

rent review

The courts have considered the position where a landlord has served notice to review the rent on a date other than that provided in the residential tenancy agreement. The case arose because the tenants had refused to pay the reviewed rent and the landlord had issued proceedings for possession based on non payment of rent.

In the first court decision it was decided that the landlord could not choose to review the rent on a different date and that as such the rent reviews in recent years were invalid. The landlord appealed. The appeal court decided that, although the landlord could not change the rent review date in the agreement and could not review the rent more than once in a year, he **could** review the rent on any date **after** the rent review date in the agreement. Landlords' safest course is to be very careful to review rents strictly in accordance with the terms of the tenancy agreement.

service charges

With effect from 1st October 2007 leaseholders will be entitled to a summary setting out their rights and obligations relating to service and administration charges when they are sent demands for those charges. If the summary is not provided **with the demand** then the leaseholder will be entitled to withhold payment of those charges until he is sent one.

These provisions will apply mainly to long leaseholders where they are obliged to pay variable service charges under the terms of their leases or where the landlord can request payment of an administration charge. However the regulations could affect other tenants depending on their circumstances.

end of the lease

A tenant, who recently defended the issue of proceedings for a new tenancy and then discontinued when he found new premises was made to pay the landlord's costs. The tenant had assumed that the landlord, being the party who had issued the proceedings, would be responsible for the costs. However the court decided that the filing of an acknowledgement of service, stating that the tenant *did* want a new tenancy but *did not* agree the terms proposed, was equivalent to the tenant issuing

proceedings himself. The court therefore applied the rule that where a claimant discontinues proceedings he will be liable for the other party's costs unless otherwise agreed.

The tenant in this case had entered negotiations for a new tenancy but had been dilatory in progressing them so that the landlord had first served notice terminating the tenancy and then issued proceedings. The tenant had presumably tried to protect his position by defending the proceedings but by the time he had found alternative premises the landlord had incurred substantial legal costs which the tenant was then obliged to pay.

Both tenants and landlords of commercial premises need to consider what they intend to do well before the end of a lease. They should use the last year of the lease to decide whether they want a renewal lease or not and also how any dilapidations are to be dealt with amongst other matters.

Devon Wildlife Trust

We are proud to act for Devon Wildlife Trust the County's foremost wildlife conservation trust. DWT are in the process of converting the historic Cricklepit Mill on Exeter Quay into their new headquarters and interpretation centre. The Mill will also be the centre of an exciting new Exeter Wild City project.

Tozers partner Vernon Clarke (who is also a trustee of DWT) helped the Trust with the complex aspects of acquiring and developing the site. DWT is now looking for local businesses and individuals to sponsor some of the build costs in order to help close their funding gap.

So if helping DWT as well as preserving part of Exeter's history appeals to you, please do contact DWT's Corporate Relations Officer Tracy Ebbrell on 01392 279244 who will be pleased to discuss the mutual benefits of corporate support or sponsorship.

pick that up!

From 1 July – to coincide with the Smoking Ban - local authorities can require occupiers of premises, where food and drink are served for consumption on the premises, to clear up litter from their premises. The rules formerly only applied to take-away outlets and premises which sell food or drink for consumption at outside tables adjacent to the street. DEFRA has apparently identified smoking-related litter as the most prevalent form of littering in England!

Local authorities can now serve a Street Litter Control Notice ("SLCN") on a property occupier, requiring him to clear up litter likely to cause "defacement of a public space" and can take measures to make sure the land is litter free. Failure to comply immediately can lead to a fine or fixed penalty notice.

These changes mean that restaurants, cafes or bars where the entire eating and drinking area is inside may now be subject to a SLCN. Offices are not covered (yet) but this was considered in the consultation paper and indications are that it may be considered to include them in the future.

smoking ban

With the ban on smoking in enclosed public spaces, many premises will provide outside smoking shelters. What businesses may not appreciate is that very often such structures **will require planning permission**. Advice can be accessed at www.planningofficers.org.uk or from the Tozers planning team.

crossing the line – boundary disputes

The court has given a reminder of the limitations of Ordnance Survey maps in boundary disputes. OS maps do not claim to fix or record the legal boundary between neighbouring plots of land. Nor, while they may well record features of the landscape - such as hedges or fences - and these may have a line down the middle, should they be taken as meaning that that line marks the legal boundary.

OS maps are drawn to a scale of 1:2500 and as such the line marked on the map may be inaccurate by as much as plus or minus 2.3 metres. Land Registry plans are based

on OS maps and the general rule is that title plans are only intended to show general boundaries. Disputes which break out between neighbours over boundaries are often based on OS maps or Land Registry plans and we recommend that *before* reaching a point of no return with a neighbour, legal advice is taken on the plans that are being relied on.

verbal contracts on property sales

The basic rule is that if you sell your property the contract must

- be in writing
- contain all the agreed terms and
- be signed by the parties to the contract

Failure to follow these requirements would normally mean that the contract is of no effect.

However, it now seems that failure to comply with these requirements may not be fatal. In a recent case, a company which owned a block of flats entered into an oral agreement with a developer that if the developer obtained planning permission it would sell the property to the developer for a fixed price. In reliance on that oral agreement, the developer put in a planning application which was granted. The company then tried to renege on the deal, saying that the contract was not in writing.

The court accepted that the developer had acted to his detriment in reliance on the promise to sell the property to the developer and awarded him damages based on one half of the increase in value through having obtained planning permission.

This case was decided on the basis of the developer's clear expectation that if planning permission was obtained he would gain an interest in the land.

It was therefore determined on its own special facts and parties to a transaction should always ensure they comply with the formal requirements.

For sound advice on property related issues please contact Tozers specialists on

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