

Introduction

Welcome to the first edition of Emsleys' quarterly newsletter for Registered Social Landlords. The newsletter has been designed following consultation with our RSL clients, who despite representing a varied cross section of the sector, had very similar requirements from an updating service.

The Newsletter to nominated Housing Managers and Housing Officers of all our clients, and subsequently archived on our website. The Newsletter offers a Frequently Asked Questions service, with responses returned to enquirers and included in our next bulletin. They will also be archived by category on the website.

It is hoped that the bulletin will be a useful tool to Housing Managers and provide the opportunity for a forum for topics of the day to be discussed. Comments and Suggestions are positively encouraged, to ensure that we continue to deliver what our clients need.

Emsleys News

New Recruit - Danny Richardson We are very pleased to announce that Danny joined our non contentious team at Viscount Court in May this year. Danny has over 20 years experience in property work, including 13 spent inhouse at

Home Housing Group, one of the largest of the National RSLs. He has also worked in house for Shepherd Homes for four years.

Case Law - Sept 2003

North Devon Homes Ltd v Christine Brazier (2003) High Court:

Anti Social Behaviour and Mental Health

- Where nuisance behaviour is caused by a disability such as a mental illness, the 1995 Disability Discrimination Act applies as well as the relevant Housing Act;
- An eviction is only lawful under the 1995 Act if it is necessary not to endanger the health and safety of the disabled person or someone else;
- There is therefore a higher threshold for eviction where the 1995 Act applies.

Possession proceedings were issued against an assured tenant on the grounds of nuisance. The factual cause of her anti social behaviour was her psychotic illness; there was little prospect of improvement. At trial the Court held that evicting her would be unlawful under the 1995 Disability Discrimination Act, but that it would not be right for the 1995 Act to override the 1988 Housing Act, and made an outright possession order. The tenant's appeal was successful: she suffered from a disability within the meaning of the 1995 Act;

eviction was a breach of that Act under s 22(3); the applicant was being discriminated against if the cause of her less favourable treatment was her disability; and that an eviction was only made lawful if it was necessary in order not to endanger the health or safety of the tenant or anyone else (s 24), which was not proven on the evidence.

North Herts DC v Carthy (2003) Court of Appeal **Ground 17: obtaining tenancies by false or misleading statements**

- Where an applicant for housing initially fully discloses his or her circumstances but then fails to report a material change of circumstances, the Court can consider a possession claim under Ground 17 of the assured grounds.

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Medina HA v Case
(2002) Court of Appeal:

Injunctions

- Injunctions obtained in a possession claim cannot run on after the tenant has been evicted

The trial judge made an outright possession order, but as the Housing Association was concerned that the Defendant would continue to behave antisocially after eviction, he ordered the Defendant not to enter the vicinity of the premises for 5 years. The Defendant successfully appealed: once the possession date had passed there was no tenancy and so no basis for the grant of an injunction.

Manchester City Council v Joleen Finn
(2002) Court of Appeal

Amending Suspended Possession Orders

- Even if a tenant is complying with a suspended possession order based on rent arrears, the landlord can apply to change the possession order;
- This includes seeking possession on new grounds such as anti social behaviour;
- If the tenant is given proper notice of the allegations against him/her, the landlord can apply to change a rent possession order that has been suspended into an immediate outright possession order

The Council had a suspended order against the Defendant; she was complying, but she was then convicted of handling stolen goods at the property and large amounts of such goods were found there. The Council applied to the Court to vary the order to an outright immediate order, having given the tenant prior warning of the allegations. The Court of Appeal held that this was lawful under the Housing Act: similar principles apply to assured tenancies.

Plymouth CC v Walker 14 May 2003
Plymouth County Court

Tolerated Trespassers

- Breach of a suspended possession order, or the passing of the possession date under an outright order, will end a tenancy whether assured, secure or otherwise.

- The House of Lords and Court of Appeal have developed the law on this point and its effects, creating the concept of the "Tolerated Trespasser"
- The occupier is then no longer a tenant, losing most implied and express rights
- Where the landlord then does something that can only be explained by the existence of a landlord and tenant relationship, there may be a new tenancy;
- This could be putting the rent up, or trying to enforce express terms of tenancy

The Council obtained an outright possession order against a non secure tenant. Once the possession date passed the tenancy ended and the occupier was a "tolerated trespasser", protected from eviction only by the need for an eviction warrant. 6 months later the occupier was still there, under an arrangement to pay current rent plus an extra amount off the arrears. The Council then increased the rent. The District Judge held that this created a new tenancy: if the Council wanted the tenant out it would have to start again.

