

E: Briefing - Housing Management

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Queries? Contact.....



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Equitable tenancies - granting tenancies to minors can cause endless headaches for landlords so here we will look at the pitfalls and how to avoid them.

Tenancy reviews - now more than ever, it is vital that your tenancy agreements are fit for purpose. Here we provide a few tips and advice.

Public law challenges - now that Weaver remains with us, we will look an example of where a tenant's solicitor' attempted to invoke a Judicial Review.

Gas access - penalties - getting this wrong can destroy lives and end careers - don't forget the risks of non-compliance.

Case studies - a look at a few cases that we have recently worked on.

New Courses...

Customer Expectations - Managing ASB & Repairs Complaints

This course looks at two of the main causes for complaints to the Ombudsman and how to manage them effectively. Delegates will learn about.

- What the Ombudsman expects
- Record keeping & Audit trails
- What your organisation can and must do
- Managing realistic expectations
- Effective Case management
- Avoiding complaints
- Challenging complaints
- Using the HouseMark Complaints Toolkit
- How the Ombudsman can help you



Where?

Birmingham - 15th April 2010

London - 22nd April 2010

Manchester - 29th April 2010

RE-HOUSING YOUNG PEOPLE – THE EQUITABLE WAY!

It is clear that many of our clients think twice before granting Tenancies to minors because of the inherent problems in doing so.

Very often, RSLs want to play their part and maintain good relationships with Social Services and other agencies in providing housing for young people. However, in the light of a recent Court of Appeal case*, Landlords who house minors without appointing a Trustee become Trustees themselves. This causes problems when a landlord wants to take tenancy enforcement action against the minor.

Some issues to consider are:

- Decide if you are making a commitment to re-house young people and carry out a cost-benefit analysis with regard to your relationship with partner agencies.
- If you decide “Yes”, appoint an adult (e.g. Social Worker) to hold the legal interest of the tenancy as ‘Trustee’ for the Minor. Remember that the Landlord becomes the Trustee if no-one else is appointed and can only be released from this by the court.
- At sign up, the appointed adult should be asked to guarantee rental payments and sign a Guarantee Agreement. Unfortunately, the Trustee cannot make similar guarantees in respect of nuisance and anti social behaviour, as it is unenforceable in the Courts.

So what will you need at the sign up?

- The young person (e.g. Minor).
- The appointed adult (e.g. Trustee).
- A Deed of Trust to be signed by the Landlord and Trustee.
- Guarantee Agreement to be signed by the Landlord and Trustee.
- An Equitable Tenancy Agreement to be signed by the Landlord and the Minor.

Transferring the tenancy

When a young person reaches 18, a Vesting Deed will be needed to pass the legal interest from the Trustee to the young person.

* *Elyarna Alexander-David and the Mayor & Burgesses of the London Borough of Hammersmith & Fulham [2009] EWCA*

Problems

During the term of the Equitable Tenancy, what do you do if you want to regain possession of the property, when problems such as anti social behaviour arise?

RE-HOUSING YOUNG PEOPLE – THE EQUITABLE WAY! Cont..

Solutions

It is a tricky area but our suggestions are:

- Serve a Notice Seeking Possession detailing the Trustee as Tenant and the Minor as Equitable Tenant, pursuant to Ground 2 or Ground 14 in relation to the behaviour of a person residing in the dwelling house.
- Following expiry of the Notice, issue Possession proceedings against the Trustee, whilst also issuing an Application Notice for an Order that will be binding on the Minor; or
- Add the Minor as a Defendant (although a Litigation Friend may be required).

You will need to ensure that all the preparatory work is done well in advance of any Hearing so as to be in a better position to persuade the Judge that the steps taken are an appropriate way forward.

If you require any further detailed advice and any of the documents referred to above in respect of Equitable Tenancies, please do not hesitate to give us a call on telephone 01257 266008, or e-mail info@whiteheadsols.co.uk.

Elaine Davies, Solicitor

Case study: Possession claim following drugs raid

Case summary

We received instructions from client to pursue Possession against a tenant whose property had been raided by the Police further to intelligence that he was allowing his property to be used as a cannabis farm.

After executing the Warrant, the intelligence was proved correct and there was a substantial cannabis farm set up in a bedroom of the property.

