

Dispute Resolution

Chasing Commercial Rents

Landlords can now secure greater judgments for less

The Problem

When a tenant fails to pay the rent, the landlord is faced with a problem. How does it recover the rent and how does it do it quickly and cheaply? Assuming the landlord's final demands for payment are ignored by the tenant, the landlord will have to look to the Courts for a judgment against the tenant. Securing judgment through the Courts can be a slow and costly process. If a tenant fails to make one rent payment, a landlord can often expect the tenant to miss multiple payments. Some High Court decisions will give assistance to landlords chasing unpaid rent.

The Process

Landlords regularly use the fast track process of 'summary proceedings' to claim outstanding rents in the High Court. These claims must be for a specific or liquidated amount. From 3 February 2014, any claim in the High Court must have a minimum value of €75,000. If tenants were failing to pay their rent on a per month or per quarter basis, landlords would have to enter a new set of summary proceedings each time the tenant failed to pay its rent. Landlords were basically re-entering the same set of proceedings each month or quarter. The landlord was incurring repetitive legal and administrative costs on each occasion the tenant failed to pay. The system was also inefficient from the Court's perspective, as the same basic dispute could be listed multiple times before the same Court.

The Solution

In two High Court cases¹, a practical solution has been adopted. The landlord has always been entitled to claim interest on the sum due for rent as part of the judgment. The interest on the sum claimed would continue to run past the date of the commencement of the summary proceedings. The Court felt that it made no practical sense to allow the landlord to claim for continuing interest but not continuing rent.

Instead of rigidly insisting that summary claims may only be for a specific amount on a specific date, a new test was introduced:

- (a) Can the final sum sought on the date of judgment be easily calculated?
- (b) Are the claims serial or sequential?
- (c) Do the claims arise on similar or associated facts?

As rents are fixed and sequential by nature, the first two elements of the test are easily met. The reason for the failure by the tenant to pay the rent will normally be consistent, which satisfies the third element.

With a more streamlined process landlords may recover debts due in a more efficient and less costly manner than was the case before the judgments.

For further information on this topic please contact Tom Casey, Associate, Dispute Resolution E: tcasey@efc.ie

¹ Dublin Docklands Development Authority v Jerymn Street Ltd and Blacktie Ltd (unreported), judgment delivered 1 June 2010 by Clarke J and confirmed in Quarreyvale Two Ltd & Quarreyvale Three Ltd v Stephen Beere & Graham Beere 2011/4548 S, judgment delivered 14 December 2012 by O'Neill J.