

To determine whether Jack can get Greta's company out of the property, we must first determine whether they have a lease or a licence. Although the document is called a licence, it might in effect be treated as a lease by the court. Leasehold is a proprietary right and cannot be terminated without due process.

Street v Mountford [1985] provides common law definition of a lease:

1. Exclusive Possession
2. Certainty of Term

For exclusive possession, Paragraph 3.3 of the Licence states that the right for the Licensee to access the property was non-exclusive, and that the Licensor can access at all times to provide security services. However, in ***Aslan v Murphy (1989)***, it was held that the retention of keys by a landlord does not in and of itself preclude the occupier from enjoying exclusive possession. In our case, the facts show that Jack probably did not provide security services because there were multiple break-ins and Greta had to hire security herself. We would need to confirm with Jack whether the services were actually being provided. If not, then Paragraph 3.3 cannot be treated as a bar to exclusive possession.

In addition, Paragraphs 3.2, 6.1 and 6.3 state that the Licensor has the right to bring in another Licensee as a sharer. In ***Antoniades v Villiers [1990]***, although the agreement stated that the landlord or any other occupants may use the one-bedroom flat that was rented to a couple, the court held that the couple had exclusive possession because it would be ridiculous to suppose the landlord genuinely intended for anyone else to share the flat with them. In our case, as the property is for commercial use, it would be less clear as to whether it is realistic for someone else to share the property with Greta. Considering Greta has already used the entire property, it's likely that introducing another Licensee would be unrealistic. We might need to look at the size of the warehouse compared to the size of Greta's business to confirm whether she actually needs this much space, but assuming she does, then it would be likely for the court to decide that Greta has exclusive possession, and Paragraphs 3.2, 6.1, 6.3 and 15 would be treated as sham clauses.

For certainty of term, under Paragraph 1 of the document, under "Licence Period", it is stated that the contract started at 4 April, 2 years ago and while end on the third anniversary. This is a sufficiently clear term.

Note that in ***Fachinni v Bryson [1952]***, it was established that a lease may be denied if there was a lack of intention to create legal relations, between family members for instance. However, this exception may not apply here because the arrangement between Jack and Greta is quite formal with a contract and rent agreement. So, there was likely an intention to create legal relations.

Overall, it is likely that the court would treat this agreement as a lease.

Since the period of the lease is three years, under **s54(2) LPA 1925**, there is no written requirement provided there were immediate possession, at best rent, and no premium paid. We need to confirm whether Greta's company took immediate possession of the property, whether the rent was at market level, and whether there was no premium. It is probably the case for all of the above. Hence, the formality requirement for the lease is met, so this would be treated as a legal lease.

In conclusion, it is likely that the court would treat the agreement between Jack and Greta as a legal lease. Greta, therefore, would have proprietary right Jack cannot terminate the lease and remove Greta's company from the property without due process.

Because Greta has not paid rent for several months, this would be a breach of covenant as specified by Paragraph 4. As landlord, Jack can sue for debt action for unpaid rent. He might also be eligible for Commercial Rent Arrears Recovery Scheme as this is a commercial property. He also has the option of forfeiture, which is a way of ending the contract essentially. Under **s1(2)(e) LPA 1925**, forfeiture is a legal right in land which the landlord will have if there is express provision for it in the legal lease. Paragraph 11.2 can be seen as an express provision for forfeiture. The rent has been overdue for more than 21 days, which would constitute a breach.

We would also have to ensure that the right to forfeit is not waived by Jack or his agent. The right to forfeit would be waived if a) landlord aware of the breach; and b) landlord or the agent performs some unequivocal act to recognise the continuing existence of the lease. As Jack is aware of the breach, we would warn him to advise managing agent not to accept or demand rent, see ***Central Estates (Belgravia) v Woolgar [1972]***, otherwise he would have to wait till next rent payment for another chance to forfeit, as established in ***London & County v Wilfred Sportsman [1971]***.

For a rent breach, there are commonly no formal requirements. Hence Jack can proceed to forfeit either by court order or peaceable re-entry. It is preferable to obtain a court order as the property is occupied with security staff on site. Re-entering the property may incur liability upon the landlord for trespass. In ***Billson v Residential Apartments Ltd [1992]***, it was established that the court prefers court order. Therefore, we would advise Jack to obtain a court order before re-entering the property.

It is also with considering that Jack is likely to get relief if Greta agrees to comply with the covenant. Nevertheless, Jack would be able to recover unpaid rent relatively easily as Greta's company does not seem to be in financial difficulty. However, as Jack was also potentially in breach of covenant by not providing security services, Greta may be able to claim for damages or specific performance, the latter would be relevant if relief is granted. Note that Greta won't be able to justify unpaid rent as a self-help remedy to pay for the security services, as this would require notice beforehand.

Overall, although the contract between Jack and Greta's company would be treated by the court as a legal lease, Jack is nonetheless able to terminate the lease and remove them from the property on the basis of non-payment of rent.