

LEASES

100 *INTRODUCTION

The valuer is often called upon to value a LEASEHOLD ESTATE. A typical LEASEHOLD INTEREST must necessarily expire on or before a given date;

to A for 14 years from January 1, 1977.

Such grant may be determined at any time by agreement. The lessee may SURRENDER his term otherwise the lease will expire on December 31, 1991.

*101 LEASES

In law "lease" applies not only to tenancies for a fixed term but also to such interests as;

TENANCIES AT WILL
PERIODICAL TENANCIES (E.G. from week to week)

Where possession of land is given for limited time & the lessee is charged rent then the relationship of landlord & Tenant is created.

The law today has adopted similar treatment of leasehold interests as for freehold interests. Today the doctrine of SEISIN is almost synonymous with POSSESSION.

It is now possible to create the equivalent to reversions, remainders & executory interests in freeholds without resorting to the creation of trusts.

Generally interests in land are real property & other interests are personal property. However leases are an exception being a cross between the 2 & known as CHATTELS REAL. They are personal property but enjoy ~~the~~ many real property rights.

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E.G. The law only allows the owner of personal property to claim damages for dispossession. But a lessee can bring an action in ejectment to recover possession.

*102 LEASE CHARACTERISTICS

At common law entry by the tenant was necessary to secure his interest. However s.120A of the C.A. abolishes this requirement.

There are 3 main characteristics;

*EXCLUSIVE POSSESSION : This distinguishes licences from leases. Such a right depends on the intention of the parties when they entered into the agreements.

*DEFINITE PERIOD: I.E. a certain beginning & ending. A lease of indefinite duration will be regarded as a term if it is capable of being rendered CERTAIN by the acts of the parties; e.g. a tenancy from week to week is definite because it is for a certain period (a week) until terminated by a valid notice.

LEASE IN POSSESSION: Commences from some time past or from the time of the execution.

REVERSIONARY LEASE: Commences from some future date.

*CERTSINTY OF THE SUBJECT MATTER:*103 CREATION OF LEASES

OLD SYSTEM TITLE: A lease is not valid at law unless effected by deed. Except any lease which is not required by law to be writing. (A lease at market rent without a fine for a term not exceeding 3 years including any right of extension. s.23B C.A. E.G. a PERIODIC TENANCY)

TORRENS TITLE: A MEMORANDUM OF LEASE duly executed & registered in the Register Book is necessary if the term exceeds 3 years. Periodic tenancies & terms of less than 3 years (irregardless of whether or not the rent is maket rent) may be created in writing or by word of mouth.

EQUITABLE LEASE: I.E. A valid & enforceable contract to give a lease than writing alone without a DEED of MEMORANDUM OF LEASE is suffcient even where the term exceeds 3 years.

These are not required for TENANCIES AT WILL or at SUFFERANCE.

NECESSITY FOR WRITING: At C.L. a lease can be made orally but the STATUTE OF FRAUDS & the C.A. s.23D mean that all interests in land not in writing & signed by the person creating them shall be INTERESTS AT WILL only. (Except a lease at market rent for a term of not exceeding 3 years is valid)

S.23B C.A. (Does not apply to R.P.A. land) subject to certain exceptions an interest in land can only pass by deed. One exception is a lease or tenancy not required by law to be in writing.

s.23C C.A.; Subject to s.23D no interest in land can be created or disposed of except by writing, signed by the person conveying or creating the same (or by his agent) or by will, or by operation of law.

s.53 R.P.A.; A lease exceeding 3 years must be registered by MEMORANDUM OF LEASE. For less than 3 years must be in writing (s.23C C.A.) unless it satisfies the proviso to s.23D.

SEE COPY OF THE FORM OF LEASE BY DEED ATTACHED.

*104 FORM OF LEASE

Usually as shown in *103 writing is necessary. In some circumstances there must be a deed.

The form of the deed is the same as all deeds as far as the formal parts. In the operative words the lessor demises unto the lessee, the subject land for the term of X years yielding & paying the yearly rental of \$Y & the lessee covenants & the lessor covenants.

A MEMORANDUM OF LEASE under the R.P.A. is similar.

The usual form of tenancy agreement recites the relevant facts, the names of the parties, the rent, the nature of the tenancy & the conditions.

*105 COVENANTS

Covenants are either imposed by law or agreed to by the parties. The term "covenants" is used loosely to describe undertakings in leases. Covenants implied by law may be varied or negated by agreement between the parties. The usual ones set out in the form of lease by deed are;

LESSEE COVENANTS WITH THE LESSOR:

*To pay rent

*To pay taxes except for local improvements, also rent of water meter.

*To repair, reasonable wear & tear & damage by fire, lightning, flood & tempest only excepted.

*To leave the premises in good repair

*That the lessor may enter & view the state of repair & that the lessee will repair according to notice in writing, & that in default the lessor may repair.

