

## Recovering rent

Can landlords recover rent from their tenant's administrators for occupying or using their leasehold property?

This protection can hit a landlord's chances to recover rent and service charge arrears from tenant companies in administration and, at best, these arrears would rank equal to other unsecured debts.

However, the recent case of *Goldacre (Offices) Ltd v Nortel Networks UK Ltd (In administration)*, offers landlords hope. The High Court ruled that administrators electing to retain the use of leasehold premises for the purposes of the administration should pay the rent payable under the lease as an expense of the administration for the duration of their occupation and/or use of the premises.

The Court further held that the administrators could not apportion the rent even if they were only occupying part of the premises and in the event that rent was payable quarterly in advance, the administrators were responsible to pay the whole quarter's rent, even if they vacated the premises during that quarter.

Administrators occupying leasehold premises will have adopted all liabilities arising under the relevant lease. In the event that the tenant covenanted to insure and pay service charges, it should follow that the administrators would also be liable to insure the premises and pay service charges for the duration of their occupation. These outgoings would also be recognised as expenses in the administration.

The recognition of rent and other outgoings as expenses of the administration benefits landlords because these expenses will rank higher than claims of preferential creditors, creditors with floating charges or unsecured creditors. Landlords will, therefore, stand a better chance of recovering these expenses than other creditors.

However, landlords have no immediate right to payment of these expenses where the administrators do not have sufficient funds to pay. They might have to wait until completion of the administration.

It is anticipated that administrators in future will be more careful in their election to retain leasehold premises and, if they do wish to remain in occupation, will be more likely to seek to engage in a dialogue with the landlord at an early stage.

### Contact

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