

## ***E: Briefing - ASB & Housing Management***

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***Allocations where there's been ASB** - the Weaver case may impact on the way housing is allocated when decisions are made based on previous behaviour. Here we will look at what the law and regulations say and what you need to consider.*

***RSL's success in VAT Claim** - HMRC is the loser in claim on input tax.*

***Subletting in Social Housing** - recently highlighted in the press, this issue is a potential hot potato with offers from the Audit Commission to help. Here we look at the key issues landlords may face.*

## **New Courses...**

**Tools in the Toolkit** - (ASB remedies from early intervention to court action)

**Evidence gathering & building your case**

**Gas servicing Master class**

**Damp & Condensation** (*the differences and your liability*)

**HHSRS & Disrepair**

**Leasehold Management Skills and Service Charges**

**Tenancy Management Master class**

**Effectively dealing with Hate Crime & Domestic Violence**

**Community Engagement & Good Neighbourhood Agreements**

## Allocations & Previous ASB

As you will now be aware, *Weaver v London & Quadrant HT* is likely to have major ramifications for RSLs. One of the key areas that may be subject to Judicial Review is in the granting, management and termination of tenancies.

### **Guidance**

There is regulatory guidance published as to how properties should be allocated and these deal with issues such as eligibility, priority need and suitability.

From the legal perspective, the framework can be mainly found in the Housing Act 1996, Part 6 (as amended), which details the reasonable preference groups that require prioritisation in allocation schemes. Also, Section 170 requires co-operation between RSLs and Local Housing Authorities (LAs) in order to meet housing needs.

### **Unacceptable Behaviour**

Research in 2007 indicated that unacceptable behaviour, and specifically, a history of ASB or breach of tenancy accounted for over half of the decisions of RSLs to decline local authority nominations. Other reasons cited were:

- ✦ Unmet support need
- ✦ Applicant unsuitable for notified vacancy
- ✦ Criminal record
- ✦ Employment status

### **Suitability**

The provisions regarding 'unacceptable behaviour' are non-specific insofar as they only give general comment on the (un)suitability of a potential tenant, but do not provide much detail regarding the behaviour referred to.

The Housing Act 1996 defines unacceptable behaviour as *"that which would entitle the authority to a possession order under the HA 1985 on any grounds 1-7 of schedule 2"*. This includes the behaviour of anyone living with the tenant.

The test is the perceived 'suitability' of the applicant (given any past misbehaviour and the prevailing circumstances) to be a tenant of the landlord. This can take into account previous ASB and also breach of tenancy issues. Any enforcement action or evidence should be considered, unless it was 2 years ago.

If the applicant has already had a previous tenancy terminated then this provides clear evidence of the applicant's unsuitability, however it is important to bear in mind factors such as the time that has elapsed since the termination of that tenancy. If for example an applicant was evicted a number of years ago for ASB or arrears, their personal situation may have changed and they may now be able to sustain a tenancy. You should also bear in mind that if an ineligible applicant feels that they should now be treated as eligible for housing, they can re-apply for housing. Clearly the decision on this is a judgement call and the landlord would have to weigh up the likelihood of specific acts being seen by the courts to be so serious that they would warrant a possession order.

## **Allocations & Previous ASB cont.....**

### ***Nomination Arrangements***

For RSLs, many nominations come from LAs and there is a duty on the part of RSLs to cooperate with LAs, where reasonable. This will usually involve entering into a Nomination Agreement that will take into account meeting the needs of reasonable preference groups and encompassing the suitability and exclusion aspects.

Despite the expectation for RSLs to 'cooperate' with Local Authorities, housing providers are able to reject applications from unsuitable applicants. Key to this process, however, is having in place comprehensive policies and procedures to assess applications and to ensure that any application is considered on its merits and hence excellent record keeping is vital.

It is also important that, when considering a nomination, RSLs remember:

- ✦ FREE advice and assistance should be offered to applicants
- ✦ Blanket decisions on specific types of applicant could carry increased risk of appeal
- ✦ Reasonable preference groups must be considered
- ✦ An element of choice should be offered to applicants

### **Judicial Review (JR)**

In the past, RSLs did not have to worry about appeals that challenged the way they came to a decision to refuse an application for housing, however following on from the decision in Weaver (see <http://www.whiteheadsols.co.uk/bulletins/bulletin57.pdf> for further details), RSLs can now be subjected to JR. This means that any applicant who feels that the decision-making process followed by a landlord was flawed, can ask the High Court to review this process. (Note: It is important to remember that this is not normally to review the actual decision, but the process used)

The allocations process is a major area that could be subjected to JR and Policies & Procedures and the decision-making process have to be water-tight, to reduce the risk of a successful judicial review action.

If you need advice on your allocations policy, the possible impact of JR and your business risk, please contact us on 01257 266008.

**Elaine Davies**  
**Solicitor**

# **Housing Association Wins Over VAT Claim**

In a recent case, a housing association was taken to task over a claim to recover input VAT.

