

The Housing & Regeneration Act – An update 25th July 2008

The Housing and Regeneration Bill finally became an Act earlier this week having received Royal Assent and a few of elements will be of interest to our social landlord clients.

Tolerated Trespassers

Many of the points that were covered in our bulletin in April 2008 are still valid, however below I have set out some of the key themes that housing providers should be aware of. The Commencement Date for this Act is yet to be announced and it is on this date that certain provisions will come into force.

- The period between the ending of the original Tenancy and the commencement date is to be known as the 'Termination Period'.
- From the commencement date, all Tolerated Trespassers will have their Tenancies replaced provided that on that date:
 - The ex-Tenant occupies and has occupied the Property as his/her only or principal home throughout the Termination Period
- 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.
- 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.

- Tenancies will be restored i.e. Secure to Secure, Assured to Assured, Demoted to Demoted etc. Where there is a Possession Order in force at the commencement date, this will continue in relation to the Replacement Tenancy.
- 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.
- Under a Replacement Tenancy, the tenant will have the same rights and obligations as before and existing Court orders remain in place.
- Whether Tolerated Trespassers have or have not been consulted or included in ballots will not mean that consultation requirements were not met with.
- Tenants who get a replacement tenancy reacquire the rights that they lost when becoming tolerated trespassers and it could be that these rights are asserted when it comes to Right to Buy and Disrepair claims.

Original Landlord

In the Bill's earlier drafts, one omission in the conditions for the creation of a Replacement Tenancy was that the original landlord had to still own the property – clearly a problem following a Stock Transfer. Consequently, a new section was added to the H&R Act regarding Successor Landlords (Schedule 11, Part 2 of Section 299).

When this section comes into force (the Commencement Date), the rights and responsibilities of a successor landlord will replace those of the original landlord.

Family Intervention Tenancies (FITs)

Family Intervention Projects have been rolled out in a number of areas across the country and the Housing & Regeneration Act has made provisions about the type of tenancy that should be used as it was felt that the security of tenure for 'problem families' should be removed. Thus Family Intervention Tenancies (FITs) will become available under the new Act for tenancies granted under the Housing Acts 1985 and 1988 when the relevant sections come into force.

Granting a FIT

A FIT can be granted to someone when:

- A possession order has been made against their property
- A possession order could be made against their tenancy
- They could be subject to a possession order if they had such a tenancy

AND

- The purpose of granting the FIT is to improve the behaviour of the tenant (and others who live with them) through the provision of behaviour support services (see below)

When considering offering a FIT to a tenant, a Notice to this effect must be served and must include the following:

- a) The reasons for offering the FIT
- b) The property to which the FIT relates
- c) The main terms of the tenancy (including obligations of the tenant regarding behaviour support services)
- d) Details of the security of tenure available under the FIT compared to that under their previous tenancy
- e) Notification that there is no obligation for the tenant to accept the new tenancy or give up their current tenancy / possession of their property (unless they are otherwise required to do so)

- f) The steps that the landlord will take if the tenant does not enter into the FIT or give up possession of their current property / tenancy

Note: When any Notice regarding the FIT is served on a tenant, advice on how the tenant can obtain assistance / advice about the Notice should be provided

Behaviour Support Agreements & Services

Behaviour Support Agreements are written agreements between the tenant and the local housing authority (Secure tenancies) and between the tenant, the landlord and the local housing authority (Assured tenancies). It outlines the expectations about the tenant's behaviour and the support services that will be made available.

Behaviour Support Services are defined as services provided by any person to the tenant or anyone living with them and which are designed to address the behaviour that led to the tenant losing or potentially losing possession of their property.

Terminating a FIT

When terminating a FIT, a local housing authority must serve a notice on the tenant and allow 14 days for the tenant to request a review of the decision. The local housing authority cannot serve a Notice to Quit (NTQ) unless during this period either:

- a) A notice about the review decision has been served OR
- b) The tenant has not requested a review OR
- c) The request has been withdrawn

If a NTQ is to be served, it must contain the following information:

- Confirmation that the authority has decided to serve the NTQ
- The effect that this will have

- The reasons for serving the NTQ
- When the NTQ will be served
- That a review of this decision can be requested within 14 days of service of the Notice (if a review is requested, this must take place and the tenant notified of the outcome and reasons for it)

At present there is no documented procedure to be followed when conducting a review but any future regulations may provide details as to who may conduct such a review, whether the tenant should have a 'hearing' on the review and who should represent the tenant at the 'hearing'.

It is worth noting at this point that the right to review only applies to local authority tenants and not to those of RSLs. Whether RSLs decide to operate a similar review regime is clearly up to each organisation but may over time become best practice.

Should you have any queries about the content of this bulletin, please get in touch on 01257 266008 or email us on info@whiteheadsols.co.uk

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