Zenith Chambers

Housing Law Newsletter

Summer 2007

Members of the Housing Team:

- **Christopher Dodd**
- **Sarah Greenan**
- **William Hanbury**
- **John Holroyd**
- **Simon Read**
- **Phillip Barber**
- **Justin Crossley**
- **Anesh Pema**
- **Tom Tyson**
- **Andrew Wilson**
- **Helen Greatorex**
- **Nicola Phillipson**
- **Kate Hunter-Gordon**
- **Vilma Vodanovic**
- **Michele Stuart-Lofthouse**

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Editorial

Welcome to the June 2007 edition of Zenith Chambers' Housing Law Newsletter.

It has been some time since the last edition of the Newsletter and we have decided to release this edition to coincide with our Housing Law seminar in Leeds Crown Plaza on 28 June 2007 at 5.30. Bill Hanbury will be giving an update on disrepair and I will be giving an update on homelessness. We hope as many of you as possible will be able to join us. The event has 1 ½ CPD points available.

As some of you will be aware, I have joined the Housing Team from Harehills & Chapeltown Law Centre in January this year, where I was managing solicitor. I have taken on the mantle as editor of this newsletter whilst Nikki Phillipson is away on maternity leave. I am very grateful to the housing practitioners at Zenith for allowing me to join their very strong team.

The major theme of this newsletter is disrepair and homelessness to coincide with the seminar. I have, however chosen to use the editorial slot to take a closer look at tolerance work under the General Civil Contract, an area which most of you will be familiar with.

Are you franchised in Civil Law but no contract in Housing?

According to the Legal Services Commission, there are 42 Civil Contracts in housing currently held by solicitors and Not for Profit (NfP) organisations in the Yorkshire and Humberside region, serving a population of over 5 million. There is therefore one housing law provider for each 121,000 head of population in the region. During the last financial year (to February 07) 5863 housing legal help matters were started of which 276 were conducted under tolerance. It is hard to believe that only one in every thousand people had a housing problem which required the assistance of a specialist adviser or solicitor. Especially given that a sizeable proportion of the local population live in rented accommodation, is homeless or poorly housed.

This pitifully low number of cases is almost certainly due to an inability of a significant number of people to access specialist help in the housing category of law. It is also worth noting that nearly 5 out of every 100 cases in housing were dealt with under tolerance. The case for tolerance work in housing is in our view very strong.

What is tolerance work?

Unlike family, immigration, mental health or clinical negligence, organisations with a General Civil Contract can carry out tolerance work in housing law. Currently up to 10% of your contract work can be carried out in housing and many firms already conduct housing work under tolerance. Tolerance is a good way to build up expertise in housing and should your firm identify a local need for housing advice and wish to undertake tolerance and perhaps aim towards becoming a specialist, then members of the housing team at Zenith would be more than willing to discuss training, consultancy and referral with you.

Housing work sits well with family work and complements debt and welfare benefits. It is true to say that many clients with a family problem also have a housing, debt and welfare benefits problem and in our view, the best service would be a holistic service dealing with all of their problems under separate but related legal helps and civil certificates. In this way clients are kept in house and profit costs are maximised. Undertaking legal help cases in housing is also a very good way of gaining some understanding in this area of law and legal help cases may lead on to the more complex certificated casework in disrepair, possession proceedings and judicial review, etc. In all of these areas the housing team at Zenith Chambers are competent to be instructed and would be able to provide on-going support.

Specialist Quality Mark Standard

Appendix 4D of issue 1.1 of the Specialist Quality Mark Standard provides additional

Chris Dodd

"ALMOs cannot be granted blanket rights of audience by the courts; although their officers can be granted rights on a case by case basis."

Editorial (Continued)

guidance on carrying out tolerance work. It is clear that the work must be carried out to the same standard as all other work undertaken but there is no requirement that the supervisory standards for housing work are met. The suggestions in the guidance include the identification of housing as a nominated area for tolerance work; whether new cases or cases for existing clients will be taken on; who will be undertaking this work and what the experience of staff members is. Finally tolerance work should be included in the file review process and there is specific guidance on how best to achieve this.

