

Article: Careful Drafting Pays Dividends

A landlord who failed to include an appropriate clause for subletting to a social tenant in his lease with a local authority recently had cause to regret the way in which the lease had been drafted. The case involved a flat which was intended to be let for temporary housing and which was eventually let to a sub-tenant of the local authority for several years. The lease, given to Haringey District Council, omitted a clause which prevented the tenant from acquiring full security of tenure. In order to prevent a tenant acquiring security of tenure, the head lease must contain a provision entitling the lessor to take possession of the premises on the expiry of a stated period or when required by the lessor, so as to comply with the Housing Act 1985.

When the sub-tenant fell into arrears, the Council sought repossession of the property. During the course of those proceedings, it was decided that she had acquired a secure tenancy because the clause in the Housing Act dealing with such leases specifies that a lease does not create a secure tenancy when the terms on which the property has been leased 'include provision for the lessor to obtain vacant possession ... on the expiry of a specified period or when required by the lessor'. The Court of Appeal decided this had to be construed strictly, meaning that the head lease must contain a break clause worded loosely enough to allow the landlord to obtain vacant possession either on the expiry of the lease or when required by him. In this case, the lessor could only require that the property was vacated at the end of the lease and the tenancy therefore qualified as a secure tenancy.

The landlord was therefore left with a sitting tenant - a most unfortunate result given that the property was only intended to be used for temporary housing.

If you need help with this or any other Housing Law issue please email john.murray@emsleys.co.uk or elizabeth.berry@emsleys.co.uk. Both Elizabeth and John can be contacted by phone on **0113 2014900**.

