Machins SOLICITORS

RESIDENTIAL LETTINGS NEWS

FEBRUARY 2022

BREATHING SPACE CAUSING FURTHER DELAYS FOR LANDLORDS

The Debt Respite Scheme (Breathing Space) was introduced in 2021 as part of the Government's response to the Covid-19 pandemic. It is designed to give those facing debt problems a degree of protection from their creditors. There are two types of breathing space: a standard breathing space and a mental health crisis breathing space. A standard breathing space, which seems to be more common, is available to anyone with problem debt.

The effect of the breathing space is that the debtor has legal protection from any action by creditors for a period of 60 days. This includes protection for tenants where they are in rent arrears.

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Where a tenant relies upon a breathing space, the landlord cannot contact the debtor about any enforcement action and that includes asking them to pay. The tenant is however still liable to pay ongoing rent that falls due during the breathing space.

Very importantly for landlords that may be seeking to recover possession of property from a tenant that is defaulting on their rental obligations, if you receive notification that your tenant is in a breathing space then during the period of protection you will not be able to serve a valid Section 8 notice based on rent arrears, nor will you be able to issue a claim for possession based on rent arrears, or take any enforcement action (for example proceed with a bailiff appointment to evict). It is also important that if you have already commenced proceedings then you should immediately inform the court about the tenant's reliance upon a period of breathing space and provide the court a copy of the notification from the Insolvency Service where possible.

When the breathing space ends, you should receive a formal notification confirming this. When this has been received, you can then proceed with any of the above actions that you may have had to pause whilst the breathing space was in place.

The effect of the breathing space, from a landlord's point of view, is that matters can be delayed by a further two months. This is particularly frustrating for landlords who have already experienced significant delays since the outbreak of the pandemic, especially in circumstances where the rent arrears started to accrue prior to Covid-19.

GAS SAFETY CERTIFICATES AND ENERGY PERFORMANCE CERTIFICATES (EPCS) – THE STORY CONTINUES…

As many landlords and agents will know, Gas Safety Certificates and EPCs seem to be the subject of a never-ending debate by the courts and legal commentators in recent years. A recent Court of Appeal case, Minister v Hathaway & Hathaway [2021] EWCA CIV 936, has clarified matters further and comes as a relief to residential landlords.

The Deregulation Act 2015 introduced new requirements for landlords, including a requirement under Regulation 2 of the (concisely named!) Assured Shorthold Tenancy Notices and Prescribed Information (England) Regulations 2015 (the "Regulations") that landlords must serve an EPC and Gas Safety Certificate on the tenant before they move into the property in order to be able to serve a valid Section 21 eviction notice.

The Deregulation Act 2015 automatically applied to any new assured shorthold tenancies (ASTs) granted on or after 1st October 2015. A three year transition period was also introduced under the Act, such that after 1st October 2018, the Act applied to all tenancies irrespective of when they were granted.

In the Minister case, the AST was granted in 2008. An EPC was never served on the tenant, and in December 2018 (i.e. after the transitional period ended), a s21 notice was served by the landlord requiring possession of the property and a s21 claim was issued.

The tenant defended the claim on a number of grounds, but of significance, he argued that the Regulations applied, and as an EPC had not been served on him, the s21 notice was not valid.

The Court of Appeal ultimately dismissed the tenant's arguments and found in favour of the landlord. The Court held that Regulation 2 of the Regulations, which relates to EPCs and Gas Safety Certificates does not apply to tenancies that were granted prior to 1st October 2015.

This case may provide some reassurance to landlords and agents who have been grappling with this ongoing saga for some years now.

HOUSE-SHARE TENANCY DEPOSITS – A WAKE-UP CALL FOR LANDLORDS?

House-shares are becoming increasingly common, particularly in light of the dramatically rising cost to buy or rent property in areas such as London. The recent decision in Sturgiss & Gupta v Boddy & Ors [2021] 7 WLUK 298 has given landlords more clarity, and perhaps a wake-up call, where they have tenants living in a house-share.

In this case, the landlord first let the property to a group of tenants in June 2004 under an assured shorthold tenancy agreement (AST). A deposit was paid, which was not protected as the AST pre-dated the introduction of mandatory deposit protection legislation. The flat share was flexible. Over the years, the occupiers changed frequently and made their own arrangements for the deposit on each "churn". Each incoming occupier arranged to pay the outgoing occupier their share of the deposit (to effectively buy out the previous occupier). The occupiers changed frequently, so there were many churns over the years.

