

Stop Press!

The End is in Sight for Tolerated Trespassers

The Housing and Regeneration Bill has just been amended to abolish the Tolerated Trespasser status. A commencement date for this will be confirmed once the legislation has been passed.

In brief the provisions are:

- 1) The period between the ending of the original Tenancy and the commencement date is to be known as the 'Termination Period'.
- 2) From the commencement date, all Tolerated Trespassers will have their Tenancies replaced provided that on that date:
 - a. The ex-Tenant occupies and has occupied the Property as his/her only or principal home throughout the Termination Period; and
 - b. The original-Landlord still owns the Property.
- 3) For the purposes of determining succession issues, calculating the periods for the Right to Buy and whether Ground 8 is made out, the Tenancy is deemed to have continued throughout the Termination Period.
- 4) For the purposes of a Claim by either the ex-Tenant for breach of Statutory Duty or by either the ex-Tenant or ex-Landlord for breach of Tenancy it will be for the Judge to decide whether the replacement Tenancy is to be regarded as continuing throughout the Termination Period.

- 5) The Rule is that the type of Tenancy which existed prior to the Termination Period will effectively be restored, for example Secure to Secure, Assured to Assured, Demoted to Demoted. Where there is a Possession Order in force at the commencement date, this will continue in relation to the Replacement Tenancy.
- 6) From the commencement date onwards no Tenancy (whether Replacement or brand new) will end until a Warrant has been executed and the Tenant has left the Property.
- 7) Whether Tolerated Trespassers have or have not been consulted or included in ballots will not mean that consultation requirements were not met with.

Commentary

The uncertainty surrounding the occupancy arrangements thrown up by judicial decisions going back as far as *Burrows v Brent* in 1996, will have gone for the vast majority of occupants. The new Tenants will have the same rights and obligations as before and existing Orders will be preserved.

It may be that, following the implementation, there will be a rush by former ex-Tenants to assert their newly reacquired rights particularly in relation to Disrepair Claims and the Right to Buy.

Where Secure Tenancy Agreements have been changed under the Housing Act 1985, during the Termination Period the changes will apply to the Replacement Tenancy. Increases in rent and other charges (implemented during the Termination Period) will apply to all Tenancies.

A diagrammatic representation of the provisions is attached this assumes a commencement date of the 1st August 2008.

One point arising is in relation to Stock Transfers. One of the conditions that has to be in place for a Replacement Tenancy to arise is for the ex-Landlord to still own the Property. If there has been a Stock Transfer during the Termination Period then clearly the Landlord will have changed in this period and the ex-Landlord will not be the same body as the original Landlord. Whether further amendments will be tabled to address this apparent omission will have to be seen.

The Housing and Regeneration Bill is a long and complicated piece of legislation and other amendments have been tabled which will require some consideration in the near future and additional bulletins will be issued on the changes in the coming weeks.

If any further information is needed please do not hesitate to contact Peter Whitehead on 01257 266008.