

# Legal alert

August 2016

## Toxic conditional break clauses (again)

*Riverside Park Limited v NHS Property Services Limited 2016 EWHC 1313 (Ch)*

Yet again the courts have highlighted the dangers of conditional break clauses in leases.

Break clauses subject to pre-conditions are toxic. No tenant should ever agree to one.

In this case, a lease contained a tenant's right to break subject to the pre-condition that it give "vacant possession" of the premises.

The tenant gave notice to the landlord of its exercise of the break. But when the break date arrived, the tenant had not removed from the premises (among other things) some demountable partitioning that it had previously installed.

The judge held (entirely reasonably) that the demountable partitioning was a chattel, not a fixture. And, since the removal of chattels is one of the criteria for giving vacant possession (because their continued presence would hinder an incoming occupier's enjoyment of the premises), the pre-condition of the break right had not been complied with. The break had therefore been invalidly exercised.

It followed that the lease remained in full force and effect and the tenant was liable for rent for the remainder of the full term.

The judge had applied an age-old principle. Where a break right (or any other right) is exercisable subject to the satisfaction of specified pre-conditions, the court requires strict compliance with those conditions for the right to be validly exercised.

Moral – If acting for a tenant, resist conditional breaks. Also, some say that, because of the uncertainties created, landlords would be wise to avoid them too.

Note that the 2007 lease code discourages vacant possession pre-conditions. The code stipulates that the only pre-conditions to a tenant exercising a break right should be that the tenant is up to date with the main rent, gives up occupation and leaves behind no continuing underleases.