1 June.*
- Rent outstanding for quarters commencing 25 March and 24 June and breach by unlawful sub-letting on 1 July and landlord aware by 1 August.  
*Landlord can collect all rent outstanding as it all fell due before the date of the breach.*



“FORSTERS IS A FORMIDABLE OUTFIT. IT COMBINES HIGH-QUALITY WORK WITH A LIKEABLE, PROGRESSIVE APPROACH THAT MAKES ITS SOLICITORS VERY EASY TO DEAL WITH.”

Chambers UK, 2020

## LESSONS TO BE LEARNED

Once aware of a breach, and assuming there is a wish to forfeit because of it, it is important that a landlord:

- Establishes what date the breach occurred.
- Does not demand or accept rent that accrued due after the date of the breach.
- Does not take any other step that acknowledges the tenancy is continuing.



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