

Tolerated Trespassers ...a final word?

Lords support the government's approach

This topic has been covered to the 'Nth degree over the past few months however, just before Christmas, the House of Lords decision reiterated the stance taken in the Housing & Regeneration Act which became law last year.

Just to summarise this decision which took into account a number of cases¹ including the high profile Knowsley Housing Trust & White case, where the tenant (White) was a secure tenant who became an assured tenant following a stock transfer, retaining her Right to Buy. She fell into arrears and Possession proceedings were issued. An SPO was made but was breached and a warrant was applied for, however this was suspended.

Mrs White still refused to comply, however she served a notice in order to exercise her (preserved) Right to Buy. KHT contended that she had no tenancy and could not exercise this right and this view was upheld by the court in the first instance and at appeal. Despite this, the House of Lords overturned the decisions of the lower courts and held that Assured Tenancies under the Housing Act 1988 Act do not end until a warrant is executed or the tenant otherwise leaves the property.

Where does this leave us?

In essence, the outcome of the Lords' decision will be that, for Assured Tenancies, Tolerated Trespassers no longer exist and they should be wiped from our collective memory.

But what of the other tenancies?

Although we all know that the status of Tolerated Trespasser will disappear, the above decision, along with the Housing & Regeneration Act, now leave us with 3 types of (former) Tolerated Trespasser.

Secure tenancies – from the commencement date (expected in April 2009), those tenants who became Tolerated Trespassers under the secure regime, will get a Replacement Tenancy courtesy of Schedule 11 of the Housing & Regeneration Act. Although called a 'Replacement', the terms of the tenancy will be the same as those in the original Secure Tenancy and any existing court orders will apply to the new tenancy.

¹ Other cases included Honeygan-Green v London Borough of Islington; Porter v Shepherds Bush Housing Association

Assured tenancies – although these tenancies were also covered in the Housing & Regeneration Act, the House of Lords decision means that instead of the tenant getting a Replacement Tenancy, the original tenancy will be considered to have never ended.

Provisions were also made in the Housing & Regeneration Act for tenants whose property was sold to a new landlord. These are called Successor Landlords and they will have the same rights and responsibilities as the original landlord.

Transferred trespassers – the recent legislation failed to take into account those occupants who have transferred from Local Authority (Secure) to RSL (assured). Prior to any Stock Transfer, these occupants would have been considered as Tolerated Trespassers, however the legislation failed to consider the impact on this group and therefore a Communities & Local Government (CLG) consultation on this issue was concluded in December 2008. Although no decision has been made with regard to this issue, it would be expected that Stock Transfer occupants will be included under identical or at the very least similar provisions to those dealing with secure tenants in Schedule 11 of the Housing & Regeneration Act.

Dates

As a reminder, one important thing to note is the date on which secure tenancies become Replacement Tenancies. In most cases, the start date will be the date immediately following the ending of the original secure tenancy, however the court has a discretion as to when the replacement tenancy should be regarded as starting. Circumstances in which this could be the case are:

- Where there is a Disrepair claim by a former Tolerated Trespasser
- Where there is a claim for possession for anti-social behaviour
- Where there is a claim for possession based upon some other breach of the tenancy agreement

Conclusion

Clearly there will be a few bits and pieces here and there to iron out and some cases where you may want to take further action but the central message is that, pending the implementation of schedule 11 and a decision on Stock Transfer tenants, TTs are no more, they are deceased, demised, defunct and gone! *(Courtesy of Messrs Cleese and Palin).*

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