



Housing Law for Housing Professionals

Newsletter Summer 2004 Issue No.3

Welcome to the third edition of Emsleys' quarterly newsletter for Registered Social Landlords.

Comments and suggestions are positively encouraged to ensure that we continue to deliver what our clients need.

John Murray
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CASE LAW

➤ **G v Harrow LBC (2004) High Court**

- The Council applied for an anti social behaviour injunction under s 152 1996 Housing Act against a 13 year old boy who lived with his mother in a Council house where there was a suspended possession order in force for rent arrears.
- Under the 2003 Anti Social Behaviour Act, RSLs will be able to apply under the provisions replacing s 152.
- The Court held that even though the Magistrates' Court could make an Anti Social Behaviour Order (ASBO) against any person aged 10 or over, civil injunctions were not available against a minor.

➤ **R (M) v SoS Constitutional Affairs & Leeds City Council (2004) Court of Appeal**

- The Court reviewed interim ASBO's made under s 1D 1998 Crime & Disorder Act

- The interim ASBO procedure did not involve the determination of civil rights and obligations and so did not raise issues under the Human Rights Act
- The test was simply whether it was just to make the interim order

➤ **R (A)(A Child) v Leeds Magistrates Court & Leeds City Council (2004) High Court**

- Another case on interim ASBO's
- Where the Defendant was a minor the Court had to have regard to the Defendant's best interests as a prime consideration; but it was not the primary consideration.

Further, many of the conditions imposed on the Defendant under the interim ASBO were not contrary to his best interest: for example, a requirement not to engage in criminal activity.

➤ **Newham LBC v Ria (2004) Court of Appeal**

- R, a minor, lived with her mother who was the secure tenant of Newham. On mother's death, her will left her entire estate to R on trust and appointed her sister (-R's aunt) as trustee.
- R was entitled to succeed to the tenancy under the statutory scheme under 1985 Housing Act, but it was unclear who held the tenancy on trust for her until she reached 18
- Held: common-law succession was not suspended by statutory rules on succession, and the tenancy vested in the aunt under the will

➤ **Gibson v Paddington Churches Housing Association (2003) Romford County Court**

- Ms Gibson was housed by PCHA in self-contained temporary accommodation.
- The accommodation was provided on behalf of the Council whilst her homelessness application was investigated.
- PCHA proposed that she be evicted without a Court Order for possession
- The Court held that temporary accommodation of this kind was not covered by the Protection From Eviction Act 1977: eviction without a Court Order was lawful
- The Court of Appeal refused permission to appeal

Comment: this applies to eviction from temporary accommodation provided under the duty to house homeless applicants pending the investigation of the application, whether the occupier has breached the terms of occupancy

before the investigation has finished, or when the investigation results in a negative decision by the Council.

➤ **Harrow LBC v Qazi (2003) House of Lords**

- Where one joint tenant gives Notice to Quit to the landlord, the other has no right to remain in the property and has no defence under the Human Rights Act or domestic landlord and tenant law to a claim for possession by the landlord.

➤ **Newham LBC v Kibata, Bradney v Birmingham CC (2003) Court of Appeal**

- The ruling in Qazi above applies even where the service of Notice to Quit was instigated by the landlord.

➤ **Bowen (and ten others) -v- Bridgend County Council (March 2004)**

A recent case in the High Court has held that Solicitors' firms acting in housing disrepair cases must advise their clients to consider pursuing claims through the Community Legal Service (Legal Aid) scheme, rather than through Conditional Fee Agreements – a decision which will be warmly welcomed amongst Registered Social Landlords.

The growth in US styled CFAs has resulted in an increase in litigation in this country, and whilst initially the market aimed at personal injury litigation, there has recently been a spread into claims against RSLs and Local Authorities for housing disrepair cases. Often tenants are targeted by firms who leaflet estates, a tactic which is not permitted for Legal Aid lawyers, and can lead to raised expectations, and in some cases, false or exaggerated claims. CFAs can also substantially increase legal costs, as solicitors are entitled to claim success fees – increasing the costs often by 100% on the actual hours spent. The success fee in future is likely to be limited to 25%

REPORTS AND GUIDANCE

Homelessness & RSLs

- The ODPM's Briefing on "Housing Associations and Homelessness", September 2003, is a special edition of the briefing produced by the Homelessness Directorate's Bed and Breakfast Unit. It contains useful suggestions and examples of good practice for joint working between RSLs and Councils, particularly in the context of reducing the use of Bed & Breakfast.

Decent Home Standard

- The ODPM has also produced revised guidance on the definition and implementation of the Decent Homes Standard (February 2004), which is the target standard for all social housing by 2010. Copies are available from the ODPM Free Literature Service tel 0870 1226 236: document reference 04HC01937

Cannabis Reclassification

- The National Housing Federation has produced an advice/information note (January 2004) which clarifies the advice that RSLs should give residents, and highlights the difference in the approach of the Police where young people under 18 are found in possession of the drug: "Cannabis Reclassification-Actions for Providers"

Domestic Violence

- Housing Corporation Sector Study 28 (-December 2003) emphasises the need for continued local partnership working, and recommends that "HAs should aim to be part of a clear, comprehensive and seamless framework that responds effectively to domestic violence."

Proposed Legislation

Clause 165 of the **Housing Bill 2004** equalises succession rights under the secure, assured and Rent Act regimes by providing that unmarried heterosexual cohabitantes of the deceased tenant, and same sex partners of the deceased tenant, will have the same succession rights as if they had been the tenant's husband or wife

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Frequently Asked Questions

Email your questions to us for a response
Questions and Responses will be contained in subsequent issues of the Bulletin

Suggestion Box Please email suggestions/comments for future editions to john.murray@emsleys.co.uk