Conclusion

We believe that the provision of advice and legal services in housing law is of fundamental importance in the region. As housing becomes more unaffordable for the average person to buy there is a growing population of the homeless, threatened with homelessness and poorly housed who require good quality and accessible advice and legal representation. In the absence of sufficient contract holders able to provide this advice the only means for doing so is through the use of tolerance work.

Zenith Chambers Housing Team provides a range of training, consultancy and advocacy services and should you decide to undertake work under tolerance then please feel free to contact a member to discuss the case should that become necessary.

Phillip Barber

No More Rights of Audience for ALMO Representatives?

On 01/11/06, Lord Justice Neuberger issued some new guidance to County Court judges about the rights of audience that should be accorded to ALMO employees and/or managing agents. Before ALMOs existed, these applications would have been carried out by local authority housing officers or in-house solicitors. ALMO officers, unless separately legally qualified, do not have rights of audience because they are not authorised local authority officers under s.60 of the County Courts Act 1984.

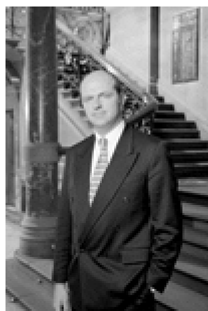
Different courts had been adopting different approaches, with some refusing to grant ALMO employees any rights of audience, and others adopting more pragmatic responses. One Court in London had refused to grant blanket permission to ALMO employees on the basis that it would be wrong to make such a policy decision with wide-ranging ramifications. Neuberger LJ agreed with this approach: and stated that any ALMO employees who seek a right of audience do so as lay representatives, much like "McKenzie Friends".

He reviewed the case-law, which frankly presents a problem for ALM0s, which seek the grant of such rights on a routine basis when authority indicates that leave should only be given exceptionally. An ALMO's parent authority had chosen to divest itself of direct responsibility for housing matters – which would undermine the case for exceptional circumstances.

He concluded that ALMOs' employees cannot lawfully be granted blanket rights of audience by the Courts; although their officers can be granted rights of audience on an individual case-by-case basis. But the grant of such rights is governed by the general authorities on the exercise of the discretion under s.27 of the Courts and Legal Services Act. "Exceptional circumstances" are needed to justify granting such rights of audience: that means what it says, and so generally such applications should be refused.

In different areas of the country, the guidance is being honoured more in the breach than the observance, but those advising ALMOs or appearing against ALMOs (some areas have them; some don't) need to be fully aware of it. It is hard to see why a Court should be unsympathetic to an ALMO where, for instance, the housing or rent recovery officer is the only person who can get along to a last-minute warrant suspension application. But in more routine matters, one would expect the ALMO to be represented by a qualified person, and if not, tenants' representatives will make the expected applications and appeals where decisions go against their clients' interests. If the local County Court User Group has not discussed this topic already, it would be worth seeing that it does so soon.

Simon Read



Simon Read

Homelessness Update

S. 189 Priority need for accommodation

Crossley v Westminster CC [2006] HLR 26 CA

The claimant, who had a history of repeated relapses into drug abuse, had been sleeping on the streets for 16 years with only occasional hostel accommodation. He was assessed by the local authority as not vulnerable under section 189. The Court of Appeal held that the authority had failed to have proper regard to the claimant's history and refused the local authority's appeal from the County Court. In an *obiter* remark, the court held that drug addiction by itself cannot amount to a special reason for the purposes of assessment of vulnerability. However, local authorities should carefully consider whether there are other factors which make a drug addict vulnerable by way of some other special reason such as suffering from a particular form of harm or spending a significant amount of time in care without family support. In the claimant's case, the special reason could have been that he was vulnerable to relapse into drug abuse if he were to be street homeless.

Khelassi v London Borough of Brent [2006] EWCA Civ 1825

Which medical evidence should a Local Authority rely on when assessing vulnerability?