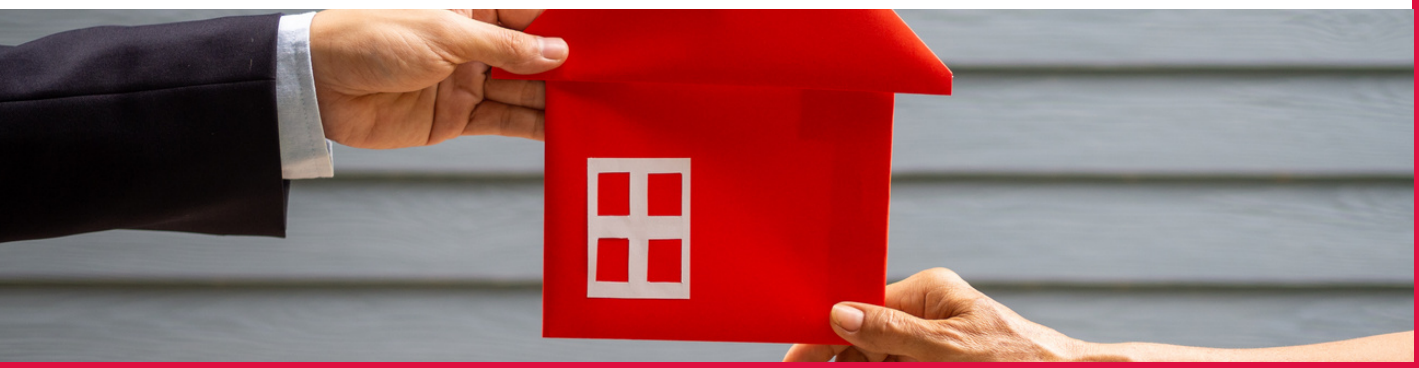
By 2020, all of the original tenants had long gone, and four new tenants occupied the property. Two of the tenants brought a claim against the landlord pursuant to s214 of the Housing Act 2004 alleging that he had failed to protect their deposit and therefore compensation was due.They sought statutory compensation of between 1x and 3x the value of the deposit. They claimed that on each churn (i.e. change of tenants) a new tenancy arose, and so they sought to claim statutory compensation for each churn.

The landlord defended the claim by arguing that the occupiers were licensees rather than tenants, and further argued that the claimants (i.e. the current tenants) had not paid any deposit to him, such that there was no breach of the requirement that any deposit be protected.

HHJ Luba QC, a well-known and highly respected judge in housing law, heard the appeal. Firstly, he held that the tenants were indeed tenants, not licensees, as the arrangement between them and the landlord had all the usual signs of being a tenancy, including exclusive occupation and rent being paid. Further, he held that the landlord must be treated as being "paid" the deposit by each cohort on each churn. This meant that the landlord was in breach of deposit protection legislation on each of the churns that had taken place.

In terms of the compensation awarded, HHJ Luba QC found that the landlord was at the lower end of culpability, and so he ordered that the landlord pay 1x compensation for each of the three churns.

This case is important to be aware of for landlords and agents who deal with house-shares, as a failure to protect a deposit could end up being extremely costly, particularly if there are a number of churns of tenants over the years.



A REMINDER – S21 AND S8 PRESCRIBED FORMS

Finally, and by way of a reminder, the template Form 6A (used for s21 notices) and Form 3 (used for s8 notices) have also been updated and are both available on the Government website.

These forms are prescribed, meaning that a failure to use the correct form could result in the notice being invalid. Where possession proceedings are then pursued on the basis of an invalid notice this may cause the proceedings to fail and exposes a landlord to the risk of having to pay a tenant's costs of defending those failed proceedings.

When serving either a s8 or s21 notice, we recommend checking the Government website and downloading a fresh version of the appropriate form to avoid any risk that the forms have been updated without you realising.

https://www.gov.uk/guidance/assured-tenancy-forms

If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' Property Litigation Team on 01582 514 000 or by using the email addresses below.

We offer fixed fees for s21 and s8 possession claims up to and including the first possession hearing. Please email Holly Baker for a copy of our fixed fee schedule or to find out more.

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