

IS A LANDLORD OBLIGED TO REPAY RENT FOLLOWING A TENANT'S BREAK?

Leases often provide that a tenant has to pay all rents due up to a tenant's break date as a pre-condition to the valid exercise of the break. If the break date falls between quarter days then the tenant will have to pay the full quarter's rent in advance even though it will not occupy the premises for the whole quarter if the break is effective. It has been widely accepted in recent case law that rent paid in advance for a period after a break date would not be recoverable by the tenant where there is no express provision in the lease. However, in the case of *Marks and Spencer Plc v BNP Paribas Securities Services Trust Company (Jersey) Limited and another* [2013] EWCA 1279, the Court was willing to imply a term into a lease requiring the landlord to repay to the tenant the rent for the period after the break date.

Facts

- Marks and Spencer ("M&S") was the tenant and BNP Paribas ("BNP") was the landlord of an office building in Paddington.
- The lease contained a break right for M&S to bring the lease to an end on 24 January 2012 subject to M&S paying all arrears of rent and the sum of £919,800.
- M&S exercised its break right and complied with all conditions including payment of the full quarter's rent on 25 December 2011.
- M&S then wrote to BNP demanding repayment of the rent paid for the period after the break date. BNP refused and M&S issued proceedings.

Decision

The Court implied a term into the lease requiring BNP to repay to M&S the rent paid for the period after the break date. The Court noted:

- If the break was not exercised, M&S would only be required to pay rent for the period up to expiry of the lease; it is reasonable that the same applies where the break is exercised;
- M&S was required to pay £919,800 to BNP as a pre-condition of the break;
- The lease provided for the rent to be paid yearly and proportionately for any part of a year by quarterly "instalments";
- At the time the lease was completed, there was no established case law stating that in the absence of express provision in a lease, the tenant was not entitled to recover rent paid for a period after a break date.

Implications of the decision

- Even if the lease does not provide for the landlord to repay any rent paid for a period after a break date, the landlord may still be obliged to do so.
- When granting a new lease, if it is intended that the landlord will be compensated for the exercise of a break right, then a lump sum payment should be expressly provided for.
- The decision in the M&S case may lead to claims for repayment of rent from ex-tenants who have exercised their break right.

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