

What influences rent on a lease renewal under the 1954 Landlord and Tenant Act?

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By Paul Werth

The recent County Court judgment in the case of Old Street Retail Trustee (Jersey) 1 Limited and Old Street Retail Trustee (Jersey) 2 Limited-v-GB Healthcare Limited throws up some interesting points for landlords, tenants and their valuation experts.

The case concerned an unopposed lease renewal under Part II of the Landlord and Tenant Act 1954, in respect of a pharmacy in a parade of shops at 199 Old Street, London. The overriding issue to be decided by the court was how much rent should be payable under the new lease. The parties were quite a long way apart: the landlord sought £148,000 p.a and the tenant £45,000 p.a. In determining the appropriate rent, the judge considered the following:

- (i) Looking at comparables, could a rental award in an arbitration be admissible in evidence? No, found the judge, as it is clear law that arbitration awards are not admissible. The court must decide the case based on the evidence before it and not give weight to the arbitrator's own assessment.
- (ii) Should a rent assessed under s.34 of the 1954 Act be reduced to reflect the absence of a fitting out rent-free period? The parties' agreed draft lease made no provision for a rent-free period. There is no binding authority on the point, and no consistent approach adopted by the County Court. Here, the judge decided that the disregard in s.34(1)(a) means that the court must assess the open market value of the rent as if there was a new tenant. The experts in this case agreed that an open market letting would include a rent-free period, apportioned into fitting out and incentive periods. He concluded that, as a matter of construction of s.34(1)(a) of the 1954 Act, the interim rent and new rent must be adjusted to take into account the whole of a rent-free period of six months, including the three months which the parties' experts apportioned as a fitting out period.
- (iii) Should the tenant pay more to reflect its right to exclusivity? The landlord argued for an uplift of 2.5%, because the tenant's business was as a retail and dispensing chemist and the draft lease contained an exclusivity clause preventing other tenants in the parade from trading as a dispensing chemist. The judge found that under s.34(1)(d) of the Act, the statutory licence required to trade as a dispensing chemist must be disregarded, which prevented any exclusivity uplift in rent. He also found insufficient evidence that a tenant in the market would pay an exclusivity adjustment of any amount.

- (iv) It was common ground between the parties that there should be a reduction in rent due to the effects of Covid-19 and the significant worsening of the economy. The judge found that the shop was too small to serve as a convenience food retailer, (where the impact of Covid would be less severe than in other retail sectors). It would therefore only be rented on the open market by a non-essential retailer from another sector and so would be impacted much more severely by Covid-19. Since Autumn 2021, the economic situation had worsened, with a very sharp increase in inflation, an increase in interest rates and the cost-of-living crisis. Having regard to all of these matters, a reduction of 25% was appropriate.

Therefore, the rent and interim rent were held to be £112,000, much closer to the landlord's proposal. While this decision is not a legally binding precedent, it provides useful guidance about how the court will consider the valuation issues raised. Although the landlord came out on top, the 25% rent reduction to reflect the current state of the economy should give other landlords pause for thought.