



Housing Law for
Housing Professionals

Newsletter Spring 2005 Issue No.5

Welcome to the fifth edition of Emsleys Housing Law newsletter. In the housing world there has been a lot of attention recently on the 2004 Housing Act, which received Royal Assent on 18 November 2004 and which is being implemented on a phased basis.

However, whilst the 2004 Act changes are important, there has been a flurry of activity in the Court of Appeal and High Court around practical housing management issues such as:

- Housing Benefit and Ground 8 of the assured grounds for possession
- Use of hearsay evidence in anti social behaviour cases
- When nuisance goes beyond the point of no return
- Same sex partners and succession

The latest edition of our newsletter pulls out the main points from these and other cases.

John Murray
February 2005

CASE LAW

Rent Arrears: Ground 8: Housing Benefit adjournments

➤ North British HA v Matthews & 3 other appeals (2004) Court of Appeal

- The Court of Appeal has confirmed that the court does not have the power to adjourn a possession claim brought on Ground 8 of the assured grounds for possession, to allow the tenant time to sort out problems with Housing Benefit, if it is satisfied that the ground is made out.
- The Court would be satisfied that the ground was made out when it had heard from both parties and given judgment; there was therefore nothing

to be gained for the Defendant to try and “get in first” with his/her version of events before the Claimant presented its case.

- The Court’s power to adjourn did not exist to allow the Defendant to change the factual situation to create a defence that was not there at the initial hearing.
- The Court gave examples of situations where it would be reasonable to adjourn for a short period, for example because the tenant was too ill to attend Court, or where the landlord had accepted a last minute cheque that needed time to clear, or where there was a counterclaim.
- The Court urged the Housing Corporation to go beyond its current Regulatory Guidance in circular 07/04, to require

RSLs to liaise with Housing Benefit departments at all stages of the possession process.

Anti Social Behaviour Orders (ASBOs): Naming and Shaming

➤ **R (Stanley, Marshall, Kelly) v Metropolitan Police Commissioner & Brent LBC (2004) High Court**

- The Council obtained ASBOs against various individuals and then published photos of those individuals in its tenants newsletter
- It also distributed leaflets including the photos in the exclusion area identified in the ASBO
- The individuals claimed this breached their human rights and was therefore illegal
- The Court of Appeal held that ASBOs need publicity to operate effectively, and provided that the decision to publish was proportionate and was intended to achieve a legitimate aim, naming and shaming did not breach the individual's human rights; appeal dismissed

Nuisance Possession Proceedings: Reasonableness

➤ **Norwich City Council v Famuyiwa (2004) Court of Appeal:**

- The Council issued nuisance possession proceedings; the trial Judge found that nuisance had occurred but decided that a suspended possession order would be pointless, and an outright order too severe, and so dismissed the whole claim without making a possession order.
- The Council then asked the Judge to grant an injunction forbidding nuisance

behaviour, which he did, to run for a 2 year period.

- The Court of Appeal quashed the Judge's decision. He had not properly considered the conditions that could have been attached to a suspended possession order.

- The Judge in such cases must (1) decide whether there has been nuisance; (2) decide whether it is reasonable to make a possession order, and (3) decide whether it is reasonable to suspend the order or make an outright one. By not fully considering the possible conditions that could be attached to a suspended order the Judge had not properly considered step 2.

➤ **London & Quadrant Housing Trust v Root (2004) Court of Appeal:**

- Ms R's partner Mr B was running a car repair and scrapping business from the property, which was in a small development; he regularly threatened to use violence against anyone who complained; the Housing Trust issued possession proceedings against Ms R, the tenant, and obtained an interim ASBO against Mr B, which excluded him from the housing scheme and surrounding locality.

- At trial the Court made an outright possession order; even though Mr B was excluded from the area by the ASBO, Ms R was refusing to provide access for the landlord to inspect the property, and the garden of the property was littered with spare parts and debris. Housing Officers could only make visits to the scheme in safety because of the ASBO.

