



## Administration update: Rent as an expense - landlords know your rights

The High Court recently considered a landlord's claim for the payment of rent as an expense of the administration in *Goldacre (Offices) Limited v Nortel Networks UK Limited (In Administration)*. The facts are familiar; the tenant went into administration, the administrators continued to use the property and the landlord sought the payment of rent as an expense.

In this case, however, the administrators were using only a small part of the demised premises and argued they should pay only a proportionate amount of the rent attributable to the floor space they occupied as the landlord was free to use or let the remainder of the space. Landlords will be relieved to hear the Court rejected this, holding that it was not, on the evidence, a realistic proposal or fair to the landlord.

example, whether a landlord is granted consent to forfeit a lease for non-payment of rent.

Significantly where rent is payable as an expense, the Court also held it is payable in accordance with the terms of the lease. In *Goldacre*, rent was payable quarterly in advance; notwithstanding the tenant's administration, the Court held the full quarter's rent fell due on the quarter day (payable as an expense) and that this payment would not fall to be apportioned in the event the administrators vacated during the relevant quarter. This decision provides landlords with scope to challenge administrators' piecemeal payments (commonly calculated on a pro rata basis) for the days the property has been occupied by the tenant in administration.

The Court further commented that a landlord need not have sought or threatened forfeiture for rent to become payable by the administrators. This is contrary to previous views that a landlord's case for the payment of rent may be strengthened if he had previously requested the administrators' consent to forfeit and this had been refused.



Source: istockphoto

The case is significant as the Court held that if, and for as long as, administrators retain demised premises (for the purposes of an advantageous disposal) or use any part of the demised premises for the benefit of the administration, landlords are entitled to the payment of rent as an administration expense. Contrary to previous views, neither the administrator nor the Court has discretion in this regard if the criteria as to use or retention of the demised premises are met. The Court and administrators do, however, have discretion as to the remedy a creditor may exercise to obtain payment of monies owed, for

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