Discussions with the client revealed that there were several issues with the tenancy including persistent and substantial arrears.

A Notice Seeking Possession was drafted and we issued a Claim for Possession when the Notice expired.

The Defendant sought to defend the Claim – he contended that it was unreasonable to make an Order for Possession on the sole conviction, as he did not have any previous convictions and he was complying with Probation service. In addition, there was a Counterclaim for disrepair at the property.

Having assessed the defence, we advised that the disrepair element be settled, however the Defendant was not prepared to enter into any negotiations. The matter proceeded through Directions to Trial.

Outcome

At the Trial, the parties entered into negotiations and eventually a proposed settlement was agreed, which was extremely advantageous to our client.

The Defendant agreed to withdraw his counterclaim relating to the disrepair on the basis that he was moved to a more manageable property. He entered into a Starter Tenancy for the new property, giving the landlord more future protection.

All in all, the outcome was of great satisfaction to the client given that they had managed to avoid any damages payments and had the protection regarding the Defendant's future conduct.

Matthew Wilson, Solicitor

TENANCY AGREEMENTS – DO YOU NEED A HEALTHCHECK?

In technical terms, a Tenancy is 'a legal estate in land', and there are many different types such as Secure, Assured and Assured Shorthold Tenancies. The agreement you enter into is fundamental to the rights that you will have to deal with matters that arise during the life of the tenancy.

What you need to check

Firstly, Landlords need to ask if their current Tenancy Agreements are fit for purpose. Does the Tenancy Agreement assist when you need to enforce tenancy conditions? If you are looking to review the Tenancy Agreement, here are some factors to bear in mind.

- Ensure your Tenancy Agreement marries up with your Policies & Procedures.
- Plan a structure for your Tenancy Review, including stages for consultation with staff, tenants, senior management and board members etc.
- As part of the review, consider how many different types and variations of Tenancy Agreement are in use.
- Pay particular attention to Rent and Service Charge clauses, as getting this wrong may result in future enforcement problems and financial consequences.
 - You may want to include a "Rent Review" clause that allows you to charge a contractual increase in the first year.
 - Consider whether you operate a fixed or variable service charge regime
 - Confirm what formula you use to increase rents, taking account of recent rent deflation.
 - Ensure you work in some flexibility as clauses that are too rigid may create difficulties.

Compliance

In the light of the decision in the *Weaver* case, it is as important as ever to ensure you comply with your statutory and contractual duties as a Landlord and any supporting Policies and Procedures. Many Landlords include more detailed clauses around estate management issues, such as parking, in order that conditions can be enforced for breach of tenancy, by way of a Common Law Injunction.

What your Tenancy Agreements should include:

- General Terms
- The Landlord's duties & obligations
- The Tenants' duties & obligations
- Tenants' rights
- Declaration

Given the length of some Agreements, we would suggest a Contents page and a Glossary can also prove useful, particularly for tenants trying to find their way around the Agreement.

TENANCY AGREEMENTS – DO YOU NEED A HEALTHCHECK? Cont..

Recent tenancy work with a Housing Association client

We recently worked with St Vincent's Housing Association on their Tenancy Review and this was their experience:

"You have got to be prepared to read and interpret a Tenancy Agreement to make sure it reflects any Policies and Procedures. One of the areas we explored in detail was our Starter Tenancy agreement as we wanted to ensure our tenancy agreement reflected current legislation and best practice. Working with Whiteheads, we were able to achieve this. It certainly made it easier that we worked with someone with a housing background as well as the legal expertise."

A full review takes time and effort and may not be the most exciting job, but if it means a document that works for us and tenants, it is worth it".

Asif Iqbal, Housing Services Manager (St Vincent's Housing Association)

If you think your tenancy agreements could do with a review, please do not hesitate to contact us on telephone 01257 266008, or e-mail info@whiteheadsols.co.uk.

Elaine Davies
Solicitor

Other Publications

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

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

Case Study.....

Public Law Challenge

Our client

This client is a mid-sized social landlord based in Yorkshire which currently owns and manages over 1100 properties across the region.

Case summary

The association obtained an outright Order for possession on Ground 8 following which a warrant was issued with eviction set for the 10th November 2009. The tenant's Solicitors then threatened the association with Judicial Review and it was agreed that the warrant would be suspended to enable merits of claim to be considered.

