

Does a breach of an obligation in an agreement for lease allow the tenant to refuse to complete the lease?

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In a recent case, the agreement for lease prevented the landlord from making variations to the landlord's works (the construction of student accommodation) which materially affected the size of the rooms. The agreement provided that a size reduction of more than 3% from the original drawings was deemed material. In contravention of this provision, the landlord built some rooms which were more than 3% smaller.

The Court of Appeal decided that although the parties could spell out exactly what type of breach would allow the tenant to terminate an agreement, that was not what the parties had done here and it would not make commercial sense if any breach of the agreed size tolerance level (e.g. an undersized bin store) automatically allowed the tenant to terminate the agreement.

In this case, the tenant is possibly facing the unpalatable prospect of having to complete a long lease of student accommodation with 56 rooms smaller than specified.

It makes sense to agree at heads of terms stage what breaches will give rise to termination so that both parties are clear from the outset and this can then be built into the agreement for lease.

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