Machins SOLICITORS

RESIDENTIAL LETTINGS NEWS

DECEMBER 2022

NEAR MISS FOR LANDLORD IN DEPOSIT CLAIM WORTH OVER £120,000

Since the introduction of the Housing Act 2004, any landlord taking a deposit from a tenant entering into an Assured Shorthold Tenancy (AST) must protect it in an approved deposit protection scheme and provide certain prescribed information to the tenant, failing which the tenant could have a claim for the return of the deposit and compensation which could be between 1x and 3x the value of the deposit.

Where subsequent ASTs are entered into (for example, where the same tenant remains in occupation but enters into subsequent renewal tenancy agreements over the years), the landlord could be liable to the tenant for compensation in relation to each renewal.

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For tenants who have been in occupation for many years, this could end up being a hefty claim against the landlord, particularly where the tenant is claiming that the compensation due for each renewal should be 3x the deposit.

His Honour Judge Luba KC, a highly respected judge with specialist housing and property experience, recently heard the case of Lowe v Charterhouse (2022) EW Misc 8 (CC) in the County Court at Central London. Whilst this is a County Court case (meaning that it is not binding as a precedent for future cases), it is a useful indication of the approach that judges are taking to deposit protection claims at present, particularly given that it was being heard by such a high-profile judge in the property sphere.

In the case of Lowe v Charterhouse, the tenant had first entered into an AST in January 2020 and, since then, the parties had entered into various renewal tenancy agreements which amounted to 8 tenancies overall. The tenant paid a deposit of £3,300 in 2010, and the landlord failed to provide the prescribed information in breach of s.213(6) of the Housing Act 2004. The landlord disputed this, and stated that their agent had sent a letter enclosing the prescribed information within the prescribed period. The copy sent was unsigned, asking that the tenant sign and return that copy for the landlord then to sign.
The tenant, Mr Lowe, brought a claim for more than £120,000, claiming compensation which amounted to £120,888. The Court rejected Mr Lowe's claim, and made the following key points:-

- Part of Mr Lowe's claim is time-barred by virtue of the Limitation Act 1980, meaning that Mr Lowe couldn't claim for some of the historic tenancies as it had been more than six years from when the cause of action accrued. This meant that Mr Lowe's claim could only be brought from June 2015 only (i.e. six years before the claim was issued).
- The Judge gave Mr Lowe's evidence short shrift, as at points he was inconsistent and contradicted what he had previously stated in his witness statement. The Judge noted that Mr Lowe stated in his witness statement that he did not recall receiving the letter, but later in oral evidence he maintained that he was sure that he did not receive it. Mr Lowe's case may have failed on this basis as the Judge was satisfied that the letter and the prescribed information had been sent. This is an important reminder to anyone considering litigation (of any kind) of the importance of witness evidence and the risk of the trial judge believing one party over the other based on what is said at trial.
- The Judge had to consider the legislation, and the requirement that the prescribed information be "signed" by the landlord (which in this case, it was not). The Judge held that Mr Lowe could not rely on his own failure to sign and return the certificate in mounting his claim. He also stated that, irrespective of the signature being lacking, Mr Lowe knew who had sent the information given that the cover letter was signed, and therefore the statutory objective had been achieved.

This case will undoubtedly come as a relief to many landlords, although is a further reminder of the potentially devastating consequences that can arise from a failure to comply with the deposit protection rules under the Housing Act 2004. In this case, and on these facts, the tenant's claim failed.

TOP POSSESSION PITFALLS OF AUTUMN 2022

Spurious disrepair claims

This season, we have had s.8 possession hearings where the tenant has raised spurious disrepair claims about issues that have never been reported to the landlord or agent and are likely to be baseless. Unfortunately, even in situations like this where the claims have no merit, the District Judge is likely to give the tenant an opportunity to put in a defence, and will adjourn the first hearing to a later date. The overall impact is to delay possession, and in the meantime rent arrears continue to accrue.

Falsified reference evidence

We have seen a few deceitful tenants use falsified evidence such as altered payslips to create the impression that they have the financial stability and affordability to pay a higher level of rent than they can in reality. It is therefore no surprise when the tenant falls into arrears just months into the 12 month AST.