This can be avoided by introducing rent increases using a carefully worded letter- making it clear that monies are accepted on the basis of "use and occupation". (see Hammersmith & Fulham LBC v. Jastrzebski October 2001

Coltrane v Day (2003)
Court of Appeal

Rent Arrears and cheques

- Where rent is paid by cheque it is deemed paid on the date the cheque is handed over, if the cheque subsequently clears
- If the landlord does not wish to accept a last minute cheque, s/he should make this clear;
- Where such a cheque is handed over just before the trial of a possession case on Ground 8 of the assured grounds, the Court should grant a short adjournment to see if the cheque will be honoured.

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John Smith v Joseph Muscat (2003) Court of Appeal Change of Landlord

- If the landlord of rented accommodation sells the property to a new landlord with a sitting tenant, the new landlord can pursue the tenant for rent arrears that built up before the change of ownership;
- Generally the tenant cannot bring a disrepair or other claim against the new landlord for failures of the old landlord;
- However if the new landlord issues a possession claim against the tenant and wholly or partially relies on arrears that became due before the change of ownership, the tenant can defend that possession claim by counterclaiming for pre transfer disrepair.

The facts of this case relate to a private sector Rent Act tenancy, but the principles are equally relevant to stock transfer cases.

Bristol CC -v- Mousah (1997) CA

Repeated drug raids; surveillance evidence of steady stream of visitors. Many people arrested (in absence of tenant); drugs, including crack cocaine, found in premises, together with accessories such as foil, crack pipes and cling film. Judge found Ground 1 amply proved (tenancy prohibited supply of drugs). Rejected tenant's assertion of ignorance as to what was going on. However considering passage of time since last wrongdoing, medical circumstances and likely finding of intentional homelessness, judge refused to find it reasonable to make an Order for possession.

Court of Appeal allowed appeal. Whether tenant would be rehoused was a matter for council, not for trial judge. Passage of time was due to Defendant not complying with the Court directions. No exceptional circumstances as to why possession should not be ordered.

Legal Update - Sept 2003

ASBO's

From 1 April 2003 an RSL can apply for an Anti Social Behaviour Order in the County Court within possession proceedings; the Order can only be sought against the tenant.

Stamp Duty

Section 130 of the Finance Act 2003 exempts from stamp duty periodic tenancies granted on/after 1 January 1990, where the annual rent at the date of the tenancy starting was £5000 or less, where the landlord is or was an RSL. As a result landlords do not need to be able to produce stamped copies of such tenancies in order to be able to rely on them in Court proceedings.

Disrepair Protocol

From 8 December 2003 new Court rules will govern most disrepair claims in the Civil Courts. The pre action protocol for disrepair sets out stages that tenants should go through before issuing compensation claims; it includes standard letters. Tenants can be penalised in terms of costs if they, or their lawyers, do not follow the procedure. Similar protocols, aimed at avoiding Court cases and promoting settlement of claims, already apply to personal injury and other types of claim. The Legal Services Commission, which funds many disrepair claims, will issue new guidance on this area, which is expected to reinforce the protocol. Landlords should note that the new rules do not apply to disrepair counterclaims in rent possession claims, or very urgent cases.

Periodic Assured Tenancy Rent Increases

New Regulations introduce a new prescribed form for a notice of rent increase under s 13 1988 Housing Act. The new form came into effect on 11 February 2003; old style notices served between that date and 11 April 2003 are treated as valid.

Further Regulations, effective from 11 February 2003, make minor changes to the earliest date on which a rent increase can be expressed to take effect under s 13 1988 Housing Act. The regime is still one of annual increases in the absence of an express term in the tenancy.

Home Loss Payments

Occupiers with a relevant interest who are displaced from their homes by for example statedemolition/redevelopment are entitled to a home loss payment under 1973 Land Compensation Act. The minimum payment increases from £1500 to £3100 if displacement occurs on/after 1 September 2003; the maximum goes up to £31000.



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Best Value Inspections

The Housing Corporation has issued 6 briefing papers entitled "Inspection Uncovered" looking at the main findings from its inspections of Housing Associations; all were published in June 2003, shortly after the Corporation transferred responsibility for inspection to the Audit Commission.

The briefings cover customer service, anti social behaviour, tenant involvement, repairs/maintenance, equality and diversity, and lettings; and are available as pdf downloads from the Corporation's website.

The anti social behaviour paper identifies awareness of current good practice and legislation as an inspection area both in relation to service planning and service delivery.

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