

Important news for social landlords and their tenants

Permission is required to obtain a warrant to enforce a suspended possession order effect of *Cardiff CC v Lee* (19.10.16)

It is important to follow the correct procedure when taking possession proceedings of a residential property. If the correct procedure is not followed the tenant/occupant of the property could have a technical defence to the proceedings so that the proceedings are dismissed or delayed. Any delay will increase legal and other costs.

Technical defences require a sharp eye for detail and a sound knowledge of the legal requirements. As the court often (but not always) has discretion as to whether to remedy the breach, technical points are not always argued. However for some, the additional time or some other benefit that they may gain by running a technical defence may mean that it is worth raising the point and arguing it strongly.

The case of [Cardiff County Council v Lee \[2016\] EWCA Civ 1034](#) is an example of where such a technical point was raised in litigation to defend a tenant from being evicted from their home. The Court of Appeal decided the point on 19 October 2016.

Whilst the warrant was ultimately allowed to stand in this case, the defence resulted in a considerable delay in possession being given to the landlord and substantial costs being incurred. If the correct procedure had been followed, such costs and delay could have been avoided.

Legal arguments

The landlord had obtained a suspended possession order (SPO) against the tenant after they had been found to have breached their tenancy agreement for acts of anti-social behaviour. By granting an SPO, the landlord could not obtain a warrant unless or until the tenant breached the terms of the order, in this case by committing further acts of anti-social behaviour. The landlord determined that such further acts were committed and applied for a warrant of eviction using an N325 court form. This form does not require evidence of the breach to be put before the court and is dealt with by the court as a purely administrative matter so that a warrant is obtained without any judicial involvement.

The tenant argued that Rule 83.2 of the Civil Procedure Rules had been breached as permission was required after a change in the rules that came into force in 2014. The application by the landlord for the warrant did not request or obtain such permission. Before the Court of Appeal it was accepted by both parties that permission was required, but the Court was asked to decide whether or not the Court had the power to allow the warrant to stand notwithstanding that permission had not been given in advance.

The Court decided that whilst there had been a procedural error, the error could be remedied by the Court under its wide ranging powers under CPR 3.10. The warrant is thus 'voidable and not void'. This would appear to suggest that any tenants evicted under an improperly obtained warrant have not been unlawfully evicted per se. Any chance such tenants could challenge the claim was further undermined by the Court confirming that in the present case

'a genuine mistake was made' when applying for the warrant without permission. It would be difficult to see a court deciding differently for any warrant obtained before their decision in this case. A genuine mistake would safeguard against claim of either oppression or abuse of process by the landlord when applying for a warrant.

However, the Court of Appeal underlined the importance of landlords following the correct procedure in future. The Court warned:

In this case, a genuine mistake was made but if the landlord could not show that it had made a genuine mistake in its error of procedure or that it knew that it was not entitled to proceed in this way and of course if it knew that it was not entitled to possession, then the outcome of the case would have been very different. Subject of course to considering any application on its merits there seems to me that there would be no question of the court validating the warrant. Indeed the court might well have imposed a costs sanction on the landlord whether or not it was prepared to dispense with the application for permission. I reiterate that CPR 83.2 constitutes an important protection for tenants. It is not to be taken lightly. Social landlords must ensure that from now on their systems are such that the same mistake will not be made in future.

What does this mean for landlords and tenants?

The decision will result in a significant change in procedure in all cases where a suspended, rather than an outright, possession order is obtained. The landlord will have to have proper evidence of the breach which can be placed before the court to show that the warrant is justified.

It could potentially impact tens of thousands of tenants. Landlords will need to ensure that this is not a mistake that is repeated and it is very likely that tenants will have good prospects of getting a warrant either adjourned or suspended until landlords have an opportunity to resolve the problem by making new applications, with the necessary permission, to resolve the problem. It will be most beneficial to those tenants who, having breached need to get extra time to resolve the breach, for example arrears caused by a housing benefit problem, as this case could give them just enough time to resolve that matter.

If a warrant has not been applied for in the correct way then the court has said that cost orders against landlords are likely and that warrants may be suspended until the issue is resolved. However, once the court has considered whether a breach took place, which it can do at the same hearing as an application to suspend the warrant, the procedural problems can effectively be remedied. That means that whilst this might delay eviction, it will not necessarily prevent it. This will reassure landlords who might face additional warrant suspension applications in the coming weeks as it means that a tenant who has breached the terms of an SPO may not be in a significantly stronger position than usual.

Given the clear guidance laid down by the Court of Appeal it will surely be incumbent upon Courts to amend their forms and signpost landlords to the correct form to use where an SPO has allegedly been breached. However, it is unclear how quickly the Court will do this.

Landlords, especially Housing Associations or other Registered Social Landlords: If you have obtained an SPO against your tenant and want advice on what evidence to provide when applying for a warrant, contact our [housing and property litigation team](#).

Tenants: if you are facing eviction after your landlord claims that you have breached the terms of a suspended possession order, contact our [housing and property litigation team](#) for advice.

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