Invalid gas safety certificates

We are not gas safety engineers and so spotting invalid or defective gas safety certificates is not within our remit. As a reminder, landlords or agents will need to satisfy themselves as to the validity of their gas safety certificate, as this is not something we are able assist with!

GUARANTEED RENT AGREEMENTS: A NO BRAINER OR A HEADACHE TO AVOID?

In today's market, with a backdrop of economic instability and a recession looming, guaranteed rent agreements are becoming increasingly attractive to private rented landlords.

Under this type of agreement, a landlord lets to a tenant, often a company, who then in turn sub-lets the property to sub-tenants who then occupy the property under an AST usually for a higher rent. Under this arrangement, the landlord has no day-to-day contact with the people living in the property (and so, hopefully, less time-intensive management responsibilities). The pay-off is that the landlord will usually earn less in rent compared to the potential rental yield if they were to let directly to an occupying tenant under an AST, but many landlords consider this to be worthwhile considering that the rental income will, usually, be more dependable.

However, that's not to say guaranteed rent arrangements are always plain sailing.

In recent years, and in particular during the Covid-19 pandemic, some tenants have faced financial difficulties and have fallen into arrears. This can sometimes leave landlords in a difficult predicament if the landlord is left with an occupier in the property who they have no direct written contract with and whose identity they may not even know. Court proceedings are often necessary in order to bring matters to a head and regularise the position, which can be time-consuming and costly.

So whilst guaranteed rent agreements have their benefits and can provide a more reliable source of income from private landlords, they are certainly not without risk.

We would always recommend that a landlord considering this type of agreement should obtain legal advice on the agreement before signing up. Machins have an experienced property team who can advise on these matters.

TENANTS' RELATIONSHIP IS AT AN END – BUT IS THEIR ASSURED SHORTHOLD TENANCY?

What happens where an assured shorthold tenancy is granted to two joint tenants, where one tenant serves notice to quit but the other tenant stays in occupation?

This question commonly arises when dealing with a separated couple, who entered into an AST in their joint names during happier times. When the couple comes to separate and one moves out, serving notice on their landlord when doing so, are they still on the hook for the ongoing rent obligations if the other tenant stays in occupation? Can the landlord pursue both tenants if the occupying tenant stops paying rent?

What happens where an assured shorthold tenancy is granted to two joint tenants, where one tenant serves notice to quit but the other tenant stays in occupation?

Well, if the fixed term of the AST has expired (meaning that the AST is now a periodic tenancy), just one of the tenants may serve notice to terminate the tenancy without the other agreeing or vacating, unless the tenancy agreement says otherwise. The landlord would then have to bring a separate possession claim against the tenant that remains in occupation if they want to seek possession of the property where rent is not being paid.

Where one tenant moves out during the fixed term of an AST, the landlord will need to look carefully at the terms of the AST in order to determine what their obligations are, but it is likely that both tenants will remain liable.

THE END IS LOOMING FOR S.21 'NO FAULT' EVICTIONS: HOUSE OF COMMONS RESEARCH BRIEFING PUBLISHED

The Government's plans to abolish s.21 'no fault' evictions first became news in 2019. In 2022, the Queens Speech committed to ending s.21 evictions by introducing a Bill in the 2022-23 parliamentary session. When the change may actually come into effect remains unknown.

The effect of the proposed abolition will be that a tenancy can only be terminated if (a) it is terminated by the tenant, or (b) if the landlord is able to rely on one of the listed grounds for possession and use the s.8 procedure, which is an alternative to s.21.

A House of Commons research briefing published on 24th October 2022 seeks to give an overview of the background to the proposed change, and sets out the wider aims of reducing homelessness applications that arise from no fault evictions and encouraging longer tenancies with more security for tenants. The briefing also highlights the current proposals to bolster the grounds for eviction under the alternative route, s.8. New grounds are to be introduced, including a ground that a landlord can rely on if they are seeking to sell the property, and a ground that can be used if a close family member wishes to live in the property.

For those interested in understanding more, the briefing is available here:
https://commonslibrary.parliament.uk/research-briefings/cbp-8658/

If you would like to discuss or need any help or support on any of the issues above then please contact the Machins' 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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