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Our lawyers have been described as “**down to earth and approachable**”, “**a cracking team**” who provide a “**professional and good value service**” by the Chambers Guide to the Legal Profession.

We specialise in services for the Social Housing sector.

In keeping with the firm's values, and because of their solid grounding in housing issues, our Social Housing team appreciate our clients' changing needs and the sensitive political landscape in which they operate. Team members are former housing officers and managers. So we bring commercial acumen, coupled with a social ethos, to our handling of the problems faced by social housing clients thereby achieving speedy and cost effective solutions.

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General Rule: Landlord Entitled to Summary Possession at First Hearing

Holmes v Westminster City Council

Facts

H had a history of mental health problems and was housed by W under Section 193 of the Housing Act 1996. H was owed the full housing duty, because H was homeless, in priority need, and had not become homeless intentionally. Accordingly, W granted H a contractual tenancy with no Housing Act security.

During his tenancy, H refused two appointments arranged by W to inspect his accommodation. In light of this, having discharged its housing duty to H, W decided to recover possession of his property. H requested a review of W's decision and, on review, the decision was reversed. However, by this time a notice to quit had already been served on H and possession proceedings had been issued. The proceedings were later adjourned pending the outcome of the review.

After W had reversed its discharge decision, H's solicitors asked W to withdraw the possession proceedings. However, two days after this request was made, two housing officers who visited H, alleged that he had assaulted them. As a result, W resumed the possession proceedings and H filed a defence to the claim.

W requested that H's defence be struck out and sought a possession order on a summary basis. W's request was

granted and the Court struck out H's defence pursuant to CPR 55.8. H then appealed to the High Court against the possession order.

The High Court observed that, under CPR 55 **possession proceedings as a general rule are to be determined without the need for a trial, i.e. on a summary basis at the first hearing.** In order to do this, the judge is only expected to read the written evidence submitted at the hearing.

High Court Ruling

The High Court concluded that the Judge's decision to deal with this matter on a summary basis was in accordance with CPR 55. The Judge had considered the evidence of the housing officers regarding H's alleged assault upon them and had considered whether, in light of the assault, W had followed its ASB policy. He concluded that the policy had been followed and conveyed in writing to H, prior to possession proceedings being resumed.

The High Court also felt the decision was consistent with recent case law on the termination of non-secure tenancies, i.e. Hounslow LBC v Powell. As a result, H's appeal was dismissed.

Where possession proceedings are commenced against a tenant with no security of tenure, a possession order should be granted at the first hearing provided that, on the facts of the case, it is lawful and proportionate to do so.

Mr John Holbrook, Counsel, who represented the Landlord, comments; "it is welcome news for social landlords who are keen to avoid the problem that Lord Hope [Deputy President of the Supreme Court] described as "the risk of prolonged and expensive litigation, which would divert funds from the uses to which they should be put to promote social housing in the area" (Powell para 31)

Marsonstips

To obtain possession at the first hearing:

- Submit detailed witness statements confirming why possession is being sought.
- Any relevant policies and procedures, e.g. rent arrears policy, rent arrears protocol, antisocial behaviour policy, should be followed before proceedings are commenced.
- Before commencing proceedings, give the tenant the opportunity to request a review of your reasons for seeking possession.

Bankruptcy, Debt Relief Orders and Possession Proceedings

Bankruptcy orders, and debt relief orders (DROs) are being used more frequently as a route out of debt. However, how do such orders effect a tenant's rent arrears?

Bankruptcy

The Court of Appeal decided in *Ezekiel -v- Orakpo [1977]* and *Harlow District Council -v- Hall [2006]* that the bankruptcy of a tenant does not prevent a landlord from forfeiting a lease or obtaining an order for possession of an assured or secure tenancy.

Debt Relief Orders

DRO's were introduced, as an alternative to bankruptcy in Part 5, Chapter 3 of the Tribunals and Court Enforcement Act 2007, to enable individuals with little income or assets to have debts of up to £15,000 written off.

The effect of a tenant obtaining a DRO is that any rent arrears which form part of the DRO are written off and are not recoverable. The landlord can only challenge the inclusion of the rent arrears in the DRO on very specific prescribed grounds.

The effect of bankruptcy and DROs on a landlord's right to possession

The Court of Appeal has recently clarified the law on the effect of bankruptcy and DROs on possession orders, in the cases of *Sharples -v- Places for Human Homes Limited* and *Godfrey -v- A2 Dominion Homes Limited*

In *Sharples & Godfrey*, the tenants were subject to a bankruptcy/DRO respectively. At the possession hearings, the Judges rejected the tenants' arguments that the landlords were not entitled to possession, because possession on the grounds of rent arrears would be a remedy in respect of the debt which was already subject to the bankruptcy/DRO. In *Sharples*, the District Judge granted an outright possession order, but did not make a money judgment in

respect of the rent arrears. In *Godfrey*, the District Judge made a suspended possession order for possession upon terms that the tenant paid the current rent plus £5 per week towards the arrears.