K applied to Brent for housing assistance as a homeless person. He completed a medical form indicating that he suffered from depression. He supplied a report from his GP which stated that he suffered from anxiety, depression and that his homelessness was making his mental health problems worse. The Council decided that he was not vulnerable within the meaning of section 189 and therefore did not have a priority need. He requested a review of the decision under section 202 and provided a psychiatric report by consultant psychiatrist. The report indicated that K needed to be under the care of the local community mental health team and represented a serious suicide risk. It was the psychiatrist's view that "there would be a substantial risk of his psychological condition worsening….."

The Council sought an opinion from a non-specialist doctor who provides opinion on medical issues to the Council on housing assistance cases. This doctor found that K was not suffering from a substantial condition and made no recommendations for rehousing. The claimant furnished further supportive medical evidence from another psychiatrist. The Council refused the application and K appealed to the County Court which allowed the appeal. The Council should have obtained a more authoritative report than the non-specialist doctor when faced with the report of a consultant psychiatrist. The Court of Appeal refused the Council's appeal.

S. 191 Becoming homeless intentionally

Bennett v Croydon LBC [2006] EWCA Civ 1292

Settled accommodation for the purpose of breaking the chain of intentionality.

The applicant had moved from local authority accommodation to her mothers address to look after her in 2003. She maintained a council flat in Lambeth LBC where her family lived. In 2004 the rest of her family moved into her mother's address as well. Her mother died in February 2004. She then gave notice on her Lambeth flat and was evicted from her mother's flat as she was unsuccessful in attempting to secure the tenancy. She applied as homeless but was found to be intentionally homeless from the Lambeth accommodation. The county court and the Court of Appeal both held that her mother's accommodation was not settled on the facts. Had she given up her Lambeth accommodation sooner then it may have resulted in her mother's accommodation being settled.

F v Birmingham CC [2006] EWCA Civ 1427

Where a council tenant gives up a secure tenancy to move to the private rented sector.

F, an 18 year old woman with a young child gave up a secure tenancy. The rent for this tenancy was entirely covered by housing benefit. Her social worker had advised her not to give up the tenancy, mentioning intentionality amongst other things. She initially moved in with her mother and then secured a 3 bedroom assured shorthold tenancy in the private rented sector. She applied for housing benefit which was unsuccessful (she failed to supply information) and F paid no rent for this accommodation. She was evicted following a possession order and applied to the Council as homeless. She was found intentionally homeless. The Council determined that housing benefit would not have covered the full rent in any event.

The case eventually went to the Court of Appeal where

Phillip Barber

"Local Authorities must be careful about which medical evidence they prefer and the weight they attach to it"

Nicola Phillipson

Vilma Vodanovic

Good faith can no include "willful ignorance" when an applicant for housing fails to consider the obvious....

Andrew Wilson

her appeal was refused. She had not done an "act or omission in good faith…." [section 191(2)] as she had failed to consider the obvious: that housing benefit may not cover her rent in the private rented sector in circumstances where it did in the secure tenancy – she was *wilfully ignorant* when she failed to consider whether she could afford the private rented accommodation and was not bothered about whether housing benefit would cover the full rent, despite advice from her social worker. The Council was entitled to look at her decision to leave local authority accommodation in deciding whether she had committed an act the result of which she ceased to occupy accommodation which was available for her occupation and which it was reasonable for her to continue to occupy.

Watchman v Ipswich Borough Council 08/02/2007 CA

Watchman lived in local authority accommodation and despite considerable rent arrears she purchased the property under the right to buy scheme with mortgage payments higher than her rent. She fell into arrears with her mortgage and was eventually repossessed. She applied as homeless and was found intentionally homeless at first instance, on review and at the appeal hearing. The Court of Appeal held that taking on a mortgage knowing that payments could not be kept up could give rise to a finding of intentionality.

