

1. Is the 'License to Occupy' a License or Lease?

A lease is a proprietary right, whereas a license is a grant of permission to occupy the property of another or do something on another's land. Moreover, a lease is binding upon the third parties, unlike a license, which only possesses a right in personam. The main issue here for Jack is the security of tenure granted by Pt. 2 of the LTA 1954 for commercial leaseholds, which will be an obstacle for Jack to remove Greta and her company, Pet Bedding Ltd, as they cannot be terminated without specific due process and reason. Therefore, if the agreement is deduced to be a lease, Greta will be granted more power than a license.

The statutory definition of a lease is stated in s 205(1)(xxvii) LPA 1925 as 'terms of years absolute', which refers to a fixed period during which the property is leased with or without the obligation to pay rent and, regardless of any other legal interests involved. Nevertheless, the courts have further developed the definition of a lease, and it must satisfy the three conditions established in Street v Mountford. The three conditions are exclusive possession for a certain term and rent, which is considered a non-essential condition.

A) Exclusive Possession

Firstly, it is necessary to determine whether Greta has exclusive possession over the property. Clause 3.1 of the License to Occupy agreement clearly states that the licensee is not granted exclusive possession of the property and is only to be used for limited prescribed purposes, such as storage of permitted items. Moreover, clause 3.2.1 mentioned that these rights are granted in common with anyone else entitled to similar rights. Clause 3.3 also enables the licensor to have non-restricted access to the licensed area to provide security services. Moreover, under clause 6, the licensor has the power to require the licensee to share the License Area with other commercial occupiers. Even though these clauses indicate a non-exclusive possession of the property, the whole Licensed Area is used up by Pet Bedding Ltd only for storing their stocks.

Additionally, Pet Bedding Ltd. has hired a security guard by themselves to assert 'territorial control' of the license area, which indicates an intention to keep thieves and others out of the property. According to this, clause 3.3 is likely to be construed by the courts as a sham clause as Jack has not accessed the property to provide security services. According to Markou, providing services can prevent a finding of exclusive possession, but Jack will likely not satisfy this condition as he has failed to provide security services. Another issue is clause 3.2.1 and clause 6, which enable Jack to reserve the right to introduce another occupier to the license area. These clauses have never been acted upon according to the facts. As Pets Bedding Ltd. has filled the property in its entirety with its stocks, it is unlikely to be feasible for another occupier to use the land (Antoniades).

Furthermore, even though clause 15 restated the fact that Pets Bedding Ltd. does not have exclusive possession and that the agreement between them is not intended to create a tenancy, Pets Bedding Ltd. likely has exclusive possession of the property regardless of whether or not Jack has retained a key to the property (Aslan). Therefore, it is likely that the court will construe the clauses stated in the agreement as pretences or sham clauses to avoid the grant of a lease, as Jack has not done anything mentioned in the above clauses to prevent an exclusive possession from taking place.

B) Certainty of Term

Another condition to consider is the certainty of the term. According to clause 1 of the agreement, the tenancy period starts on 4th April 2022 and ends on the third anniversary. In addition, a termination clause is included in the agreement. The license period is likely to be fixed, and the maximum duration is certain as it is measurable with an exact end-of-tenancy date, which will be 4th April 2024. Therefore, the license period can be conferred as precisely three years and certain, unlike in Chantler.

Nevertheless, even if the term's duration is uncertain, the court could imply a periodic lease by the rent payment, as mentioned in *Prudential*. However, it is unlikely to be an issue in our case as they have failed to pay the rent for several months.

C) Rent

Pets Bedding Ltd also pays a monthly sum of £15,999 plus VAT as rent. Therefore, it can be presumed that payment of rent may indicate an intention to create legal relations between Jack and Pets Bedding Ltd., and it could be used as evidence to display the existence of the lease (Ashburn).

After the detailed analysis, the 'License to Occupy' agreement between Jack and Pets Bedding Ltd will likely be a lease.

D) Exceptions

There is no need to consider the four unities as this is not a lease to more than one person (AG Securities). An exception may be considered to assist Jack with removing Pets Bedding Ltd from the property. According to Cobb v Lane, the finding of the lease can be rebutted if there is an occupation based on family relationships or family connections to indicate an absence of intention to create legal relations. As the 'License to Occupy' agreement was made between Jack and Pets Bedding Ltd., which is owned by her cousin, Greta, it can be argued that it is just a family agreement and that Jack did not intend Pets Bedding Ltd. to be a tenant, but as a licensee only to help Greta with the storage of the stocks for a certain period. However, it could be easily rebutted, as in the case of Nunn, as Pet Beddings Ltd has a strong case against Jack by fulfilling all the tests of the Street case.

E) Formalities

According to s54(2) LPA 1925, 3 years or less leases do not require a written agreement provided there is an immediate possession, at best rent and no premium. Following the facts, as the duration of the lease is three years, no written agreement is needed to create a lease. Moreover, it can be assumed from the monthly rent price that it is likely to be a market price, and there is no indication of upfront payments. Therefore, the formalities of the lease creation are likely to be satisfied.

F) Conclusion

According to s23(1) and (2) of the LTA 1954, this can be considered a commercial lease. The consequences are that Jack will not be able to remove the tenant immediately and must issue a notice of termination to end the tenancy with a prescribed date, which must be given at most twelve or less than six months before the termination date. On the other hand, Jack can wait until the end of the tenancy period, or Jack can surrender the lease by negotiating with Greta and recover the prior rents owed by Pets Bedding Ltd under debt action for unpaid rent because it is a quantifiable sum or under commercial rent arrears recovery.

2. Termination for Non-Payment of Rent

According to clause 11.2, Jack is entitled to terminate the lease if the whole or any part of the Licence Fee is unpaid 21 days after becoming payable. As it can be observed that Pet Beddings Ltd. has failed to pay rent for several months, Jack can utilize this clause to terminate the agreement as they have broken the tenant's covenants.

As this license agreement between Jack and Pets Bedding Ltd can be considered a legal lease, Jack also has a legal right in the land to forfeit the lease according to s1(2)(e) LPA 1925 if it is expressly mentioned in the lease. The agreement has no express provision or wording 'forfeiture', but termination clause 11 could likely be construed as such. There are no formal requirements for a failure to pay rent and no indication of formal rent demands mentioned in the lease.

Nevertheless, according to s138 and s139 County Courts Act 1984, there is an automatic right to relief up until the date of a court order for Pets Bedding Ltd. and a discretionary right to relief up to 6 months after a court order or peaceable re-entry for non-payment of rent. Therefore, Jack could issue a court order as soon as possible for the payment of rent and consider an option of forfeiture to terminate the rent. Nevertheless, the lease is unlikely to be terminated as Pets Bedding Ltd. can counter the forfeiture by paying the rent.

In conclusion, the best options for Jack are to recover the rent payment owed by Pets Bedding Ltd. by taking the actions mentioned above and negotiating with Greta personally to sort out the issues between them to maintain a good relationship between them as families. This is because the legal procedures for termination and suing are time-consuming. Therefore, it is best to resort to negotiation to resolve the dispute.