

Introduction

Welcome to issue 8 of Emsleys Housing Law Newsletter, in which we concentrate on issues arising from possession proceedings, and the new framework for Local Authority action on housing standards.

John Murray
July 2006

CASE LAW

Rent Arrears and Bankruptcy; the effect of a suspended possession order

➤ Harlow DC v Hall (2006) Court of Appeal.

- On 12 January 2005 the County Court made a suspended possession order against Mr. Hall, a secure tenant of the Council. The order was in the standard form N28, requiring him to give possession on or before 9 February 2005, but suspending enforcement whilst current rent and arrears payments were made.
- On 10 February 2005 the County Court made a bankruptcy order in relation to Mr Hall; he argued that under the Insolvency Act, the Council was then prevented from enforcing the suspended possession order, as that would be a remedy against the property of the bankrupt in relation to a debt that was provable in the bankruptcy.
- The Court held that the possession order was worded in such a way that his tenancy came to an end on 9 February

2005. Therefore, as he had no tenancy from that date onwards, attempts to enforce the possession order did not breach insolvency law.

➤ Bristol CC v Hassan (2006) Court of Appeal

- The Court does not have to specify a date for possession in a possession order; the Court can award possession to the landlord but postpone the date on which possession is to be given by the tenant to a date to be fixed by the Court, upon application from the landlord. Such an application would only be possible under an Hassan order if conditions set by the Court were breached.

Comment

The Hall decision concerns the effect of a standard form possession order on a Local Authority secure tenancy. It undoubtedly applies to RSL secure tenancies as well. The type of order (N28) involved has been in use for several years.

However the case has re-opened the debate about whether an assured tenant can become a tolerated trespasser.

Following Hall, District Judges have been given interim guidance about how to word possession orders so that a secure tenant will only lose his/her tenancy if the conditions upon which possession has been suspended are breached. Some of those District Judges have stated that they do not feel the need to make amended orders in cases involving assured tenants as, in their view, tolerated trespass does not apply to assured tenants.

In consequence of the Hassan case, with effect from 3 July 2006, the Courts will be using an amended form of possession order (N28A) in relation to secure tenancies, called a postponed possession order. This order does not specify a date for possession at all but allows the landlord to apply for a date for possession of conditions set by the Court are breached. The Practice Direction issued by the Court Service only refers to this type of order being used in secure tenancy cases.

As is apparent in the case of **New Progress Housing Trust v Slater** (-see below), some District Judges do apply at least part of the tolerated trespass analysis to assured tenants however.

The situation is not helped by there being no definitive ruling on the point from the Court of Appeal, which is necessary as there are differences between the 1985 Housing Act which governs secure tenancies, and the 1988 Housing Act in relation to assured tenancies.

RSLs who are concerned about the impact of Hall, or the applicability of tolerated trespass to assured tenants, should contact Emsleys Housing Law team for further advice.

➤ **New Progress HA v Slater (2005) Manchester County Court 15 September 2005**

- Ms S started off as a secure tenant of the Local Authority but then the stock was transferred to New Progress HA.
- New Progress obtained a suspended possession order against her in 1997, which probably said that the order would cease to be enforceable once the arrears and costs were cleared. However no-one could find a copy of that order.
- Ms S paid off the arrears and costs in 2001, then signed a new tenancy agreement in 2002

The Court held that because of the probable wording of the possession order, she was unable to apply to Court to discharge it under s 9(4) 1988 Housing Act, and that in any event, by signing the new agreement she had given up any rights that could be traced back to the original tenancy or possession order.

Tenancy by Deception

➤ **Islington LBC v Uckac & Another (2006) Court of Appeal**

- Ground 5 of the secure grounds for possession is only available where the defendant from whom possession is sought is the person to whom the tenancy was originally granted.
- It was not available in this case as the tenancy had been assigned by the original tenant, even if the person to whom the tenancy was assigned was party to the original deception which led to the tenancy being granted to the original tenant.

- There was no framework outside the Housing Act that could allow the landlord to treat the tenancy as being withdrawn because of a false statement.

However, the Court of Appeal allowed the Council to amend its particulars of claim. The Council wished to put forward an argument that the tenancy was null and void because the tenancy was only granted in the first place because the Council had accepted that it owed a full homeless rehousing duty towards the household; and that the homeless decision was itself void because it was induced by fraud or at least a fundamental mistake of fact. Recent case-law in the High Court has extended the circumstances in which a homelessness decision can be withdrawn

The Court has not yet decided upon the amended claim for possession.

Comment:

Ground 17 of the assured grounds for possession is worded in identical terms to Ground 5 of the secure grounds for possession

Housing Benefit: Temporary Absence

➤ **SoS for Work and Pensions v Selby DC (2006) Court of Appeal**

- Mr B was in rented accommodation on Housing Benefit; he was also in frail health and went into residential care in Leeds on a trial basis to see if it was suitable.
- After about a month he decided that it was suitable and through relatives informed the Council of this, and gave 4 weeks notice on his rented accommodation.

The Court held that the Housing Benefit rules created a special framework for those going into care on a trial basis, and that as a result the tenant's entitlement to Housing Benefit ran for 13 weeks from the date of going into care, even if he decided part-way through that 13 week period that he wasn't returning home. He was therefore entitled to Housing Benefit to the date the termination notice expired

Comment:

Different rules apply to Housing Benefit entitlement for other types of temporary absence, so that if the claimant no longer intends to return home part-way through a period of absence, entitlement to Housing Benefit would cease.

