

# Housing Team Legal Bulletin

Issue 12. October 2006



## Possession proceedings

**Brisco (Builders) Limited v. Diane Smith [2006], Liverpool County Court, 21 September, HHJ Mackay**

The Defendant was an assured shorthold tenant. Her rent was £385 pcm. Rent arrears accrued and a NSP was served on 10 March 2006 under Ground 8 when the arrears stood at £1155. She had previously paid her rent by way of cash payments and by way of cheque although on at least one occasion a cheque was not honoured. The claim for possession was listed for 16 August 2006.

On 14 August 2006 the Defendant sent a cheque for £385 to the landlord which was received on 15 August 2006. Before the hearing on 16 August 2006 the Defendant contacted the landlord's agents to offer them £1000 in cash. She was told that they had instructions not to accept any monies but to take it to court. At the hearing the Defendant requested an adjournment to allow the cheque for £385 to clear which would, together with the £1000 cash bring the arrears below the 8 weeks level. The day after the hearing the landlord presented the cheque for £385 which was paid upon first presentation. The District Judge rejected the adjournment application and made a possession order. He held that an un-presented cheque is not cash and did not stand as payment off the arrears.

On appeal HH Judge Mackay applied the decision of Day v Coltrane [2003] EWCA Civ 342 in which it was held that an uncleared cheque delivered to the landlord at or before the hearing which was accepted by him, or which he was bound by earlier agreement to accept, is to be treated as payment on the date of delivery provided that it was subsequently paid on first presentation. Whilst in the present case the Defendant had been told by a representative of the landlord that he would not accept any payment she was also told to take her money to court. At court the landlord's representative did not return the cheque and did not give any evidence concerning whether it had been accepted. That together with the fact that the cheque was then presented and paid the very next day led to the conclusion that there had been a conditional payment effective from the date of delivery. The landlord was then ordered to pay the Defendant's costs.

**Barnsley MBC v Deborah Beevers, Barnsley County Court, 9<sup>th</sup> June 2006, (Legal Action, September 2006)**

The Claimant landlord brought possession proceedings pursuant to s.84 of the Housing Act 1985 relying upon Grounds 1 and 2 of Schedule 2. The Defendant had resided at the property for 4 ½ years, although she had previously lived there with her parents during her childhood and until the age of 22. The claim followed a police search at the property on 7<sup>th</sup> July 2005 during which a

sophisticated hydroponics system supporting 82 cannabis plants, with a potential street value of £28,700 was discovered in a concealed room to the rear of the garage. The Defendant accepted a caution with regard counterfeiting of DVDs and the possession of cannabis resin found during the police search of the house. The Defendant's case was that she had let the garage to an unknown male at the end of May 2005 who had sought its use to spray a car. No complaints had been made by neighbours and no criminal charges or convictions had arisen from the discovery of the hydroponics system.

District Judge Babbington rejected the Defendant's claim that she had been ignorant of what had been taking place. The extent of the undertaking in the garage must have involved a great deal of activity during the 5 week period from its letting to the Police search on 7<sup>th</sup> July. There was a clear breach of the tenancy agreement which stated that the tenant would be held responsible for visitors involved with drug use at the property. Ground 1 was established. The District Judge found that this was a serious breach of the tenancy agreement and in view of the finding of the Defendant's knowledge it was reasonable to make an order for possession. The date for possession however was to be postponed upon further compliance with the tenancy agreement for a period of 12 months. The District Judge took into account the length of time that the Defendant had resided at the property and that she and her children were settled there. It was also relevant that there had been previous compliance with the tenancy agreement and that this was the first time that the Claimant landlord's attention had been drawn to the tenancy.

## Disrepair – quantum / evidence

**Seddon v St Helens MBC [1] & Helena Housing Ltd [2]  
13<sup>th</sup> September 2006 St Helens County Court, DDJ Greensmith**

The Claimant brought a claim for housing disrepair against both Defendants, the time period in question covering the stock transfer to the second Defendant in July 2002. The Claimant had lived at the property since November 1998 had had experienced problems of dampness and sporadic rat infestation. He left in April 2003 to a temporary decant arranged by the second Defendant and which became permanent. The Claimant and his wife were excellent historians who had also committed complaints to writing at various junctures. A settlement of £1,400 was agreed at court with the second Defendant, pertaining to a 9½ month period from July 2002 until April 2003. The first Defendant refused to settle and the hearing proceeded.

The Claimant gave evidence which included all aspects of notice and specifically regarding the failure of the first Defendant to adequately address disrepair through remedial works which had been

undertaken. Clear evidence was also given about the impact of the disrepair, including credible detail about how items set out in a modest schedule had been damaged. During the lunch break a settlement of £3,650 was agreed with the first Defendant, pertaining to a 27 month period. Costs were borne by both Defendants.

connected and would not open the floodgates due to the unusual nature of the facts.

The matter settled at Court on terms that were considerably advantageous to the tenant.

## “Tolerated trespasser”

This case raises the issue of whether the concept of “tolerated trespasser” applies to the assured tenancy regime.

### **Julie White v. Knowsley Housing Trust, 15 September 2006**

Julie White was a transferring tenant of KHT and sought to exercise her preserved right to buy. After initially accepting her right the Trust informed her that she had no entitlement as she was a tolerated trespasser following a breach of the terms of a suspended possession order obtained by local authority post transfer. She made an application for a declaration as to her status. It was argued on her behalf that the tenancy did not come to an either upon breach of the old SPO or on the date specified in the possession order as she was an assured tenant and there was no equivalent of Housing Act 1985 section 82(2) in the Housing Act 1988. HH Judge Mackay dismissed the application on the basis that section 9(3) of the 1988 Act referred to the power to order the payment of mesne profits meaning the tenancy was capable of terminating before execution of the order. Permission to appeal to the Court of Appeal was granted and an expedited hearing is being sought.

## Legal Training

**The following North West Housing Law Practitioners Group (NWLPG) course takes place next month :**

7/11/06 **Relationship Breakdown, Civil Partnerships and Housing Matters** (evening)

Presented by James Stark (Garden Court North)

## Adjournment – Ground 8

Ms Humphries was an assured tenant of a private landlord. The landlord issued possession proceedings under Ground 8. The tenant had been served with a valid notice of increase of rent which had led to a substantial shortfall. She had previously sought assistance with regard to the increase of rent from a Local Authority Housing Aid Unit. They had failed to serve a review notice to the Rent Assessment Panel in time. As a consequence of this the tenant had a shortfall of rent which would not be met by the Housing Benefit Department. The tenant brought Part 20 proceedings in negligence against the Authority and sought to set off her rent arrears against the Housing Aid Unit.

At trial a preliminary issue arose as to whether the landlord's claim for possession should be adjourned pending determination of the part 20 claim against the Local Authority. Notwithstanding that Ground 8 was established, Recorder Hollington QC found that there were “exceptional circumstances” (North British Housing Association Limited v Matthews [2005] 1 WLR 3133) and adjourned the landlord's claim for possession. It was held that the meritorious Part 20 claim against a non-party to the Ground 8 proceedings was an exceptional reason to adjourn the claim for possession as to do otherwise would be outrageously unjust; in addition it was clear that the claims were intimately