Falcon Chambers

In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month: agreements for surrender under the Landlord and Tenant Act 1954, cost of alternative accommodation, and relief from sanctions in possession proceedings.

# AUGUST 2026

## Euroresins UK Limited v TLC Investment Limited [2026] EWHC 2105 (Ch)

***Summary***

The High Court determined that the entirety of a settlement agreement was void owing to non-compliance with s.38A Landlord and Tenant Act 1954.

The defendant landlord had let a warehouse to the claimant tenant. The tenant sought the landlord's consent to assign, which the landlord refused, citing alleged breaches of repairing covenant. The parties compromised their dispute by way of a Tomlin order which annexed a settlement agreement. The agreement provided for the doing of certain works (to be determined by an expert) and then an early surrender of the lease.

In order to be effective, the agreement to surrender the lease needed to comply with the requirements of s.38A of the 1954 Act. However, it failed to do so, purporting instead to rely on the court's order as sanctioning the agreement (which would have been the applicable law pre-2004).

Further disputes arose about the state of the premises and what the expert had determined, resulting in the stay of proceedings being lifted. The High Court was asked to determine preliminary issues, including the extent to which the settlement agreement was void owing to the non-compliance with s.38A, and in particular, whether the expert determination provisions could survive.

HHJ Cadwaller determined that the settlement agreement was void in its entirety.

***Why it's important***

This judgment contains a detailed consideration of the operation of s.38A and the effects of non-compliance. While in this case the result was that the entire agreement failed, there is no automatic rule that all terms of a non-compliant transaction will automatically be void: the court is required to undertake the exercise of considering each provision.

The case is also a salutary reminder of ensuring compliance with s.38A, where applicable, in settlement agreements.

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## Southern Land Securities Ltd v Gisele Catherine Rettie [2026] UKUT 308 (LC)

***Summary***

The Upper Tribunal determined that leaseholders could be required to contribute to the cost of temporary accommodation during works.

Two flats in a block of eight were affected by damp. The landlord carried out remedial works. Although it was not essential for the tenants of the two flats to vacate during the works, it was convenient, and they did so. The landlord sought to recover the costs of the works and of the alternative accommodation through the service charge. At first instance, the FTT found that the accommodation costs were not recoverable.

The UT allowed the landlord's appeal.

***Why it's important***

This case clarifies the principles in ***McGreal v Wake*** [1984] 13 H.L.R 107 relating to recoverability of accommodation costs:

1. Where it is <u>essential</u> that a tenant move out to enable repair works, they are under an obligation to do so, at their own cost.
2. Where it is <u>not</u> essential, the landlord has a choice as to how to perform its covenant:
    a. Either, the landlord can do the works with the tenant in situ (even if that is more difficult or expensive than if the tenant left);
    b. Alternatively, the landlord can seek the tenant's agreement to them moving out, with the cost of alternative accommodation potentially being the price of that agreement.

In that latter scenario, the UT emphasised that it may or may not be reasonable for a landlord to incur such costs, depending on the facts; expense is not the only factor.

As the costs of alternative accommodation can be significant, their recoverability is a matter which those advising landlords would be well advised to consider in advance of substantial expenditure.

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## Kiloran Properties Limited v Amanda Clutterbuck [2026] EWCC 49

***Summary***

The High Court refused permission to appeal against orders refusing an out of time extension for filing defences and granting possession of two properties.

The claimant company, acting by receivers appointed pursuant to a charge, was the owner of two leasehold properties. The first defendant was the beneficial owner of the claimant. Following other litigation with a third party, substantial costs orders were made against the defendants. The first defendant (in her capacity as trustee of a trust) and the second defendant's brother exchanged contracts for the purchase of one of the properties, and certain sums were paid pursuant to that contract, but the charge was not discharged. Around the time of the sale contract, the defendants took up occupation.

Proceedings were issued in April 2023 and a suggested defence was put forward on the basis that the defendants were licensees. The claimant served notices on that basis without prejudice to its primary contention that the defendants were trespassers. All of the proceedings were listed for a single hearing in August 2025. Several extensions of time were agreed for a defence to the new proceedings; when a further extension was denied, the defendants applied for relief from sanctions.

At the August 2025 hearing, the court refused relief and made orders for possession. That order has now been upheld on appeal.

***Why it's important***

This case contains a useful exposition of the law relating to relief from sanctions in the context of first possession hearings and failure to file a defence, emphasising that the usual position is that a court should not consider the merits of any suggested defence when considering whether to grant relief from sanction, unless it is readily identifiable that it may be so strong as to enable the grant of summary judgment. The case is also a helpful illustration of the court's approach to the evaluation of medical evidence in this context.

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