198 Referral of case to another local housing authority

Kensington & Chelsea RLBC v Danesh 05/10/2006

A case involving a local connection referral following an acceptance of a full housing duty under section 193. Mr Danesh attempted to resist the referral on the basis he would experience violence in the form of racially motivated harassment and aggressive acts, thus putting him in fear of violence. The Court of Appeal held that violence in section 198 referred to *actual physical violence* and did not extend to Mr Danesh's situation…the decision that Mr Danesh would not experience actual or even threatened physical violence in Swansea was a conclusion open to the reviewing officer.

188 Interim duty to accommodate in case of apparent priority need

Desnousse v Newham LBC and Paddington Churches HA and Veni Properties Ltd [2006] HLR 38

What is the security of tenure and Human Rights requirements of interim accommodation?

D was provided with interim accommodation managed by the second respondent and owned by the third. She was found intentionally homeless and Newham sought to evict her from the accommodation. She sought an injunction restraining the eviction in the county court and eventually the Court of Appeal which was refused on the basis that there is authority for holding that a licence of interim accommodation was excluded from the Protection from Eviction Act 1977. The circumstances of the case meant that it was unnecessary to consider whether this was also true for tenancies. The case also considered the impact of Articles 6 (Right to a fair trial) and 8 (Right to respect for home etc.) on interim accommodation holding that Article 6 was engaged and at the time of the appeal the property had become D's home thereby entitling her to the safeguards under Article 8. However for various reasons (by a majority) the interference of her rights by virtue of the absence of the procedural safeguards in the Protection from Eviction Act 1977 were justified.

R(Carstens) Basildon BC CO/9231/2006 Administrative Court

When and under what circumstances does the interim duty to accommodation cease where no section 184 decision has been made?

C was street homeless and in receipt of higher rate disability living allowance and incapacity benefit. He applied as homeless and was provided with interim accommodation. The accommodation was many miles away and C was unable to get there the same night. There was a dispute over whether the Council had discussed with him his ability to travel to the accommodation but in any event he went the following day and was told that the accommodation had been cancelled. He slept rough and a few days later attended the Council again to be told that they would provide no further interim accommodation. An application was made to the High Court on the basis that the section 188 duty remains up until a section 184 notice; that the duty continues until an applicant unreasonably refuses accommodation or acts in a wholly unreasonable manner (R V Kensington & Chelsea RBC, Ex p Kujtim [1999] 32 HLR 579); that C lacked the funds to travel to the accommodation but attended as soon as he could afford to and that the Council had applied a blanket policy of refusal. The High Court granted an injunction and the Judge, made the point that C had

"not rejected the offer of accommodation so as to bring the duty under section 188 to an end."

R(Aweys & Others) v Birmingham CC [2007] EWHC 52

Seven claims relating to the way in which Birmingham CC treated applications for housing assistance. All the applicants were families who were living in overcrowded and inappropriate accommodation. On applications for homelessness, some were advised to make transfer applications; others had their applications refused and some were advised that they would be offered alternative accommodation. All were left in the unsuitable accommodation for periods between 12 months and 3 years. Following protracted correspondence, the Local Authority accepted the families as homeless on the basis that it was not reasonable for them to continue to occupy their respective accommodation. They were not offered interim accommodation and instead they were treated as "homeless at home" applicants pending suitable offers. The Council's allocation policy distinguished between two types of applicant: those in temporary accommodation and those who are not. Those not in temporary accommodation were not accepted as homeless and were thus not eligible for assistance under Part VI of the Housing Act 1996, despite being in accommodation which the Council accepted as unsuitable and not reasonable to continue to occupy.

The Administrative Court held that the Local Authority had failed to take appropriate steps to house the applicants and their large families. The threshold under section 188 was a low one and as soon as a local authority accepts that there is reason to believe an applicant is homeless and in priority need (and eligible for assistance) then the duty arises. It may be possible to agree with the applicant that they stay in the unsuitable accommodation for a short period of time – but this must not be by compulsion. Local authorities cannot postpone the taking of a homelessness application in order to avoid a duty under section 188.

