



Rent - Is it Lawfully Due?

Landlords should comply with the terms of the Lease when increasing rent

A recent County Court case (reported in Legal Action Group July/August 2014) highlighted an interesting point in relation to rent possession proceedings and whether the rent demanded by the landlord was lawfully due under the terms and conditions of the tenancy agreement.

The case in question involved possession proceedings on the ground of rent arrears against an assured tenant who had held his tenancy for 5 years. The Housing Association landlord brought proceedings relying on Ground 8 of Schedule 2 of the Housing Act 1988 and was granted an order for possession on the basis that more than 8 weeks' rent was owed by the tenant on the date the Notice of Seeking Possession (NOSP) was served and at the date of the possession hearing.

The tenant, having sought legal advice, applied to have the possession order set aside on the basis that the annual rent increases had not been implemented in accordance with the terms of the tenancy agreement. In this particular case, the agreement stipulated that at least 4 weeks' notice of any increase in rent would be given and that the rent could not be reviewed in periods of less than 1 year since the last increase. On looking at the rent account since the commencement of the tenancy it became apparent that rental increases had occurred on the 1st Monday in April – which actually meant that they were occurring at intervals of slightly less than a year, contrary to the terms of the tenancy agreement.

The tenant argued that as a result of this, the only rent lawfully due was the rent charged at the commencement of his tenancy and that any subsequent increases were invalid. The tenant also argued that as the only rent payable was the rent charged at the commencement of the tenancy, his rent account was actually in credit at the time the NOSP was served. Therefore, the ground 8 possession claim should fail.

The issue was not decided by the court as the parties signed a consent order agreeing to set the possession order aside. However, the Judge who presided over the matter strongly urged the Housing Association landlord to review the way in

which it operated its rent increases, to ensure that the system for doing so complied with the terms and conditions of its tenancy agreements.

In this case a seemingly straightforward ground 8 rent arrears claim was defeated due to rent increases being implemented just 1 or 2 days earlier than was permitted under the tenancy agreement. This is a potent reminder for landlords of the necessity to adhere to the contractual terms of all its tenancy agreements, particularly where those terms relate to the payment of rent and the landlord's right to increase it.

Marsons Tips

1. Rent should only be increased in accordance with the periods stipulated in the tenancy agreement and no earlier.
2. If the tenancy agreement for an assured periodic tenancy does not contain a clause on rent increases, then you should comply with the provisions of s13 Housing Act 1988.

This bulletin is intended to provide information of a general interest about current legal issues.

If you want to discuss these issues in greater detail, **please call Bernadette Reid on 020 8313 1300 or email her on bernadette.reid@marsons.co.uk**



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