

Insights

HOW LONG DOES A LANDLORD HAVE TO RESPOND TO A REQUEST FOR CONSENT TO ASSIGN?

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The issue

I am the owner of a luxury three-storey leasehold apartment. My lease has 150 years to run. I want to sell by assigning the lease, but I need my landlord's consent (not to be unreasonably withheld) to assign lawfully my leasehold interest. There is an interested buyer, who wishes to complete the sale as soon as possible; however, my landlord has threatened to defeat the sale by delaying and refusing to consent to the assignment.

Can I sell my property (assign the lease) without my landlord's consent because of his conduct?

The solution

Let's look at the rules and apply them to the facts.

The rules

- The landlord has a reasonable time to consider and respond to a tenant's request for consent to assign the lease.
- The landlord commits a breach of statutory duty by failing to respond within a reasonable time, which is equivalent to a refusal of consent to the proposed assignment without reasons.
- A landlord cannot justify a refusal to consent by reference to matters not raised with the tenant prior to the expiry of the reasonable period.
- What is "reasonable" is heavily dependent on context: the length of a reasonable time depends on the circumstances of the particular case, including those known to the landlord and tenant at the time the tenant makes the application for consent. Moreover, once the landlord has notified the lessee of the refusal of consent, there is nothing more for the landlord to do so it cannot thereafter claim that a reasonable time had not elapsed.

- A reasonable time will often be measured in weeks rather than days; but even in complicated cases, it should be measured in weeks rather than months.

The facts

On 25 February, you informed the landlord of your intention to sell your property to X. X is undoubtedly able to pay the sums due and perform the covenants in the lease. However, there were pending legal proceedings between you and the landlord in the First Tier Tribunal (FTT) about alleged breaches of your lease, so you agreed that the sale would not proceed until the legal proceedings were resolved.

The legal proceedings were resolved in May. On 20 May you made a formal request to your landlord for licence to assign your lease to X. After 11 business days, your landlord had not given consent, and claimed that this delay was not unreasonable.

The problem with this argument is that your landlord had known since 25 February that this request would be received almost as soon as the legal proceedings were concluded, and the 20 May communication requesting consent to assign to X had been foreshadowed for three months.

Your landlord was not entitled, after receipt of the FTT decision, to the same amount of time for consideration of the request that he would have been entitled to had the request been a surprise.

The failure to communicate a decision within 11 business days from the formal request was in context unreasonable.

You may proceed with the assignment to X without your landlord's consent.

A caveat

Readers who are lessees must take case specific advice as to whether they can, without risk, assign without landlord's consent, or whether a court declaration that their landlord has unreasonably refused consent should be obtained before completing the assignment.

This insight was originally authored by Roger Cohen.

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