Phillip Barber

CASE NOTE

ALKER & COLLINGWOOD

HOUSING ASSOCIATION

COURT OF APPEAL 7th FEBRUARY 2007

(TIMES 14th FEBRUARY 2007)

Introduction

This case was concerned with the important duty placed on landlords under Section 4 of the Defective Premises Act 1972 ("1972 Act"). The nature of the landlord's duty under that section is often a source of confusion. This case demonstrates the limits of the section and in particular, the fact that it only covers items falling within the landlord's repairing obligation. It did not give any general warranty as to fitness.

Legislative background

Section 4(1) of the 1972 Act provides:

"Where premises are let under a tenancy which puts on the landlord an obligation to the tenant for the maintenance or repair of the premises, the landlord owes to all persons who might reasonably be expected to be affected by defects in the state of the premises a duty to take such care as is reasonable in all the circumstances to see that they are reasonably safe from personal injury or damage to their property caused by a relevant defect."

However, this section goes on to provide in (iii) that a "relevant defect" is:

"A defect in the state of the premises existing at or after the material time and arising from or continuing because of, an act or omission by the landlord which constitutes or would if he had notice of the defect, have constituted a failure by him to carry out his obligation to the tenant for the maintenance or repair of the premises."

The section goes on to provide (in sub-section (3) (b)) that the "material time" will be the earliest of three dates; when the tenancy commenced, when the tenancy agreement was entered into or when possession was taken.

Finally, sub-section (4) provides that where the landlord retains a right to enter to maintain or repair the premises he "shall be treated" for the purposes of the section as if he were under a duty to carry out that maintenance or repair.

The facts in this case

R was badly injured when an annealed glass panel in the front door gave way. Whilst the danger from annealed glass was known about, before the accident, the panels through which R had fallen had not been broken and did not require any maintenance.

The Recorder had allowed the claim.

The decision on appeal

William Hanbury

The reach of section 4 is no wider than the repairing covenant save that in certain circumstances.....

Kate Hunter-Gordon

John Holroyd

"Most Authorities take such decisions by a single specialist officer....unusually the decision makers here were Councillors"

Case Notes

Laws LJ held that the obligation in the tenancy agreement was to repair and maintain the structure and exterior of the building and maintain that building in "good condition". The hazard from annealed glass did not constitute an item of disrepair or lack of maintenance and the premises had, apparently, been constructed to the standard set by the buildings regulations in force when they were built. The tenant was under an obligation to allow the landlord and the landlord's agent's access to carry out repairs and improvements. The issue before the Court was whether the annealed glass constituted a "relevant defect" for the purposes of Section 4.

It was held that the Recorder's reasoning was fatally flawed. There was no warranty in the 1972 Act equating the duty to "repair", or even to keep the premises in "good condition", with a "duty to make safe". However, where the duty did arise or the landlord had a right to repair or maintain, it is clear from the wording of subsection 4(4) that the landlord would be liable. This would be the case where the landlord "can put himself in a position to exercise the right" to maintain or repair the premises even if he had no actual knowledge of the defect. Therefore, on the facts, there had no breach of Section 4.

Discussion

The case follows earlier authorities (principally McNerny –v- Lambert London Borough Council [1989] 1 EFLR 81 and McAuley –v- Bristol City Council [1992] 1 All ER 749) in linking the defects in the premises to the repairing obligation. Thus, in McNerny condensation-related damp did not give rise to liability, but in McAuley, by finding that the Council had an implied right to repair a defective step to the rear of the premises (on which the Claimant as injured), the Court was able to find that Section 4(4) of the 1972 Act applied. The Court of Appeal held in that case that the Council had impliedly reserved the right against the tenant to carry out repairs to the garden, albeit they did not fall within their express or implied repairing obligation. In Alker, the landlord could carry out repairs and improvements but that did not render improvement to the safety and utility of the premises within the definition of a "relevant defect".

