



Housing Law for
Housing Professionals

Newsletter Summer 2003 Issue No.1

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 is to be sent 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.

John Murray
July 2003

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.

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 estate demolition/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.

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.

The Team

JOHN MURRAY (LLB (HONS) LEEDS)

John was articled in London, and was admitted as a solicitor in 1989. He relocated to West Yorkshire in 1991. He was one of the founder members, and is permanent secretary to the West Yorkshire Housing Law Group, a regional forum of professionals working in the housing law sector.

Nationally he sits on the Law Society's Housing Law Committee as representative of lawyers acting on behalf of RSLs. The Committee monitors and advises the legal profession on all areas relating to residential lettings in the public and private sectors. He has recently drafted the Law Society's response to the Law Commission and DTLR consultation papers relating to Anti Social Behaviour.

He has wide experience of Nuisance litigation for RSLs and Local Authorities.

He has trained a number of RSLs, Local Authorities and others on a wide range of housing law topics.

DANNY RICHARDSON BA (Hons)

Danny graduated in Law in 1981 and has worked continuously in various legal environments since 1982. Admitted in 1995 Danny joined Emsleys from Shepherd Building Group where he had worked as Senior Solicitor. As the largest privately owned building construction and engineering Company in Europe SBG's subsidiary companies included such household names as Portakabin and Shepherd Homes. Before joining Shepherd's Danny spent 12 years working in-house for Home Group Ltd which is one of the largest Housing Associations in the country. Whilst at Home Group Danny assisted the Legal Services Manager in setting up the first in-house legal team within the housing association movement.

Dealing with complex high value development transactions Danny has extensive experience in private finance initiatives, joint venture work and urban regeneration projects and development work for the private housing market.

During his 12 years at Home Group he was responsible for the Association's extensive development programme which involved the acquisition, development and disposal of various types of Low Cost Home Ownership sites including Shared Ownership, Rural Shared Ownership, Improvement for Sale, and Leasehold Schemes for the Elderly, on both a freehold and leasehold basis, including houses, bungalows and flats as well as PF developments.

He has advised extensively on the management of LCHO properties, including Sales On, Staircasing, the application of the Mortgagee Protection Clause, Service Charges and recoverability, Sub-letting and the on-going interpretation of a large number of varied leases. He provides in house training on low cost home ownership procedures and associated housing management issues as well as advice to the private housing sector on overcoming legal problems in development and site assembly issues.

PAUL WIDDUP (MA CANTAB)

Paul was educated at Ermysted's Grammar School, Skipton and at Clare College, Cambridge. He is one of the firm's founding Partners and currently its Managing Partner. He is dedicated to the firm's philosophy of providing quality work and to the value of its services and he has been responsible for many of the firm's quality initiatives including its Investors in People accreditation.

He has considerable experience in commercial property work and, in particular, in site assembly, development and the provision of infrastructure. In addition to his legal qualifications he is also a Legal Associate of the Royal Town Planning Institute.

LUCIE BRYAN BSC (HONS) (SALFORD), DIP H & S

Lucie has the advantage of dual qualification being qualified as both an Environmental Health Officer and a Solicitor. She graduated from University of Salford in 1989 with a degree in Environmental Sciences. In her career as an Environmental Health Officer in local government she worked for Leeds City Council, Selby District Council and York City Council.

She specialised in the housing side of environmental health as a senior local government officer whilst completing part time studies at Leeds Metropolitan University and College of Law, York to obtain a Postgraduate Diploma in Law and Postgraduate Diploma in Legal Practice, respectively. She completed her training contract as a member of the Crossgates Housing Team and was admitted as a solicitor in August 2000. In addition to her legal qualification Lucie is a member of the Chartered Institute of Environmental Health Officers.

She has a wide practical experience of housing matters with particular specialism in the areas of housing law relating to disrepair and anti social behaviour actions.

ALISTAIR MCKINLAY (BA(Hons) BIRMINGHAM)

Alistair graduated from the University of Birmingham in 1993 with a degree in Geography. He then completed the Common Professional Examination and Legal Practice Course at De Montfort University before training as a solicitor with a firm in Wakefield.

He qualified in 1997 and joined Emsleys in January 2000 to deal with a range of property matters, including residential sales and purchases, estate development work and commercial property transactions.

Alistair advises several local development companies in relation to their site acquisitions, infrastructure development and subsequent residential sales.

He also acts for the firm's commercial clients who are acquiring or disposing of businesses and advises on a range of leasehold issues on all property transactions.

JULIANA CAINES (LLB (HONS) WOLVERHAMPTON)

Juliana was also a late convert to the law, having started her career in Social Housing in the 1980s as a Housing Officer with North British Housing Association. Juliana is currently a board member for Northern Counties Housing Association.

JASON BIRCH (LLB HONS) NEWCASTLE

Jason graduated from Newcastle University and is currently a trainee solicitor in our commercial property department.

He is to qualify in January 2004 having already had extensive experience working for National Charities and Registered State Landlords.

In addition to dealing in the acquisitions and disposals of various types of shared ownership and leasehold schemes for the elderly he is currently acting in the plot sales of a recently built shared ownership development.

LIZ STEPHEN (BSc HONS) LONDON SCHOOL OF ECONOMICS

Liz graduated with a degree in Economics and worked as a teacher at St. Peter's School York between 1989 - 1999, where she was Head of Politics, Acting Head of Economics and Business Studies. She is now a trainee solicitor in our commercial property office and will qualify in September 2003.

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