

## Tolerated Trespassers

### What is a Tolerated Trespasser?

The term is applied to person(s) who were formerly secure tenants and whose tenancy has ended pursuant to a court order, (this could be due to accruing arrears of rent, unacceptable behaviour or other breach of tenancy) but who has remained in occupation in circumstances 'tolerated' by the former landlord.

### What this means for you

Effectively a tolerated trespasser is in 'limbo' until the stage where either the Court decides the tenant should be evicted or the tenant can renew their tenancy. This period could be anything from weeks to years depending on the circumstances of the case. Legally this means that during this period neither the landlord nor the tenant have any contractual obligations to one another and this could potentially result in problems recurring. However, as yet, the Courts have been reluctant to refuse the tolerated trespasser their rights and, in some instances, have ordered that the occupier still has sufficient rights to sue the Landlord (*Pemberton v Southwark LBC [2000]* – a case where the Court ordered that being a tolerated trespasser should not deprive an occupant of all their rights).

### What this means for the Tolerated Trespasser

Residents in this situation have their occupation of the property protected by the Court however the effects of the Court's decision will have already had further impact on them from a legal point of view. For instance, a tolerated trespasser would no longer be able to implement any Right to Buy and has no tenancy to assign. This doesn't end at housing law, however, and in fact affects matrimonial cases as the trespasser, whilst tolerated by the Landlord, cannot now have any of the property in which they live transferred, for example in divorce proceedings.

### *What can you do to reduce potential problems?*

The Court has now issued a new Form N28A (this form enables the Court to require that the Defendant give up possession but that the tenancy continue until a date fixed by the Court) and has made changes to Practice Direction 55 (this governs rules with regard to how possession claims are made to the Court) with effect from July this year.

This means that the tenant will not automatically become a tolerated trespasser until a date for possession has been fixed by the Court, however you should take care to examine the precise wording of the Order.

The thinking behind this is clearly that the tenant is entitled to a second chance and should be able to have this without any restrictions to their rights as a tenant. This means, however, that Social Landlords now have to apply to the Court to fix a date for Possession and this will mean more administrative work for them.

It has been suggested by some that the subject of tolerated trespassers needs further consideration by the legal system to simplify matters further however, with the above rules having been implemented from July this year, this seems unlikely at least at present.

So far, the Courts attention has been limited to secure tenancies and the assumption has been that the same view would be taken in respect of assured tenancies. The Court of Appeal is to test that assumption in the New Year.

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