Although this distinction (between repairs and improvements falling within section 4 and those which are not) is often difficult to apply in practice, the theory is clear. The reach of section 4 is no wider than the repairing covenant save that in certain circumstances the landlord may be under a duty where otherwise he would merely have a right to do something. In particular, works required to remedy a defect in design are not works of "repair" giving rise to any liability under Section 4 (see Lee –v- Leeds City Council [2002] All ER 124). However, this is an area where Judges at first instance will continue to err with a view to compensating Claimants who suffer, sometimes, serious injuries.

William Hanbury

When is fresh evidence admissible at the hearing of Homeless Appeals?

W. v Harrogate Borough Council. Harrogate County Court, judgment 18th April 2007, Mr Recorder Walker

This appeal under s.204 of the Housing Act 1996 involved the Court deciding whether to admit fresh witness evidence of the deliberations of a 3 member Appeals Panel, which had conducted a statutory review of an original decision that the appellant was not in priority need. Most Authorities take such decisions by a single, specialist senior officer, who can be expected to express themselves with particular clarity and thoroughness. Unusually, the Respondent's decision makers here were Councillors, who although trained, were by no means specialists. They delivered their decision, after an oral hearing, in the form of a concise written report.

W argued that the wording of the decision showed that the Review Panel failed to take a composite approach to the issue of vulnerability, by compartmentalising the two statutory categories which could render him in priority need. These were "another special reason", related to a risk of relapse into chaotic drug and alcohol use; and because he had been recently released from a prison sentence. The decision, in effect, read "You are not vulnerable for the other special reason, and you are not vulnerable as an ex-prisoner". He said that the Panel did not consider whether a combination of factors relevant to both categories could together render him vulnerable. At the Council's request, the Court allowed an adjournment for witness statements to be obtained from two of the members of the Panel, in

Case Notes

Anesh Pema

"Section 1(8) of the CDA 1998...gives the court the power to vary or discharge any order."

Helen Greatorex

order to show that they had in fact considered the evidence in the round.

Only exceptionally will the Court allow fresh evidence at a homeless appeal hearing (CPR 52.11(2)). It must come within the categories of admissibility for such hearings. In *R v Westminster CC ex p. Ermakov* [1996] 2 All ER 302, CA, these were restricted to cases where there had been an error in transcription or expression, or words were inadvertently omitted or lacked clarity. The function of such evidence should generally be "elucidation not fundamental alteration, confirmation not contradiction". *Hijazi v Kensington & Chelsea RLBC* [2003] EWCA Civ 692 said that statements which are aimed at clarification, and do not alter or contradict anything in the decision, would be properly admitted. Here, the nature of the review hearing and recording of the decision by the Panel perhaps made it more likely that such a clarification would be in order.

The Court found that the evidence in the statements would not be admissible, because it went beyond mere clarification. In essence, it sought to say that the Panel had indeed considered whether the combination of factors relating to W being a recently released prisoner, and a former drug addict at risk of relapse, had been considered, when the plain words of the decision showed otherwise. Were the judge to have admitted the evidence, he would have been unfairly allowing the Council to supply a third reason for its decision, with the benefit of hindsight. The decision was quashed, and the matter remitted to the Council for reconsideration.

Simon Read

Extendable ASBOs?

ASBOs have been with us for some time now and many of the issues surrounding the procedure and legal basis have been dealt with by the courts. One important issue has however remained unconsidered until now, is namely whether an ASBO can be extended in duration beyond its original period. ASBOs are made either for a period of not less than 2 years or are without an end. The issue before the Divisional Court in the case of Leeds City Council v G was whether the court had the power to extend the duration of an order validly made some years before. G had had an order imposed on him by the Magistrates Court for a set period. G had breached the order on a number of occasions and been sentenced for the same. The council applied to the court seeking a variation of the length of the order pursuant to section 1(8) of the CDA 1998. This gives the court the power to vary or discharge any order. The Defendant contested the same saying that there was no power to extend the period of the order by variation which could only apply to terms.

