

## Introduction

Welcome to issue 7 of Emsleys Housing Law newsletter for RSLs; the focus this issue is around possession proceedings, with an emphasis on rent possession

RSLs are a strange legal animal; so far the Courts have decided that the traditional remedy of judicial review, deployed regularly against Local Authorities, is not available against RSLs, and there are many situations where the Human Rights Act is not applicable, or makes little difference.

Regulation of Registered Social Landlords is achieved largely through the Regulatory Guidance issued by the Housing Corporation, and Circular 07/04 in particular is essential reading for all those practicing in this area.

However, apart from forming the basis of a complaint under an individual complaints mechanism, or to the Housing Ombudsman, what legal challenge ( if any) can be built on a breach of the Regulatory Guidance?

**John Murray**  
**November 2005**

## CASE LAW

### Evictions and Regulatory Guidance

➤ **Circle 33 Housing Trust v Desmond Ellis (2005) Court of Appeal 23 September 2005.**

- Mr Ellis had an assured tenancy that was expressed to take effect subject to Regulatory Guidance issued by the Housing Corporation.
- His Housing Benefit was cancelled and the landlord took no steps to find out why this had happened; possession proceedings were issued because of the arrears.
- At the point of eviction his housing officer told him that if he could get Housing Benefit to cover all the arrears, the landlord would give him a new tenancy.
- The High Court set aside the possession warrant on the basis that the trust had not followed regulatory circular 07/04 para 3.1.1 in that it had not made “every effort to establish effective ongoing liaison” with Housing Benefits.
- The Trust appealed to the Court of Appeal and won. A failure to follow the Regulatory Circular did not amount to oppression; the landlord was not to be expected to do more than it had done.

- Although a full report of the judgment is still awaited, the decision is a major reassurance for RSLs.

### **Evictions and The Disability Discrimination Act (DDA)**

In issues 1 & 4 we have highlighted the relevance of the DDA to nuisance possession claims where the nuisance is caused by a medical condition in the tenant recognised as a “disability”.

At the end of its lengthy judgment in **Manchester City Council v Romano & Samari** (issue 4) the Court of Appeal raised the possibility of a tenant who was being evicted for rent arrears, arguing that as for example mental health problems had led to the arrears accruing, the DDA was engaged and it was therefore only lawful to evict if it was necessary to do so, so as not to endanger the health and safety of the disabled person or someone else—something which would be impossible to prove in many arrears cases.

#### ➤ **Liverpool City Council v Slavin** **Liverpool County Court 29 April 2005**

- S was a secure tenant of the council. She breached a suspended possession order made on the basis of rent arrears of almost £3,000.00. She failed to renew her housing benefit claim and the arrears continued to increase. The council obtained a bailiff’s warrant and an application was made to suspend the warrant of possession
- S had suffered from depression for many years and obtained expert psychiatric evidence, which confirmed she was disabled within the meaning of the DDA and that this meant she was unable to adequately conduct her rent account/Housing Benefit claim.
- The district judge decided that it would be unlawful under the DDA 1995 to evict S. The decision to evict was not justified, since eviction was not

necessary in order not to endanger the health or safety of any person. The council’s argument that it had not acted unlawfully because it did not know that S suffered from a disability was rejected. The warrant was suspended on the basis that S would pay current rent plus £2.85 per week off the arrears.

### **Notice Seeking Possession on Ground 8**

#### ➤ **Equity Housing Group v Boshir (2005)** **Stockport County Court 6 January 2005.**

- A notice under Ground 8 contained most of the wording of the ground for possession as set out in Schedule 2 1988 Housing Act, but omitted the words “ and rent means rent lawfully due from the tenant”
- The District Judge held that the notice was invalid as a result; that the Court did not have the power to allow the claim on ground 8 to proceed on the basis that it was just and equitable to do so; and so the ground 8 claim was dismissed.

### **Notices Seeking Possession Can Only be Relied on Once**

#### ➤ **Shaftesbury HA v Rickards (2005)** **Cheltenham County Court 21 June 2005.**

- A Notice Seeking Possession (NSP) under s 8 1988 Housing Act was served on the tenant on the grounds of rent arrears on 28 June 2004; proceedings were issued on the grounds of rent arrears.
- The tenant paid off the arrears before the hearing; no possession order was made, but the landlord obtained a money judgment for half the costs.
- The tenant then got into arrears again and a second set of proceedings were issued relying on the same NSP, which were heard on 21 June 2005.
- The District Judge held that the same notice could not be relied on in 2 sets of

proceedings, but (pragmatically) adjourned the claim rather than striking it out.

### **Tolerated Trespass and New Tenancies: The Saga Continues**

Once a suspended possession order has been breached or the date for possession under an outright possession order has passed, an assured/assured shorthold/secure tenant becomes a tolerated trespasser. The Court of Appeal has looked at what behavior by the landlord can lead to the creation of a new tenancy (as opposed to the revival of the old one, where that possible). In Issue 6 we reported on the case of **Newham LBC v Hawkins**; the Court of Appeal has since revisited this issue.

### ➤ **Lambeth LBC v O’Kane, Helena Housing v Pinder & other cases (2005) Court of Appeal**

- Alleged “Landlordly behavior” will only lead to the creation of a new tenancy if it “forces the conclusion” that there is a new relationship of landlord and tenant between the parties; it is not enough for the occupier to argue that the behavior in question is consistent with there being a new tenancy (eg doing repairs; sending out letters referring to “rent”).
- It is becoming increasingly important to look at the detailed wording of the possession order made in a particular case, especially the wording of suspended possession orders, when considering whether or not an occupier is a tolerated trespasser or a new tenant. If in doubt please contact us for advice.

## Housing Possession Claims under the Civil Procedure Rules: Updates

As a result of rule changes, claims for possession based on rent arrears issued on or after 1 October 2005 must be accompanied by a rent arrears schedule that goes back 2 years from the date of issue of the claim, or to the date on which the arrears first arose if more recent.

If a landlord wishes to rely on a history of arrears that goes back further than 2 years, that must be stated in the particulars of claim and the full schedule exhibited to a witness statement.

Comment: this requirement is likely to be the subject of some local variation from Court to Court

Standard form N5 claim forms for possession and particulars of claim N119 have been amended with effect from August 2005.

From 1 October 2005, the Civil Procedure Rules provide for the issue of possession claims online; for more details of the availability of this service please contact our Housing Team.

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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](mailto:john.murray@emsleys.co.uk)