

Handing back an empty shell of a building did not fulfil a vacant possession break condition

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29 October 2020

Break rights have proved a fertile source of litigation over the last few years. Courts have consistently required strict compliance with the terms of those rights and the recent High Court decision in *Capitol Park Leeds plc v Global Radio Services Ltd* is no exception to this position.

Capitol Park Leeds Plc v Global Radio Services Ltd [2020] EWHC 2750 (Ch) (23 October 2020)

The tenant had a right to break its lease on condition that it delivered vacant possession of the property to the landlord. The tenant had stripped out significant elements of the base build and landlord's fixtures in the property and the landlord argued that, in returning the property minus those elements, it had not complied with the vacant possession condition.

The judge agreed with the landlord. One of the tests for determining whether vacant possession has been given is that there is no substantial physical impediment to the enjoyment of the property. That test was not satisfied where a tenant handed back an empty shell of a building which was dysfunctional and not capable of being occupied.

This High Court case emphasises how important it is for a tenant negotiating a new lease to resist any requirement that a break right is conditional on the delivery of vacant possession. In this case, had the break right been conditional just on the tenant giving up occupation and leaving behind no subtenants or other occupiers (a common compromise position), the tenant would have been able to exercise it successfully.

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