Both tenants' appeals were dismissed by the Circuit Judge so they appealed to the Court of Appeal. The tenants argued that possession sought on the basis of rent arrears which had been included in a bankruptcy order or which were subject to a DRO, were "remedies against the debt". They also argued, that rent arrears which formed part of a bankruptcy order or a DRO were not "rent lawfully due" to the landlord. The Court of Appeal rejected these arguments and held that:-

- A possession order on the grounds of rent arrears is "not a remedy in respect of a debt" even when those arrears are included in the bankruptcy, or are debts which are the subject of a DRO.
- Possession is a remedy for the tenant's breach of a contractual obligation, i.e. failure to pay rent.
- The object of a claim for possession for rent arrears is not to secure payment of the arrears but to restore to the landlord the right to full possession and enjoyment of his property.
- However, where possession is sought for rent arrears on a discretionary ground, the Court cannot suspend or postpone an order for possession upon condition that the tenant pays an amount off the arrears which are included in the bankruptcy or DRO.

The UK Supreme Court confirmed *Godfrey & Sharples* in *Secretary of State for Work and Pensions -v- Payne & Cooper 2011* (test case), which involved Social Funds payment and overpayments recovery. The case confirmed that debts cannot be recouped during the moratorium of a DRO and that bankruptcies shall not be treated differently from DRO's.

Summary

- 1 A possession order (whether outright, suspended or postponed upon terms) for rent arrears which are a debt included in a bankruptcy or DRO, are enforceable against the tenant.
- 2 A money judgment cannot be made against the tenant for arrears which are included in a bankruptcy or DRO.
- 3 A suspended or postponed possession order cannot be conditional upon the tenant paying off arrears which are included in a bankruptcy or DRO.

Unauthorised Sub-letting

On 11 January 2012, the Government published proposals to criminalise **unauthorised subletting** with a **maximum prison sentence of 2 years and/ or a fine, for anyone found guilty of the offence**. This has now passed consultation and is currently being considered by Parliament.

We will keep you informed of further developments in this regard in our future newsletters as and when they occur.

Letter sent in error can have adverse legal repercussions

Saxon Weald v Dayne Chadwick

The issue between the parties was whether the tenancy had become an assured tenancy or whether it remained an assured short-hold tenancy. The landlord argued that it was an assured shorthold. The tenant argued that it was assured.

On 11th August 2008, S granted C a starter tenancy (assured shorthold). The tenancy agreement stated that the tenancy was for a probationary period of 12 months, after which it would automatically become an assured tenancy unless:

- possession proceedings had begun against the tenant; or
- a notice requiring possession was served

The tenancy agreement also stated that, if the tenancy was converted to an assured tenancy, the landlord would serve a letter on the tenant confirming this.

Soon after the tenancy commenced, C engaged in various acts of antisocial behaviour. As a result of this, on 5th August 2009, S served on C a notice requiring possession and a notice seeking possession. Just 6 days later, S sent C a letter confirming that C had successfully completed his starter tenancy and that C now held an assured tenancy. The person who

sent the letter was apparently unaware that S had already served notice to recover possession of C's property. Possession proceedings were later issued and C filed a defence to the claim. The judge at first instance ruled that the letter confirming that C was now an assured tenant, was clearly sent in error and the notices requiring/ seeking possession of the tenancy, prevented it from becoming assured. The judge rejected C's argument that the letter was in fact a notice pursuant to paragraph 2 of Schedule 2A of the Housing Act 1988.

C appealed against the judge's order and C's appeal was allowed by the Circuit Judge (CJ). The CJ accepted C's argument. The letter confirmed that the tenancy was now an assured tenancy and this was sufficient to satisfy paragraph 2, Schedule 2A.

The CJ found that the letter was unambiguous, despite S's alternative intention to recover possession of the property, with the effect that C's tenancy had become an assured tenancy.

S's appeal to the Court of Appeal was dismissed. The Court of Appeal agreed with the CJ and rejected S's argument that despite receiving the letter, C would have known that, on the contrary, S intended to take possession of his property. The Court of Appeal concluded that it was

not for C to consider the reasoning behind S sending the letter. There was no mistake or ambiguity in the wording of the letter itself. The only mistake was that S had sent it at all. Read objectively, the letter effectively converted the tenancy into an assured tenancy.

Marsonstips

- Landlords who operate a starter tenancy regime should be very careful when issuing "routine" first anniversary letters confirming successful completion of the 12 month probationary period.
- Any such letter should include a proviso that the tenancy has become an assured tenancy, only if the landlord has not already served a notice requiring/ seeking possession; or if possession proceedings have not been issued.
- All first anniversary letters should be reviewed together with the file, to ensure that a starter tenant, who has not met the criteria, is not granted an assured tenancy.

A date for your Diary - Free Seminar 22nd January 2013

The next seminar in our programme is on **WELFARE REFORM and other topical issues**.

Our seminars are on subjects affecting the social housing sector and are open to all. They are free and usually held in a central location. Make a note in your diary and keep an eye on our website for details – www.marsons.co.uk

Comments from our previous seminars:

"I understand how housing law affects case work and the job I do in customer services."

"Excellent presentation of complex topics. I was looking for a grounding and the additional course notes and appendices will prove extremely useful."

"Discussion on housing law was great - got lots of knowledge, particularly in Assured Tenancies. Great stuff."

"Really enjoyable and very informative."

"Brilliant trainer - kept my attention - really pleased, thanks."