Before the Divisional Court the Defendant argued that a term could not include the duration of the order and therefore there was no power to vary the same. The Defendant argued that there were no procedural safeguards in an application to vary with no right to a heading, a reversed burden of proof and lower standard of proof. Further that there was no right of appeal from a Magistrates Court decision to vary an order even if it was by 10 years (arguing that section 4 which gives the right of appeal to a Crown Court as of right only applied to the making of an order not the extension.

The council argued that the duration of an order was an essential part of an order and was as much a term of the order as others. Further all the procedural safeguards that applied to full applications applied to hearings when a variation of an ASBO was sought. The council argued that the majority of applications to vary were sought by reason of breaches and therefore were properly considered by the courts as variations rather than a further full application which would potentially overlap and conflict with the original order. The council were supported on paper in its submissions by the Department for Constitutional Affairs.

The Divisional Court heard the matter on 17th April 2007 and is due to give its reserved judgement shortly. Anesh Pema of Zenith Chambers represented the council. A summary and discussion of the judgment will appear in the next Housing Law bulletin.

Anesh Pema

Michelle Stuart-Lofthouse

"No surprise but the Court has extended the concept of tolerated trespasser to assured tenants."

Justin Crossley

Case Notes

Does the rent arrears protocol apply in all rent arrears cases?

Yorkshire Housing Limited v Robinson. Dewsbury County Court, judgment 5 February 2007, Her Honour Judge Belcher

Facts

The Defendant was a tenant of the Claimant and Notice Seeking Possession was served alleging nuisance and annoyance and rent arrears. Subsequently court proceedings were commenced citing grounds 8 and 10 of Schedule 2 to the Housing Act 1988 only. The pre-action for rent arrears was not followed by the Claimant and at the hearing of the possession claim the case was adjourned by District Judge Glentworth to allow time for the protocol to be applied. The Claimant appealed to the Circuit Judge.

Tom Tyson of Zenith Chambers drafted the grounds of appeal and Phillip Barber appeared at the appeal hearing for the Claimant; William Hanbury for the Defendant.

Held:

The protocol did not apply in relation to this case as the matter was not proceeding solely on rent arrears grounds. The fact that the Section 8 Notice contained allegations of nuisance and annoyance meant that the protocol did not apply even though the possession claim relied only on rent arrears grounds. Accordingly District Judge Glentworth had no discretion to adjourn the proceedings in relation to the Ground 8 application as *North British Housing v Matthews* applied and should have been followed.

Comment

The case is interesting and is currently subject to an application for leave to appeal to the Court of Appeal by the Defendant. The effect of the judgement means that the circumstances for adjourning Ground 8 applications are limited to those where a genuine defence or counterclaim is made out; or where the Defendant is unable to attend the hearing for *bona fide* reasons. The protocol only applies where the Section 8 Notice relies on rent arrears only.

Phillip Barber

Knowsley Housing Trust v Julie White & Secretary of State for Communities & Local Government [2007] EWCA Civ 404 (CA)

Not with surprise, this case extends the concept of "tolerated trespasser" to those who hold assured tenancies from private landlords or housing associations.

Facts

The Defendant originally held a secure tenancy but in 2002 the Appellant Housing Trust acquired the whole of the authorities housing stock and the Defendant's tenancy became assured. Arrears of rent accrued and the Appellant took possession proceedings. An order for possession was made suspended on terms, with possession to be given up on or before 6 July 2004. The Defendant subsequently decided she wanted to buy the property under the Right to Buy scheme and sought a declaration, in 2006, that she remained an assured tenant of the premises. The application for the declaration was dismissed by HHJ Mackay and the Defendant appealed that refusal.

Held:

The principal in Bristol City Council v Hassan [2006] EWCA Civ 656 applied. The original suspended possession order was made on Form N28 and accordingly at the point when possession was to be given up the Defendant became a tolerated trespasser. Accordingly she lost her statutory rights which included the Right to Buy her housing association property.

