

Property & Construction Department

Sub-Tenants Beware!

Upward-only rent increases were abolished in February, 2010, and since then, it is not uncommon to have a sub-tenant paying a potentially lower rent than that payable by his landlord under the head lease.

There are, however, circumstances where a sub-tenant can find himself obliged to pay the full rent liable under the head lease.

This is the unfortunate effect of Section 78(2) of the Landlord and Tenant (Amendment) Act, 1980, and means that when a head landlord forfeits a lease, the sub-lease will not terminate and the sub-tenant becomes liable to pay the greater of: (a) the rent reserved by the sub-lease; or, (b) the rent payable under the terminated head lease to the head landlord.

It is not possible for the parties to a sub-lease to contract out of Section 78(2) above, although it does only apply in the case of forfeiture of the head lease. The sub-section propels both the head landlord and the sub-tenant into a new direct relationship which may not have been contemplated by either of them and at an effective rent which was never envisaged by the sub-tenant on the grant of the sub-lease.

This unsatisfactory situation is best remedied by amending the legislation to remove the above anomaly.

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