The supply of registered social housing is an exempt supply, which means that the input VAT paid by a housing association cannot be reclaimed.

However, Community Housing Association had set up a subsidiary to carry out development projects (which are not VAT exempt) and it was registered for VAT. The association then transferred to the subsidiary the benefit of its development projects.

Because the transfer was a taxable supply, the association claimed the recovery of the input VAT relating to the projects transferred.

HM Revenue and Customs (HMRC) took a dim view of this and succeeded in persuading the VAT Tribunal that the input tax should be 'blocked', since it was related to the exempt supply of social housing. Unsurprisingly, the housing association appealed the decision.

The High Court agreed with the Housing Association's argument that the input tax which was reclaimed was directly related to the taxable supply of development and not to the wider supply of social housing. It was therefore recoverable.

The moral of the story is that if you are sure you are right, don't give up. Property tax and VAT can be complicated and HMRC often make challenges on tenuous grounds to tax treatments adopted.

Stephen Daniels, Solicitor

# Impact of Subletting in Social Housing

## **Audit Commission**

Many of you will have seen recent media coverage on the issue of subletting in the social housing market and the impact that this is having on those on waiting lists for accommodation.

Figures suggest that thousands of social housing tenants are letting out one home while residing in (and in some cases owning) other properties and the Audit Commission are offering social landlords the opportunity to weed out sub-letters to help eliminate tenancy fraud.

This 'weeding out' will require social landlords to provide the Commission with the details of their tenants which can then be cross-referenced.

## **Then what?...**

Clearly identifying illegal occupiers (both sub-letters and sub-lessees) is only half of the battle – the next stage is to decide what your organisation wants to do about them.

*Should you evict them? Should a new tenancy be granted?*

## **Route 1 – Eviction**

In order to gain possession, you would firstly have to serve a NTQ as the sub-letter is not occupying the premises as their only or principal home which will be a breach of tenancy. In the alternative you could then plead Ground 12 (breach of tenancy) for Assured tenants and & Ground 1 for Secure tenants.

As with all legal claims, in order to secure an eviction, you would need to establish evidence of the illegal occupation and the fact that it breached the tenancy agreement.

## **Route 2 – Grant a tenancy**

If the sub-lessees are eligible for social housing, you may wish to consider their circumstances and decide whether they should be offered accommodation. If the landlord wishes to grant a tenancy, the normal allocation procedures would apply and very careful consideration should be given as to whether such a grant would be within the parameters of the allocations policy.

## **Impact of Subletting in Social Housing cont....**

### **Recovering monies owed**

In many cases, landlords may want to include (within any proceedings) a claim to recover any money outstanding on the property for example rent or mesne profits (for use and occupation) owed, unpaid service charges etc.

### **Costs**

From our recent experience of dealing with a case where a Defendant had sublet the property of an RSL client (and another property from the local authority), it is important to recognise that as well as the cost to the tax payer (fraudulent housing and council tax benefits) the costs of these types of cases are invariably higher than a standard Claim for Possession. By definition much more work tends to be required in unravelling the web of fraud. Where the Defendant has a freehold or long leasehold interest in a property it may also be worth considering seeking an Order for costs against the Defendant and then applying to place a charge on the freehold/leasehold interest in order to recover (albeit at some stage in the future) the costs and any other Money Judgment such as arrears.

Far too often RSLs find themselves with a costs Order that they will never receive a penny of; so where the Defendant has the finances or assets, RSLs should seriously consider recovery, the costs of which can also be added to the debt/charge.

If you have any queries about any aspect of the above or concerns about dealing with sublet properties, please do not hesitate to contact us.

**Jason Hobday**  
**Solicitor**

## **Damage Case Ends with Landlord in Debt to Tenants**

After a court battle for three months' worth of arrears and £1,500 compensation for the damage caused, a private landlord was awarded £4,413. However, her former tenants counter-claimed on the grounds she had not lodged their deposit with an approved scheme.

Although the landlord had done this retrospectively, the judge found in the tenants' favour, awarding them £4,507.82. This meant the landlord found herself owing £94.82 to the people who had caused serious damage to her property.

After chasing arrears on the property for several months, the landlord started repossession action. She found the flat abandoned.

'If they had left it in a reasonable condition I would still have accepted the loss of rent but walls were broken, things were burned and stained, there was rotting food, general human filth and even class A drugs left behind,' she said.

The case is going to appeal with the support of the Residential Landlords Association.

### **Other Publications**

**Don't forget to check our website for further updates on the following:**

- **Disrepair**
- **Property Matters**
- **Housing Law updates**

### **Contact us**

**T: 01257 266008**

**E: [info@whiteheadsols.co.uk](mailto:info@whiteheadsols.co.uk)**

**W: [www.whiteheadsols.co.uk](http://www.whiteheadsols.co.uk)**

**Please remember, if you need detailed advice on any issue included in this E-Briefing, please contact us.**