How can a landlord find himself in the dock for his tenant's breach of waste regulations?

The answer is that when a tenant uses your property as a *maison-close*, you can terminate the lease; it is not always so easy with polluting tenants who break the law. What has this to do with agricultural law? It should be nothing at all, but for the farming community's habit of entering into tenancies and licences without inconveniencing their professional advisers for a document to record such arrangements.

There are few offences deemed to be so serious that the authorities are likely to pursue a landlord, lessor or agent in addition to a guilty tenant – one long-standing example is the use of a property as a brothel. A landlord or lessor may only be liable under section 34 of the Sexual Offences Act 1956 where he has knowingly permitted such use, and the Act usefully makes provision for a landlord to forfeit the lease should he find more nocturnal activity on the premises than he expected.

The Environmental Protection Act 1990 also imposes liability upon landlords (and most likely their agents) who knowingly permit tenants to use their properties for the “unauthorised or harmful depositing, treatment or disposal of waste”.

There are, however, key differences between these pieces of legislation:

1. Unlike the 1956 Act, the 1990 Act does not give the landlord a statutory right to evict the tenant if he carries out illegal acts on the land and does not desist from doing so after warning. Therefore, unless there is a covenant in the tenancy or lease to allow such an eviction, the landlord will be powerless to intervene.

2. Crucially, the 1990 Act also refers to a “person” rather than the “lessor or landlord” referred to in the 1956 Act – it may therefore be that managing agents (or indeed anybody with power to ‘permit’) are just as liable as landlords to prosecution.

As a result of this difference, if you are a landlord and do not have a written lease or there is no express covenant in any written lease not to do any illegal act, you cannot compel the tenant to put things right, you cannot get him out and you are liable in any event to prosecution.

In March 2008, Halesowen Magistrates’ Court found against Commercial Motor Spares Ltd (the Environment Agency prosecuting) and set a worrying precedent in terms of who pays the price for a tenant’s illegal acts. At the time, this appeared to be the sort of case which (if the defendant had sufficient inclination and resources) could have been winnable on appeal. It now seems that the decision is going to lie, and as such merits some further analysis.

Commercial Motor Spares Limited (CMS) was fined £30,000 after being held to have “knowingly permitted” its tenant effectively to operate a skip business and “keep waste” without the requisite environmental permit (known as a ‘waste management licence’ up to 6 April 2008). The knowledge was imputed by virtue of CMS company directors having made frequent visits to the site while the tenant was breaking the law.

Despite having paid £18,000 to clean up the site, and claiming in court that the absence of any written lease limited its ability to control or evict the tenant, the magistrates said that a company which has been established for 28 years ought to have known better than to allow a tenant to occupy its land without a written agreement.

Protecting your client: leases

1. Insist on a properly drafted lease which contains provisions enabling the landlord to terminate or obtain an injunction if the tenant breaks the law.

2. If you “smell a rat” (make sure you are seen to do so), investigate the tenant’s activities and take remedial measures accordingly.

3. Think: if your client’s tenant will not sign a proper lease voluntarily, do you want to run the risk of maintaining the relationship with a tenant who will not agree to your terms?

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