

Chattels or fixtures and fittings?

20 April 2018

Christopher Sullivan and Nick Dowding QC look at vacant possession and what can be considered as chattels or fixtures or fittings under the terms of a lease

I am the landlord of an office property. The tenant vacated prior to a condition precedent break, but he left in situ large quantities of partitioning, carpets and discarded office furniture, all of which he brought on to the premises during the lease. Was he obliged to remove them, and does this mean he hasn't given vacant possession?

You should read the lease carefully to see what the tenant is entitled to install during the lease along with any obligations on him for removal. In general, the key question is whether the element is a chattel or a fixture. Giving vacant possession will be an implied term in most leases; this will ordinarily require the removal of chattels where their presence substantially interferes with the enjoyment of a substantial part of the property, but not necessarily anything else.

The question of a tenant break conditional on providing vacant possession is not dissimilar, but the stakes are often much higher, and we discuss this further below.

Chattels and fixtures

A chattel is any item that has not been physically attached to the premises so as to become part of them in law. There are a number of obvious examples of chattels, such as furniture or debris, but it is not always as simple as that. A fixture is an item that has been attached to the premises in a way that results in it losing its character as a chattel, and that has thus become part of the property.

There is plenty of case law that considers this, although not all of it is consistent. In such cases, there are two essential questions. The first relates to the degree of annexation, and considers the extent of attachment: in general terms the greater the attachment, the more likely the item will be a fixture. The second question concerns the purpose of annexation, and whether the element was installed only for its temporary enjoyment as a chattel.

Chattels must ordinarily be removed at lease-end, but the position is less straightforward with fixtures

Fixtures are further subdivided into landlord's fixtures and tenant's fixtures. A tenant can remove their fixtures, although they must have attached the items for the purposes of their trade, and it must be possible to remove these without excessive damage either to the items or the property. A landlord's fixture is any fixture that is not a tenant's.

Obligation to remove

Chattels must ordinarily be removed at lease-end, but the position is less straightforward with fixtures. The general rule is that a tenant is not obliged to remove fixtures, even their own, although this situation is subject to the terms of the lease. Particular clauses to consider include any covenant against alterations; any obligations to remove or reinstate, including in any licences to alter; and any obligations relating to the return of the premises at lease expiry.

Partitioning

It is necessary to look at how the partitioning has been constructed and fixed, and how easy it is to remove, as some forms of partitioning may be classed as chattels. So, in [Riverside Park v NHS Property Services \[2016\] EWHC 1313](#), demountable metal partitions, fixed to the raised floor and the suspended ceiling grid by screw fixings, were held to remain chattels. But partitions that are more permanently fixed to the structural slabs and soffits, or whose construction is such that they cannot be removed without effectively destroying them, may be fixtures.

By way of further illustration, a metal-framed stud wall with plasterboard and a painted plastered finish will in all likelihood have lost its chattel nature. In contrast, a composite-framed partition wall with a pre-finished panel, which is clearly designed to be put up and taken down without destroying it or the building fabric, may retain its chattel nature.

Carpets

Carpets that are not attached to the floor or are attached only by tacks are likely to remain chattels. But carpet tiles that are glued to the floor screed or the raised floor tiles may be held to be fixtures, as they were in [South Essex Partnership University NHS Foundation Trust v Laindon Holdings \[2016\] EWCA Civ 377](#). However, carpets that are lightly fixed with a tackifier are unlikely to have lost their chattel nature.

Discarded office furniture

Freestanding items of furniture will be chattels, and the same may be true of items such as shelving that are attached only by screws. But items with a more substantial degree of attachment to the premises, such as a built-in reception desk or a trade counter, may have become fixtures.

Christopher Sullivan is a partner at [Malcolm Hollis](#). Nick Dowding QC is a barrister at Malcolm Hollis

Further information

- Related competencies include: [Landlord and tenant \(including rent reviews and lease renewals\)](#), [Leasing/letting](#)
- This feature was taken from the [RICS Property Journal](#) (March/April 2018)
- Related categories include: [Leases](#)