

## **LEGAL ALERT**

### **Exemplary damages awarded to tenant for landlord's failure to make a decision whether or not to consent to assignment within a reasonable time**

#### **The Law Briefly**

Pursuant to section 1(3)(b) of the Landlord and Tenant Act 1988, on receipt of a written application for consent to assign or underlet where such consent is not to be unreasonably withheld, a landlord must give the tenant written notice of its decision within a reasonable time and, if consent is given subject to conditions, specify those conditions or, if consent is refused, specify the reasons for the refusal.

Time starts to run from receipt of the written application and not, for instance, from receipt of an undertaking for costs. Generally, depending on all the circumstances, a reasonable period is likely to be a few weeks at most. Whilst a landlord is entitled to be provided with sufficient information to enable it to make an informed decision if the landlord wants further information it must ask for it promptly, failing which it runs the risk of breaching its statutory duty give consent within a reasonable time.

If a landlord breaches its statutory duty either to consent within a reasonable time or to give its decision within a reasonable time it may be liable to pay damages to the tenant. Clearly such damages may be substantial if the tenant has lost the opportunity to assign or sublet the premises. Further the court can award additional exemplary damages where the landlord's behaviour merits it (in particular where the landlord has purposefully delayed for its own commercial benefit).

#### **The Case Briefly**

In the recent case of *Design Progression Ltd v Thurloe Properties Ltd* [2005] 1 WLR the High Court decided that after two months the landlord was in possession of all the information it needed to make its decision and, having failed to give written notice to the tenant of its decision, was therefore in breach of its statutory duty.

Further the Court concluded on the evidence that, through its agents, the landlord had deliberately pursued an obstructive policy designed to prevent the assignment so that the landlord could recover the premises with a view to reletting it at a full market rent. Accordingly, in order to punish the landlord's behaviour, the Court took the unusual step of awarding the tenant exemplary damages of £25,000 in addition to damages compensating the tenant for its actual losses.

#### **Practical Implications for Landlords**

Clearly it is important for landlords to have effective and documented systems in place for dealing with tenant's applications promptly and for raising any necessary further enquiries at an early stage. Landlords should keep a clear "paper trail" documenting their handling of such applications. Landlords should be aware that if they have ulterior motives for delaying or refusing consent they might expose themselves to the risk of additional exemplary damages.

**For further information please contact our property litigation partner David Stevens on 020 7421 6453**