Noise in Flats

➤ **R (Vella) v Lambeth LBC (2005) High Court**

- Mr V was an RSL tenant who lived in a building converted into 6 flats; he said that the sound insulation was inadequate, because he could hear everyday household noises from the flat upstairs and from the common parts of the building.
- He asked the Council to take action against the RSL under 1990 Environmental Protection Act on the basis that the noise made the premises prejudicial to health or a statutory nuisance; the Council declined to act

Held: a simple lack of sound insulation could not make a property prejudicial to health; the resource implications of reaching a decision in Mr V's favour were immense

Comment:

The 1990 Environmental Protection Act specifically excludes traffic noise from the scope of statutory nuisance; however, it

appears that both traffic noise and poor sound insulation could be considered

under the Housing Health and Safety Rating System (see below).

Civil Procedure

In relation to claims issued on or after 6 April 2006:

- Claimants (and Defendants) must include postcodes for any address supplied to the Court;
- There are new Defence forms (-both in relation to mainstream possession and the accelerated procedure under s 21 1988 Housing Act);

The Civil Procedure Rules governing appeals have also been amended from 6 April 2006; the most significant change is that the rules now allow a party to bring an appeal within 21 days rather than 14; this period can be lengthened or shortened by the Court.

Housing Conditions: New Statutory Provisions: HHSRS

From 6 April 2006 the Housing Health and Safety Rating System (HHSRS) replaced the Housing Act 1985 Fitness for Human Habitation standard.

The HHSRS applies to all rented accommodation, whether occupied by a single household or multi-occupied, and it involves the Local Authority assessing the property against a list of up to 29 hazards, and calculating a points score for each hazard taking into account the risk of harm or injury, and the severity of any harm that might result.

Local Authorities must take some enforcement action in relation to any hazard that has a points score of 1000 or more (-a "Category 1 Hazard"), and has a discretion in relation to others ("Category 2 Hazards")

Major issues for RSLs include:

- The range of hazards is very wide, and covers issues like excess cold, and risks of falling, which have traditionally been outside the scope of Council enforcement action; it may also cover some types of noise nuisance which would otherwise not be actionable.
- The points score for many hazards is calculated with reference to the risks to the most vulnerable type of occupier for that hazard rather than the actual occupier
- The Council can therefore take action under HHSRS even on empty properties

- There are many hazards where the Council only has a power, and not a duty, to take action
- The Council still has a choice about whether initial action will be formal or informal
- The Council must give reasons for any action it takes

Enforcement options for Category 1 hazards include

- Hazard Awareness Notice - alerting the landlord to the hazard, to the works that need doing, but setting no timescales for the work, and creating no criminal liability for failure to comply;
- Improvement Notices (-similar to notices under the 1985 Housing Act), and
- Prohibition Orders (-prohibiting the use of all or part of premises until the hazard is dealt with; if it is necessary to obtain possession in order to comply with a Prohibition Order, nothing in the Housing Act 1988 will prevent possession being awarded in the County Court.)

Housing Conditions: New Statutory Provisions: Houses in Multiple Occupation

A new definition of House in Multiple Occupation (HMO) applies from 6 April 2006, along with a range of new Local Authority powers and duties, including compulsory licensing of larger HMOs and new management order rules.

However, multi-occupied buildings managed or controlled by RSLs are exempt from the definition of HMO and are therefore exempt from licensing/management orders

Civil Partnerships

The Civil Partnership Act came into force on 5th December 2005 and has amended Housing legislation such as the 1988 Housing Act.

Succession

In general, the rights of same sex couples to succeed to a tenancy which was in a partner's sole name are put on an equal footing with those of heterosexual couples, so for, assured and assured shorthold tenancies for example, surviving civil partners and those living together as if they were civil partners are entitled to succeed to the tenancy upon the death of the tenant.

Assignment

The new legislation does not alter the position re assignment of an assured or assured shorthold tenancy, as the Housing Act 1988 seeks to control such assignments by way of requiring consent from the landlord.

In relation to secure tenancies the legal framework is altered; there is a right to assign to a person who would qualify as a successor if the tenant died (s.91, Housing Act 1985). Therefore, secure tenancies can be assigned to civil partners and those living together as civil partners provided they have cohabited for a minimum of 12 months. The secure

tenancy can also be assigned by the court via a property adjustment order in the course of civil partnership proceedings. This does not count as a succession for the purposes of the right to succeed.

Housing Benefit/Other Benefits

In respect of housing benefit and council tax benefit, civil partners and those living together as civil partners are treated in the same way as spouses and heterosexual cohabitants. As such, only one of them can claim HB and CTB and the resources and needs of the other are taken into account when determining eligibility.

Civil partners and those living together as if they were civil partners are jointly and severally liable for payment of council tax on a property they share (as is the case for spouses and cohabitants).

CONTACTING THE TEAMS

Property Law Team – Rothwell

Viscount Court, Leeds Road, Rothwell Leeds LS26 0JH
Tel: 0113 201 4900
Fax: 0113 201 4901

Alistair McKinlay

Secretary: Alison Dealey
alistair.mckinlay@emsleys.co.uk

Steph Leaver

Secretary: Marella Wood
steph.leaver@emsleys.co.uk

Housing Litigation Team – Crossgates

35 Austhorpe Road, Crossgates, Leeds LS15 8BA
Tel: 0113 260 3115
Fax: 0113 260 6693

John Murray

Secretary: Maureen Chapman
john.murray@emsleys.co.uk

David Higgins

Secretary: Heather Grange
david.higgins@emsleys.co.uk

Juliana Caines

Secretary: Sue Jones
juliana.caines@emsleys.co.uk

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