

PROPERTY DISPUTE RESOLUTION

LANDLORD PENALISED FOR DELAY IN REPAIRS

The case of *(1) Princes House Limited (2) Princes House (Two) Ltd -v- Distinctive Clubs Ltd* will be of interest to landlords and tenants of commercial premises where the lease imposes a repairing obligation on the landlord. In this case, which was decided in September 2006, the landlord had covenanted to use all reasonable endeavours to repair and replace the roof of the building, with the various tenants contributing towards the cost pro rata according to the area of the building they occupied. Interestingly the lease provided a cap on the contributions that the tenants were required to make but this cap expired at the end of 2003, so that the landlord could recover all the costs expended thereafter.

The roof needed to be repaired and the landlord deferred carrying out the work until after the end of 2003 and then sought to recover all the costs from the tenant. Had the work been done straight away the cost recovery would have been subject to the cap.

The Court had to decide whether the landlord had used all reasonable endeavours to repair the roof. The Judge concluded that the landlord could have carried out the repairs earlier and by postponing the repairs had failed to use all reasonable endeavours and therefore could not recover all the costs from the tenants.

The landlord tried to argue that even if it had been in breach of its repairing obligation the tenant had not given any notice of this fact and therefore argued that the tenant could not rely upon the landlord's breach. The Court dismissed this argument primarily on the basis that the landlord had notified the tenant of its intention to carry out these repairs but then postponed them. Because the tenant did not have direct access to the roof the tenant could not know that the landlord had postponed the repairs and therefore whilst ordinarily a tenant should give notice of a failure on the landlord's part to carry out its repairing obligations, in this case such failure did not assist the landlord.

The case shows that where a landlord has covenanted to use all reasonable endeavours to carry out repairs, these must be done in a timely fashion. Any additional costs that might be incurred by delaying the repair will not necessarily be recoverable from the tenants by way of service charge or contribution.

David Watson

NOISE NUISANCE

All night parties, argumentative neighbours who shout and scream at all hours of the day and night, dogs and cats howling and screeching at the moon and children causing deliberate damage to property. Just a few examples of the behaviour that some individuals have to live with on a daily basis from their neighbours.

Whilst the majority of people appreciate that it is not appropriate to introduce their neighbours to their collection of rock music at 2am in the morning, there are unfortunately those who are less than sympathetic to their neighbour's need to sleep, the result being, in the case of tenanted properties, that Landlord receives a deluge of complaints from disgruntled neighbours.

Help is at hand, however, with Landlords being able to commence County Court proceedings under the Housing Act 1988 against tenants to recover possession of properties on the grounds of nuisance, including excessive noise. In such circumstances, the Court has a discretion as to whether to award the Landlord possession and can be persuaded to exercise that discretion by the Landlord providing documentary evidence of the sustained problems experienced by the nuisance tenant's neighbours and the attempts

made that by the Landlord to curb that behaviour. Where the miscreant is not a tenant or the Landlord will take no action, it is still possible to take action either by obtaining an injunction to restrain excessive noise or by bringing Environmental Health in to monitor the level of noise.

In all cases, steps can be taken that will improve the prospects of dealing with the problem:

- keep a detailed log of all instances of excessive noise and complaints made against the occupant. In particular all complainants should be encouraged to put their complaints in writing;
- in the case of a landlord, ensure that the tenant is made aware that complaints have been received, warning them against their future conduct and highlighting that proceedings may be taken. In addition, keep neighbours fully informed of the action being taken by the Landlord - their assistance in providing witness statements in future proceedings will be invaluable.
- take advice at an early stage.

Chris Drinkall



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ADVERSE POSSESSION - THE HUMAN RIGHTS APPROACH IN *PYE -V- GRAHAM*

The long-running case of *Pye -v- Graham* has proved to be of great interest to property owners and property lawyers alike, considering a possible human rights approach to claims for adverse possession or "squatters' rights" where the claimant's right is alleged to have arisen prior to the implementation of Land Registration Act 2002.