Comment

This case was to be expected and most practitioners were working on the principal that the new N28A should be used in relation to assured as well as secure tenancies. The Court indicated that the terms of the N28 in this case were such that the tenancy terminated on the date for giving up possession. This may not apply in all cases and therefore the terms of the N28 should be considered carefully when advising clients.

Michele Stuart-Lofthouse

Anthony Lee v Accent Foundation LTD (CA) Civ 14/06/2007

The appellant had been subject to an ASBI under section 153C of the Housing Act 1996 obtained by the respondent housing trust. The object of the ASBI was to prevent the appellant from anti-social behaviour towards members of his family and prohibited the appellant from entering the area where they lived. He initially breached the order by hiding under his mother's bed and following arrest was warned about his behaviour by the judge. His sister subsequently invited him into the house. He was arrested and sentenced to a suspended 28 day custodial sentence. His mother then invited him into the home and again he was

Tom Tyson

"The protocol had improved the way in which the claims were dealt with.....claims management companies are to be regulated"

Sarah Greenan

Case Notes

arrested and on this occasion the suspended sentence was activated. Lee appealed and it was submitted to the judge that the order had been waived by the beneficiaries inviting him into their home.

Held: There is a general proposition that a party in whose benefit an order is made could waive the order. In the present case, however the court was entitled to find that the actions of the sister and brother did not amount to a waiver. The order was obtained by the housing trust, whose consent had not been obtained for the waiver, and there was a public interest in maintaining the order as it had not only been obtained to protect members of his family but also for other neighbours.

Housing Disrepair – consultation on small claims limit

The government has recently published a consultation paper (CP 8/07) dealing with the issue of whether the financial limits for the small claims track should be increased in housing disrepair cases. The consultation may have gone largely unnoticed among housing practitioners, as it is contained within a much wider consultation on personal injury claims (it warrants 3 pages out of 93 in all). Consultation began on 20/4/07 and ends on 13/7/07.

The arguments in favour of raising the limit are identified: the reduction in number of housing disrepair claims; the absence of legal aid would reduce public expenditure and dissuade claimants from brining claims without merit; the fact that such claims can be properly brought without the need for expert evidence; the disproportionate cost of defending such claims on the fast track and the "assistance that judges can give through intervention", presumably to litigants in person.

The arguments against are summarised thus: housing advice is a priority for the CLS as it is usually the most deprived and excluded groups who live in substandard accommodation, whether public or private; the inequality between a litigant in person and a well-resourced local authority landlord; housing disrepair claims are not always as straightforward as it is contended, potentially involving a counterclaim, a personal injury element (e.g. asthma) and expert evidence, whether medical or surveying; the protocol has led to greater sharing of information and resolution of claims at an earlier stage with lower costs; the concerns about claims management companies have mostly been addressed by the Compensation Act 2006; damages for disrepair are relatively low, estimated to be about £1,600 p.a. for the most serious cases – tenants may be encouraged to wait for years to increase the potential value of the claim.

The stated conclusion of the government is that an increase in the limit of £1,000 for disrepair and £1,000 for damages is not proposed largely because (a) consistency of approach with the personal injury limit was thought key and (b) "it was essential to ensure that vulnerable tenants were not unduly disadvantaged". The protocol had improved the way in which the claims were dealt with and the activities of claims management companies are to be regulated. In fact, most claims management companies have left this particular arena and the majority of disrepair claims are brought with the assistance of public funding.

If this is in fact the outcome post consultation, it would appear to be a fair balance, allowing the opportunity for more serious claims to be brought with the assistance of legal representation, but allowing for minor disrepair claims particularly where the repairs have been completed at an early stage to be dealt with under the protocol or in the small claims track.

Tom Tyson

ZENITH
CHAMBERS

10 Park Square
Leeds LS1 2LH

DX: 26412 LEEDS PARK SQUARE

Phone: 0113 245 5438
Fax: 0113 242 3515
E-mail: clerks@zenithchambers.co.uk

www.zenithchambers.co.uk

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