

Pay the Rent!

Tenants often try to withhold their rents if landlords fail to fulfil their obligations under a lease – for example, failing to keep the property in good repair. Landlords, on the other hand, want their rent first, before entering into any arguments over what they should or should not spend on the property.

Needless to say, these conflicting desires have led to much litigation over the years. In general, decisions have gone in favour of landlords because the standard lease terms include a clause that rents will be paid without any deduction for any reason whatsoever.

Recently, a case in which there was such a clause came up with a novel twist. It concerned the lease of premises at Crystal Palace FC. The lease contained a turnover rent clause, which provided that the amount of rent payable depended, in part, on the level of sales. The tenant believed that he had overpaid turnover rent previously and sought to deduct the earlier overpayments from the current rent due, on the basis that these were, in effect, payments of rent in advance.

Alas, Mr Justice Lightman could not agree. He ruled that unless there is a specific agreement under the lease that payment of rent before it is due is a fulfilment of the obligation to make the rent payment, it cannot be treated as satisfaction of a future obligation.

The result is that landlords who use turnover rent clauses are assured that a properly drafted lease will protect them from tenants seeking to apply set-offs.

If you need any help with this matter or any other Housing Law issue please email John Murray at john.murray@emsleys.co.uk or David Higgins at david.higgins@emsleys.co.uk. Both John and David can be contacted by phone on 0113 260 3115.