LESSOR COVENANTS WITH THE LESSEE:

*For quiet enjoyment

Where there are no express provisions there are IMPLIED PROVISIONS either STATUTORY or arising from the NATURE of the tenancy,

E.G. In the lease of a furnished house & immediate habitation is clearly intended there is an implied condition that the house is reasonably fit for human habitation. SMITH V. MARRABLE (1843) 11 M & W 5 the house was infested with bugs.

In an agricultural lease there is an implied covenant by the tenant to cultivate the land in a husbandlike manner (WEDD V. PORTER (1916) 2 KB 9)

Covenants are also implied under the DOCTRINE OF WASTE.

S. 84 CONVEYANCING ACT (includes leases by memorandum under the R.P.A. & by deed only for land under O.S.)

Implies a covenant to;

*Pay rent with a proviso for abatement in the event of damage to the premises arising from certain causes beyond the control of the parties, such as fire, flood, & tempest.

*To keep & yield up the premises in good & tenantable repair except for damage arising from similar causes & from reasonable wear & tear.

AT COMMON LAW : The following covenants are implied;

ON THE PART OF THE LANDLORD:

*For quiet enjoyment; i.e. that the tenant would enjoy uninterrupted possession & would not be disturbed by the landlord & those claiming under him.

*That the premises if furnished were fit for habitation at the time of the creation of the tenancy.

ON THE PART OF THE TENANT:

*To use the premises in a tenant-like manner.

*To yield up possession to the landlord at the end of the tenancy.

*For agricultural lands; to cultivate the land in a husbandlike manner.

WHERE THE COVENANTS ARE NOT STIPULATED: or agree that the USUAL COVENANTS APPLY the law implies the following covenants;

BY THE TENANT

*To pay rent

*To pay rates & taxes

*To keep & deliver up in repair

*To permit the landlord to enter & view the state of repair.

*To cultivate the lands in a husbandlike manner

BE THE LANDLORD

*For quiet enjoyment

*106 BREACH OF COVENANT

The usual contractual remedies are available including;

*Action for damages

*Equitable remedies of injunction

*Specific performance

However the landlord usually protects himself by a proviso for re-entry on breach of the tenant's covenants as well as non-payment of rent. The covenant implied by the C.A. extends to both types of default.

S.129 C.A.: Imposes certain formalities on the exercise of a right of re-entry for breach of covenant & possible relief against the forfeiture;

*A written notice must be served on the tenant.

*Specifies the breach & if capable of remedy the tenant can remedy it

*If compensation is demanded the lessee must be given reasonable time to comply with the notice.

*Even after non-compliance the tenant may apply for relief in Equity. The Court can grant relief or not & if it grants it, then on terms, payment of costs, compensation etc. as it thinks fit.

*107 DETERMINATION OF LEASES

Leases can be DETERMINED by;

*EFFLUXION OF TIME: On the last day of the lease it determines without notice. SUB-LEASES determine with the HEAD LEASE.

*HAPPENING OF SOME EVENT: A TENANCY AT WILL determines on the happening of any event inconsistent with its continuance.

E.G. The landlord lets the premises to someone else, death of a party, or the landlord receives notice of an ASSIGNMENT.

*NOTICE TO QUIT: Except for yearly tenancies the length of the notice must correspond with the period of the tenancy & must expire on the last day of the period.

s.22A LANDLORD & TENANT ACT 1899:

Provides that a notice to quit may expire at any time provided the necessary notice is given. Even if the day to quit is not the last day of a period of the tenancy.

*BREACH OF A COVENANT: Enables re-entry by the landlord.

*DISCLAIMER: by a trustee in bankruptcy

*MERGER: I.E. The tenant acquires the landlord's interest.

*SURRENDER:

*108 ASSIGNMENT OF LEASES

During the term of a lease both the landlord & the tenant except tenants of sufferance & tenants at will may assign the lease.

It is common for leases to have a covenant prohibiting assignment or subletting without consent.

s.133B C.A.: Notwithstanding any express provision to the contrary there is implied a proviso that consent will not be UNREASONABLY withheld. The consent must be sought even though there is no reasonable grounds for refusal.

*109 FORM OF ASSIGNMENT

*A LEASE REGISTERED UNDER THE R.P.A.:
Must be assigned by a registered transfer of the lease.

*A LEASE OF REAL PROPERTY LAND:& NOT REGISTERED:
May be assigned in writing signed by the person transferring the interest (~~s.23~~s.23 C.A.)

*AN INTEREST IN O.S. LAND: Must be by way of DEED. S.23B C.A.)

*\$110 ASSIGNMENT & COVENANTS

ss.117 & 118 C.A. (Based on the "Rule in SPENCER'S CASE")

*An assignee of the lease is bound by the lessee's covenants.

*He may enforce the lessor's covenants

*An assignee of the lessor's reversion is bound by the lessor's covenants.

*He may enforce the lessee's covenants.

This rule gives remedy in damages, applies to positive as well as negative covenants & ~~the~~ most importantly the assignee is bound whether or not he has notice of them.