- The neighbours were so afraid of reprisals that they would not give evidence voluntarily and had to be witness summonsed to Court; however the Judge decided the claim on the evidence of the landlord's nuisance officer, photographic evidence and the evidence of the tenant and her partner.

- The Court of Appeal refused to interfere with the trial Judge's decision to make an outright order, as this was a case where the shadow of the past was too heavy upon the present (borrowing a key phrase from the judgement in *Lambeth LBC v Howard* (2003), a key Court of Appeal nuisance possession case: the situation had gone past the point of no return, and there was ongoing breach of tenancy by Ms R which was not covered by the ASBO.

Nuisance Possession: Hearsay Evidence

➤ **Solon Housing v James (2004) Court of Appeal:**

- The Court made an outright order for possession having heard some evidence from "live" witnesses including the tenants, but having then admitted hearsay evidence in the form of statements from Police Officers and others about complaints that had been made to them by residents who were too afraid to give direct evidence.
- The Judge's approach was to decide who he believed on the "live" evidence, and then to see whether the hearsay evidence was consistent with the live evidence that he did believe. He believed the landlord's "live" evidence in preference to the evidence on oath from the tenants, and decided that the hearsay from the Police Officers was consistent with the landlord's other evidence
- The Court of Appeal held that the Judge had approached the case in the right way and dismissed the tenant's appeal.
- The Court of Appeal stated that fear of reprisals was a good reason why landlords might want to use hearsay evidence; it was up to the trial Judge to decide how much weight to attach

to that evidence, and up to the Defendant to apply to the Court for an order to make the witnesses to attend. In this case, there had been no such application from the Defendant.

- The argument that the Judge at trial had given too little weight to a recent improvement in behaviour was also rejected; this had to be balanced against the tenant's continuing denial of any wrongdoing, and the serious nature of the behaviour that the Court found proven.
- Once again the Court of Appeal referred back to its decision in *Lambeth LBC v Howard* (2003), where "the shadow of the past" was "too heavy upon the present."

Assured Shorthold Tenancies: s 21 Notices

➤ **Adamson v Mather (2004) Harrogate County Court:**

- The landlord served a notice requiring possession under s.21(4) on "15 August 2004 [or after the date being the earliest date not earlier than two months after the date of service of this notice when shall expire a period of the assured shorthold tenancy]". The notice did not contain a reference to section 21.
- Section 21(4) expressly requires the notice to state that "possession of the dwelling-house is required by virtue of this section".
- District Judge Wood held that in failing to state on its face that possession was sought as a result of section 21, the notice was defective. The claim for possession was dismissed.

➤ **Mark Nutting v Southern Housing Group (2004) High Court**

- Mr N's claim to succeed to an assured tenancy on the death of the tenant failed,

even though he had been having a relationship with the tenant.

- The High Court held that the same sex partner of a deceased tenant could not succeed to the tenancy unless he/she could prove that they were living together as husband and wife; without a lifetime commitment at least at some point in the relationship there was no sufficient similarity to marriage.
- The relationship must also be openly and unequivocally displayed to the

outside world to give rise to a right to succeed to the tenancy

- On the facts that degree of commitment and permanence was not proven; indeed the tenant had been transferred to the premises in dispute shortly before his death to get away from Mr N

Note that the clause in the 2004 Housing Bill that equalised the succession rights of married couples and all cohabiting couples has now been moved into the Civil

Housing Act 2004

As noted earlier, the Act received Royal Assent on 18 November 2004. The rent to mortgage scheme was closed on that date, but further changes came into force on 18 January 2005, including

- Changes to the right to buy on secure tenancies starting on/after 18 January 2005;
- RSLs becoming bodies to whom information can be disclosed under s 115 1998 Crime & Disorder Act
- New definition of house in multiple occupation

Other changes including

- New ground for refusing consent to mutual exchange: anti social behaviour proceedings
- Extension of length of introductory tenancy trial period to 18 months in individual cases
- Licensing of houses in multiple occupation

Will come into force on dates still to be announced

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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