

## **Keep a Close Eye on your Tenants**

This article focuses on practical tips for landlords, surveyors and lawyers when considering a claim for possession.

There have been no new Rent Act tenancies since 1989. It is conceivable that a Rent Act tenancy could be continuing on terms that are exactly the same as those originally granted, including rent. The tenancy could then be terminated only in accordance with the terms of that tenancy (and the Rent Act 1977).

In practice, however, this is rare. The initial contractual tenancy is often likely to have become a statutory tenancy following the expiry of the original term, and sometimes following the landlord securing a rent review by rent registration under the 1977 Act.

A landlord that is seeking to terminate the occupation of a statutory tenant is not technically obliged to serve a notice to quit before bringing possession proceedings (subject to the Rent Act requirements considered below). However, unless there is a compelling reason not to do so, it is probably best practice to serve such a notice.

### **Grounds for possession**

There are discretionary and mandatory grounds (or cases) for possession.

The mandatory grounds are mainly concerned with situations where notice was given at the outset of the tenancy that possession would be required at a later date. They are rarely available today.

The main discretionary grounds relied upon are the usual situations of tenant default (rent arrears (case 1), nuisance (case 2), disrepair (case 3)) and where the landlord seeks possession for an employee (case 8) or for himself or a member of his family (case 9).

In discretionary cases, the court must be satisfied that the ground is established and that it is reasonable to make the order. The courts can consider the needs of the landlord and tenant, the parties' conduct, both before and during the proceedings, and the respective lengths of occupation or ownership of the property in question.

Quite frequently, it is clear that the reasonableness requirement has been established, but this should not be taken for granted.

## **Suitable alternative accommodation**

The reasonableness requirement is required to establish another possession ground, namely that suitable alternative accommodation is available.

Formerly, a landlord might have asked the local housing authority for a certificate that it (the authority) would provide alternative accommodation, such certificates constituting "conclusive evidence". These are now rare.

The Act suggests that "suitability" should be considered by reference to whether the tenant would have "reasonably equivalent" security under the new arrangement. The court should also take account of where the tenant and/or his family works, the rent and the extent and character of the property. In fact, in the case of *Whitehouse v Lee*, the Court of Appeal held that a court should look at the impact on both a landlord and a tenant of making or not making an order for possession.

The alternative accommodation does not have to be offered by the landlord. A frequent example of alternative accommodation is other property that is owned or occupied by tenants themselves. Rent Act-protected premises do not have to be the only premises occupied by the tenant they merely have to be his or her main residence. A second home is therefore permitted.

A tenant may occupy two properties for legitimate reasons he may need to do so because of work commitments or because it is temporarily necessary to look after an ill relative. However, not all arrangements are so innocent.

If a statutory tenant ceases to occupy rented property as his only or main residence, Rent Act protection is lost. Nevertheless, it is not uncommon for Rent Act tenants to take the risk of subletting their protected property, often at a higher rent than their own, while living in another property that they might own or rent.

## **Establishing true residence**

Statutory tenants who decide to move out of and/or sublet their properties often maintain an apparent connection with the property.

For example, a tenant might keep his name on the electoral register for the property or will ensure that the utility bills for the property remain in his name. The landlord may often perceive this to be a difficult evidential obstacle, but, in practice, the landlord should not find it difficult to overcome.

First, an enquiry agent can make discreet investigations in the neighbourhood of the property neighbours can be surprisingly helpful. Further enquiries will frequently reveal whether the tenant owns or lives in another property. An inspection of the property will also provide information on occupational arrangements.

The landlord must then confront the tenant. If the tenant has a legitimate reason for a temporary absence, or is in a "two-homes" position, the situation should be easily explained. However, if the tenant's answer is less than satisfactory, a well-advised landlord should continue to press the tenant for evidence.

When asked, most people could provide copious information on where they live, either documentary or by way of statements from friends, family and neighbours. "Where do you live?" should be one of the most straightforward questions anyone is required to answer.

Any hint of evasion or inconsistency is likely to justify a landlord's suspicions. The value to a landlord in recovering possession of a Rent Act-protected property means that a careful evidence-gathering exercise is often a worthwhile investment.

### **Tips for landlords and their advisers**

- There is no substitute for regular and substantial contact with the tenant to establish that all is normal at the property.
- If the terms of the tenancy have been breached, a right to possession is not automatic among other things, the court is entitled to consider the behaviour of the parties.
- Any sign or suspicion that a tenant has moved out of the property should not be ignored. Enquiries will often provide helpful evidence.
- Evidence from the tenant should be considered critically. The tenant should be asked to explain inconsistencies or gaps.

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