

## Commercial Landlord & Tenant: No Security of Tenure for Legal Menaces

The Case of *Horne & Meredith Properties Ltd v (1) Mr Cox (2) Miss Billingsley* [2014] EWCA Civ 423

### The Facts

In 1981, Mr Cox and Miss Billingsley ('the Tenants') were granted a lease of a shop from which they sold upmarket women's clothing.

The Tenants' lease included not only the shop but also two rights of way and the right to park in six private car parking spaces.

From around 1996 and during the following sixteen years, the Tenants issued ten separate sets of proceedings against Horne & Meredith Properties Ltd ('the Landlord') over alleged obstructions to the rights of way. It was said that:

1. The Tenants' proceedings concerned spurious or exaggerated legal infringements.
2. The Tenants were transfixed by allegations of wrongdoing and fraud on the Landlord yet time and again their assertions had been struck out as being wholly baseless and an abuse of process.
3. The Tenants did not await the outcome of well-advanced judicial investigations proceeding to trial. Instead, the Tenants made applications (without notice to the Landlord) that made additional allegations reiterating old allegations many of which had already been resolved in previous proceedings.
4. One set of proceedings were struck out by the Court only to be repeated by the Tenants.
5. The Tenants issued proceedings regardless of the legal advice they were likely to have received. They chopped and changed their solicitors when one or other of them disliked the legal advice they received. No fewer than nine different solicitors had been involved (and four additional firms refused to accept a retainer) and at least as many barristers.
6. The Tenants were made subject to repeated wasted costs orders as they chopped and changed their solicitors and barristers and in doing so could only be regarded as a legal menace so far as the Landlord was concerned.
7. On 18 May 2011, the Court imposed a limited civil restraint order against the Tenants.

8. The Tenants' approach to litigation grotesquely exceeded any reasonable balance or judgement on their part.
9. The cost to the Landlord had been absolutely colossal – its legal costs for just one set of proceedings in 2007 were around £300,000. Very few companies in the Landlord's position would have been able to accommodate all the costs brought about by the Tenant's actions.
10. The Landlord and the Tenant both accepted that the relationship between them had irretrievably broken down.

When the fixed term of the Tenants' lease expired, the Landlord opposed the grant of a renewal lease on a ground permitted by section 30(1)(c) of the Landlord and Tenant Act 1954, namely, the Tenants '*ought not to be granted a new tenancy ... for [a] reason connected with [their] use or management of the holding*'.

On 21 December 2012, His Honour Judge Main QC found in favour of the Landlord and ordered that the Tenants' lease be terminated on 1 May 2013.

The Tenants appealed to the Court of Appeal against the decision made by HHJ Main QC on the ground that the sorry history of litigation which had destroyed the landlord and tenant relationship and had cost the Landlord a colossal sum of money were not reasons connected with the use or management of the holding.

#### The Court of Appeal's Decision

Lord Justice Lewison gave the Court of Appeal's decision on 19 March 2014 to which Lord Justice Ryder and Sir Stanley Burnton agreed.

The Court of Appeal noted:

1. The Landlord's opposition on the ground set out in section 30(1)(c) of the Landlord and Tenant Act 1954 did not require it to successfully establish the Tenants had committed a substantial breach of their obligations under the tenancy.
2. The words '*for any other reason connected with the use or management of the holding*' were deliberately broad and enabled the Court to look at everything it regarded as relevant in connection with the Tenants' past, present or future use and management of the holding.

The Court of Appeal concluded that litigation regarding rights granted under the tenancy must be connected with the use and management of the holding.

Nevertheless, the mere fact that the Landlord and Tenant had been in litigation did not necessarily lead to the refusal of a renewal tenancy because the Court must ask itself whether that litigation was such that the Tenant '*ought not*' to be granted a renewal tenancy i.e. whether it would be fair to the Landlord for him to be compelled to re-enter into legal relations with the Tenants.

If the Landlord had been the aggressor in the litigation or if the Tenants' litigation had been responsibly and proportionately conducted, the Court should grant a renewal tenancy to the Tenants. In this case, however, (a) the Tenants' approach to litigation grotesquely exceeded any reasonable balance (b) made baseless allegations of wrongdoing and fraud and (c) could only be regarded as a legal menace.

In the circumstances, the Court of Appeal dismissed the Tenants' appeal against the decision made by HHJ Main QC on 21 December 2012.

Richard Moss Solicitors  
12 April 2014