

Lease breaks – strict compliance; no room for substantial compliance

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The Court of Appeal has stated unequivocally: “If you want to avoid expensive litigation, and the possible loss of a valuable right to break, you must pay close attention to all the requirements of the [break] clause, including the formal requirements, and follow them precisely.”

In *Friends Life v Siemens Hearing Instruments* (2014) a lease contained a break clause that provided for the termination of the lease on the tenant giving not less than six months’ written notice “which notice must be expressed to be given under section 24(2) of the *Landlord and Tenant Act 1954*.” It was thought that the break clause was drafted in that way do deal with the risk that the tenant might use the break to seek the grant of a new lease under the 1954 Act, a risk subsequently closed off by the decision in *Garston v Scottish Widows* (1998). A break notice was served by the tenant, but the notice contained no reference to section 24(2) or to the 1954 Act at all.

The judge at first instance said that the failure by the tenant to use the required wording made no difference at all to the validity of the notice. As the service of the notice precluded the subsequent service by the tenant of a request for a new lease, the judge was of the view that the parties could not have intended the break to be dependant upon compliance with a meaningless formula.

The Court of Appeal disagreed. It analysed the law of options and restated that, where an option contains conditions, those conditions had to be completely fulfilled; substantial compliance was not enough. It said that the principles applicable to options to renew were equally applicable to options to break and that even trivial non-compliance would invalidate a break (as shown by the blue paper/pink paper example in *Manni*).

The Court of Appeal held that the fact that the parties did not explicitly prescribed the consequence of a failure to comply did not mean that the court could do so. There was no room for the notion of substantial compliance. “*Either a purported exercise of an option satisfies both the formal and substantive provisions of the clause, or it does not. If it does not, then it is ineffective.*” The tenant’s notice was held to be invalid.





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