

Breaking up is never easy (when vacant possession is in play)



The Court of Appeal has overturned the High Court's decision in the case of Capitol Park Leeds Plc v Global Radio Services Limited. [Read our original article about the High Court's decision and the facts of the case.](#)

In summary, the tenant had exercised its option to break the lease. The tenant had stripped out the landlord's fixtures and fittings whilst negotiating a dilapidations settlement but that fell through at the last minute leaving the tenant unable to reinstate the landlord's fixtures and fittings before the break date. The High Court found that the tenant failed to exercise the break clause effectively having not handed the property back with "vacant possession" because the stripped out property was not found by the court to satisfy the definition of demised 'Premises' in the lease (which referred to landlord's fixtures and fittings). The facts of this case were unique; usually the issue is whether the tenant has failed to remove items from the demised premises, not that it has gone too far and removed too much.

Falling foul of break conditions is a very costly mistake for a tenant, and a requirement in a break option to hand premises back with vacant possession can give rise to difficulties, so the High Court's decision was not welcomed by tenants.

However, the Court of Appeal agreed with the tenant's arguments that vacant possession does not refer to the physical condition of the premises and that the landlord's argument was contrary to business common sense. It found that the break option had been validly exercised and noted that the landlord could recover its losses for refurbishment works via its dilapidations claim against the tenant.

The Court of Appeal's decision highlights both the importance of clear drafting of break options and compliance



with any conditions. In general, the condition to give vacant possession is, sensibly, being replaced with less ambiguous conditions with the aim that both parties will know what the tenant must do before they break the lease, in the hope of avoiding costly disputes. In the current climate, there are more tenants choosing to exercise break options and this may well increase as more businesses open and the Covid-19 related financial support from the government wanes as the country approaches “Freedom Day” on 19 July 2021.



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