Our advice

This case presented a number of difficulties as internal procedures had not been followed closely enough.

Having investigated the background to this case and considered the decision to issue possession action made on the 2nd July 2009, it was apparent that, at that time, no internal approval had been given to authorise the use of ground 8 and this was not granted until after the Possession Order was made. The client's internal procedures detailed that such authorisation was a pre-requisite of issuing proceedings.

Furthermore, the Notice Seeking Possession used by the client was defective.

We advised the Association that a challenge to the Association's decision was highly likely to succeed, if not on Public Law principles then as a result of failing to adhere to housing legislation.

Given the potential impact on the reputation of the Association and the costs likely to be incurred, our advice was to settle the case on the basis that the order would be set aside and a suspended order made in its place, based on other grounds for possession.

Outcome

This case highlights the importance of being familiar with and following published internal policies and procedures as well as understanding the legal frameworks. Despite the difficulties, we were able to agree a settlement with the tenant which avoided what could have been a lengthy and costly process of Judicial Review.

Gas Safety and Your Organisation - fixed fee or fine????

DON'T IGNORE THE RISKS!!!!

Fact - Every year 30 people die and hundreds are hospitalised as a result of carbon monoxide poisoning

Fact - failing to comply with the Regulations* has meant fines for landlords of between £1250 and **£49,000**

Fact - court costs in these cases range from £5000 to **£45,000**

Fact - landlords can be imprisoned

Fact - corporate manslaughter charges can follow if a tenant loses their life

** The Gas Safety Installation and Use Regulation 1998*

Our Fixed Fees**

- Policy and Procedure Review - £750
- Gas access letters from £20
- Access Injunction £500

Three steps to follow.....

Step 1 - You need to start with a good policy and procedure.

Step 2 - You can dramatically reduce the risks of prosecution and consequent damage by having and following a comprehensive P&P.

Step 3 - As a back-up, you also need a clear route to obtaining access through the Courts where access is refused.

Our Success Rate

Over 75% of non-access cases are resolved as a result of letters that we issue and for those 'difficult' cases, we have a 100% success rate with over 250 court applications in the last 12 months.

Call Joan Hobday on 01257 266008

Case Study.....

Removal of Resident Sheltered Housing Wardens

Case summary

Our client initially contacted us using our free advice line to discuss the issue of the removal of resident sheltered housing wardens. There were concerns about whether the decision to remove warden services would be lawful and whether the association could be challenged.

Our advice

Our initial advice focused on the following points:

1) Tenancy Agreement - what we did

- We reviewed the tenancy agreement and assessed the ability of the Association to vary the services.
- This was confirmed but there was a contractual right to consultation set out in the Agreement
- Provided comprehensive advice on the consultation process
- Provided advice and guidance on the Agreement but also existing regulatory requirements (Housing Corporation / TSA) and the need to seek and be responsive to residents' views and shaping services around those views.

2) Legal Challenge

We next considered the risk of challenge by way of Judicial Review and advised that a decision of this type would be a function susceptible to review by the Courts. We then explained the avenues of challenge and the procedures involved in each. To minimise the risk of any successful challenge we advised our client to:

- Evaluate the rationale for the original proposals to remove the wardens – this needed to be clearly set out with reference to all relevant factors including Supporting People funding.
- Assess how an equivalent service might be provided – alternatives must be explored and any impact on service charges explained.
- Prepare a time-line to demonstrate how the consultation process progressed including the methodology
- Ensure that all standing orders had been complied with and that delegated authorities had not been exceeded.
- Ensure that the reasons for the decision which was made were set out clearly.

Outcome

We advised our client throughout the consultation process and assisted in drafting letters to residents.

Working closely with our client meant that the process was completed smoothly and cost-effectively. We chose a lawyer who was formerly a senior housing manager who could take into account the practicalities in addition to the legal issues in play.

Contact us

Please remember, this E-Briefing is for information only so should you need any specific advice, please contact us.

Peter Whitehead - Tenancy Management, Housing Law & Community safety

Paul Lloyd, - Leasehold management, Housing Law & Community safety

Lindsay Felstead - Housing Law, Case Management & Community safety

Glyn Jones - Disrepair

Steve Daniels - Commercial & Residential Property

Joan Hobday - Gas access injunctions

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