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Resolving housing issues

BRIEFING NOTE

NOTICES TO QUIT —
A DECISION BY THE EUROPEAN COURT OF HUMAN RIGHTS HERALDS CHANGES IN DOMESTIC LAW

On 13th May 2008, the European Court of Human Rights (ECHR) handed down a decision which signals a fundamental change in a line of case law that dates back over more than a century. For as long as can be remembered, it has been the rule at common law that: a person who is entitled to serve a Notice to Quit (NTQ) may do so for any reason; the NTQ will bring the tenancy to an end; the owner of the property will thereafter be entitled to an outright order for possession.

In ***McCann v The United Kingdom*** *(Application no. 19009/04)*, in a judgment given on 13th May 2008, the ECHR has reached a decision which may mean that rule no longer applies where the property is owned by a public authority. The Court has held that, notwithstanding that under domestic law a person's right to occupy has come to an end, that person's Article 8 human right to respect for the home may mean that an outright possession order should not be granted.

McCann is the latest in a series of cases which undermine the long-established common law position on NTQs. The Court of Appeal decision in ***Kay v Lambeth LBC*** *[2006] 2 AC 465,* enabled tenants of local authorities, and other public bodies, to defend claims on the grounds that the decision to bring the claim was irrational. In ***Lewisham LBC -v- Malcolm*** *[2007] EWCA Civ 763,* a decision which affects both public and private landlords, the Court of Appeal decided that NTQ claims can be defended on grounds of disability discrimination. The House of Lords' judgment on the appeal against that decision is awaited but, in the meantime, **the ECHR decision in *McCann* suggests that all occupiers of properties owned by public authorities, whose tenancies have been terminated by NTQ, should potentially have available to them a human rights defence**.

Case Summary

Mr McCann and his wife had held a joint secure tenancy of a Birmingham City Council property. Following domestic violence, his wife had left the property and had been re-housed by the Council. Subsequently, at the request of a Council officer, she served a Notice to Quit, terminating the tenancy. After pursuing human rights arguments unsuccessfully in the domestic courts, Mr McCann applied to the ECHR. The ECHR held that:

"The loss of one's home is a most extreme form of interference with the right to respect for the home. Any person at risk of an interference of this magnitude should in principle be able to have the proportionality of the measure determined by an independent tribunal in the light of the relevant principles under Article 8 of the Convention, notwithstanding that, under domestic law, his right of occupation has come to an end."

In other words, for UK housing law to observe human rights in NTQ cases, an outright possession order cannot be the automatic outcome in every case. Instead, there must be a procedural safeguard which enables the Court to: consider the occupier's right to respect for the home; balance that right against the need to protect the property rights of the public authority and the need to ensure that the statutory scheme for housing provision is properly applied; decide whether the interference with human rights is proportionate; and make an order accordingly.

Impact on Social Landlords

The decision in ***McCann*** is relevant to all local authority NTQ cases. It also has implications for other types of case where the public authority landlord is said to be entitled to possession 'as of right' e.g. introductory and demoted tenancies.

The ECHR decision does not have the effect of directly changing our domestic law, however, so it is business as usual in our County Courts for now, but it is essential to watch this space. — It is anticipated that the House of Lords may well use the opportunity of the forthcoming case of ***Doherty -v- Birmingham CC*** to re-examine the question of how Article 8 is to be applied in UK possession proceedings.

As to whether it will affect other social landlords, the Court of Appeal's decision in *R (Weaver) v LQHT* is currently awaited and should clarify whether RSLs are now to be regarded as public authorities. The possibility of an amendment to the Housing and Regeneration Bill to require RSLs to act in accordance with human rights law, is also under discussion. — We will keep you updated.

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