

BRIEFING NOTE

ASSURED TENANTS DO NOT BECOME TOLERATED TRESPASSERS FOLLOWING THE TAKING EFFECT OF A POSSESSION ORDER

The law relating to tolerated trespassers is due to be changed wholesale by section 299 and schedule 11 of the Housing and Regeneration Act 2008. Pending those provisions coming into force, case law developments in this area have continued. On 10th December 2008, the House of Lords delivered judgment in 3 cases which have provided definitive answers to some of the questions which have been concerning social landlords and their lawyers for some time.

Most significantly, in *Knowsley Housing Trust –v– White [2008] UKHL 70*, the House of Lords has decided that the answer to the question:

- ◆ **Does the concept of the tolerated trespasser apply under the assured tenancy regime, as well as in relation to secure tenancies?**
Is
- ◆ **No — an assured tenancy does not end on the date specified in the possession order, it continues until the date of eviction, so the status of tolerated trespasser does not arise.**

This finding, which reverses the law as it previously stood following the Court of Appeal's earlier decision in the same case, has repercussions for all housing association landlords. Each organisation will need to review its policies and procedures in relation to tolerated trespassers in light of this decision, which has implications for housing management, court proceedings and the Housing and Regeneration Act.

Here are some of the key considerations:

Housing management

- ◆ Thousands of occupiers who have been treated as tolerated trespassers must now be recognised as assured tenants
- ◆ Obligations under the assured tenancy agreement will remain binding until eviction
- ◆ Rights under the assured tenancy agreement—in relation to, succession, assignment, mutual exchange, preserved right to buy, right to acquire, consultation etc.—will continue until eviction.

Court proceedings

- ◆ Suspended possession orders i.e. orders containing a date for possession but suspended on terms, should now be granted against assured tenants rather than postponed possession orders
- ◆ Fewer applications for discharge of possession orders should be made by assured tenants and there will be no need for such tenants to apply for their tenancies to be revived
- ◆ Claims can be anticipated from assured tenants and other occupiers e.g. would-be successors, who have suffered loss as a result of the tolerated trespasser status having been applied.

Housing and Regeneration Act 2008

- ◆ The effect of those parts of the Act which are intended to redress the status of tolerated trespassers will now be more limited than intended
- ◆ New assured tenancies will not arise upon the commencement of those provisions, as the original tenancies have not ended.

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