In January 1999 Pye (the landowner) brought proceedings for possession against Mr Graham, a neighbouring farmer who claimed title to the land under the old (pre LRA 2002) adverse possession right. Mr Graham had at one time enjoyed licences to use Pye's land, but these had lapsed and though he had requested renewals, his requests had been ignored and for some years he had simply continued to use the land.

Having lost in the House of Lords, Pye applied to the European Court of Human Rights alleging that the UK law violated Article 1 of the Convention.

The European Court of Human Rights held that the effect of the Land Registration Act 1925 and Limitation Act 1980 was to deprive Pye of its beneficial interest and so the Article was triggered, and that in the absence of any balancing provision for compensation, the provisions of the old adverse possession regime imposed an excessive burden and upset the fair balance between the demands of the public interest and Pye's right to the undisturbed enjoyment of their possessions.

It seems likely that Pye will recover substantial compensation although it is unlikely to recover the land in question, and the UK government have since applied to have the case heard by the Grand Chamber of the European Court of Human Rights.

In theory, the case gives a possible private law defence to a claim of adverse possession, but the law is far from settled on this point, and any "trailblazers" who wish to pursue a test case should be aware that it may become necessary to fight the matter all the way to the House of Lords or into Europe to achieve a final decision.

The new system which applies to those rights which have arisen since the coming into force of the Land Registration Act 2002 is thought to be compatible with the European Convention on Human Rights, but given the number of potential claimants whose rights may still be governed by the "old" regime, this decision will be highly relevant for some time to come.

Andrew Digwood



UNLAWFUL EVICTION AND HARASSMENT

Even if a landlord has a "tenant from hell", steps cannot be taken to remove a tenant from the property without a Court Order.

Classic acts of unlawful eviction and harassment include a landlord changing the locks at the property without the tenant's permission, barring entry to the tenant in some other way, cutting off the electricity and gas supplies, entering the property without notice and without the tenant's permission, and threatening and verbally abusing the tenant.

The Protection of Eviction Act 1977 makes it a criminal offence for a landlord (or anyone acting on their behalf) to force or attempt to force a tenant to leave the property without a Court Order. The Police and/or the Local Authority can commence criminal proceedings against the landlord, the maximum penalty being two years imprisonment.

The Act also provides for civil remedies and therefore, in addition to criminal action, the tenant can sue the landlord for damages (compensation). The basis for the measure of damages is the difference in the value of the property with the tenancy and the value of the property without the tenancy. Damages can therefore run into several thousands of pounds.

So what can a landlord do to remove a residential tenant lawfully? If (as now is usually the case) the tenancy is an Assured Shorthold, then the generally held view is that the two month notice procedure under Section 21 of the Housing Act 1988 is the safest method. Although, after serving the Notice, the landlord has to wait at least two months before being in a position to issue Court proceedings, an accelerated County Court procedure is then available and the opportunities for a tenant to defend such proceedings are very limited.

Shorter notice periods are available where the tenant is in default of his/her obligations, but court action will generally not be successful where the default

is remedied before the hearing. In addition, tenants in those cases have greater opportunity to defend the proceedings and raise a counterclaim.

Another potential minefield is the situation where a tenant appears to have vacated the property, without formally announcing their departure. For example, the rent could dry up and an inspection by the landlord reveals little or no trace of the tenant's belongings. Here it is advisable to leave a written notice at the property, informing the tenant that the landlord believes the tenant has abandoned the property and that the landlord will take back the property within a set period. This will then provide protection to the landlord if the tenant subsequently argues that he/she had not surrendered the tenancy.

Moral of the story: always go down the legal route, and in particular take legal advice before taking steps to repossess any residential property.

Roger Driscoll

INFORMATION

***If you have any queries on any property disputes please contact:
Ralph Gilbert at Hull on (01482) 323239
David Watson at York on (01904) 625790***

This bulletin is for the use of clients and will be supplied to others on request.

It is for general guidance only. It provides useful information in a concise form.

Action should not be taken without obtaining specific advice. We hope you have found this bulletin useful. If, however, you do not wish to receive further mailings from us, please

write to Mrs. Pat Coyle, Rollits, Wilberforce Court, High Street, Hull, HU1 1YJ.

***The law is stated as at 1 October 2006
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