

Housing Team Legal Bulletin

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***Draycott and Draycott v Hannells Letting Ltd* [2010] EWHC 217 (QB)**

The tenants took an assured shorthold tenancy and paid a deposit of £2,700 on the 4th March 2008. The deposit was held by the letting agents as stakeholders. Arguably, according to section 213 of the Housing Act 2004 the deposit should have been registered with a tenancy deposit scheme and confirmation given to the tenants that that had occurred within 14 days of receipt. In this case registration did not take place until the 19th May 2008 and the tenants were not notified until the 21st May 2008.

In November 2008 the tenants sought return of the deposit and other relief under section 214 of the Act (which includes payment of a sum equal to three times the deposit by the landlord to the tenant), bringing their claim against the landlord's agent, rather than the landlord, as it was the agent who had failed to comply with section 213.

At first instance, the Circuit Judge held that the claim could be brought against the agents. The Circuit Judge also held that section 213 of the Act meant that the deposit had "to be dealt with in accordance with an authorised scheme from the time it was first received" and that section 213(3) of the Act did impose a 14 day requirement. Accordingly he awarded the tenants a sum equal to three times their deposit, observing that to do otherwise would permit an unscrupulous landlord to simply avoid a scheme until a claim was made, then comply, 'driving a coach and horses' through the Act.

Whilst confirming that a claim could indeed be brought against a landlord's agent where the failure to comply was by the agent, the High Court allowed an appeal against the decision that section 213 had not been complied with. This was on the basis that there is no requirement within the terms of the Housing Act 2004 itself that the deposit must be protected within 14 days of receipt and because, in this particular case, there was no requirement in the

deposit scheme used that payment be made within 14 days (the outcome may have been different if there had been such a requirement). Accordingly the sanctions in section 214 could not be obtained where the tenancy deposit requirement had been met before the claim was issued, even if the 14 day time limit had been breached.

It is perhaps unfortunate that a case where such a large deposit had been paid is the first to be determined by the High Court – in seeking to ameliorate the harshness of the statute to landlords the High Court has indeed "driven a coach and horses through it". The purpose of the Act is to protect tenancy deposits, and for tenants to be aware of that protection and their rights (by the information provision). The three times penalty provision was to seek to ensure that landlords complied with the statute.

In essence, the judgment has negated entirely the effect of Parliament's requirements for protection and information as any non-compliant landlord will be able to defeat a claim by late compliance. Although a tenant will be able to force late compliance by bringing a claim, this is of little protection to a tenant whose landlord is bankrupt or has the property repossessed or to the tenant who does not know of their rights to enforce due to failure to comply with the information provisions.

[> judgment](#)

***Barber v Croydon LBC* [2010] EWCA Civ 51**

Mr Barber, a single man, applied to the council for homelessness assistance. It decided that he was vulnerable given his mental health history. He was provided with non-secure council accommodation in performance of the council's duty. Following a one-off incident in which the caretaker was abused, the council gave notice to quit and claimed possession. The judge granted an outright order.

The Court of Appeal allowed an appeal and dismissed the possession claim. In breach of its own procedures for tackling anti-social behaviour where

the perpetrator was vulnerable, the council had failed to consult the relevant statutory agencies or take their advice as to whether other measures, short of eviction, might control the behaviour. That gave rise to a successful defence under "gateway (b)" set out in *Kay v Lambeth LBC*.

An interesting issue that arose was at what point does the gateway (b) claim arise? According to *Doran v Liverpool City Council* [2009] EWCA Civ 146 the relevant point was the decision to serve the notice to quit; on the other hand *Central Bedfordshire Council v Taylor & Ors* [2009] EWCA Civ 613 was far more expansive. Pattern LJ, giving the only reasoned judgment in this case, sided with *Taylor*:

"... in principle, there is no reason to stop at that point [ie the NTQ]. In Kay Lord Hope spoke of the challenge under gateway (b) being to the decision of the local authority to recover possession. That process involves not only the service of a notice to quit as a necessary first step but also the commencement and conduct of the possession action thereafter. It seems to me that a local authority is bound to keep the position under review and to take into account any relevant facts which come to its notice at any stage in the proceedings. This process of review has two obvious consequences. The first is that it avoids any questions of retrospectivity by requiring the local authority to make a series of decisions which accommodate any new facts or other material relevant to its decision to seek possession. The second is that it allows the local authority to re-consider new material subsequent to its initial decision to terminate the tenancy and so avoid the charge that it has failed to take all relevant matters into account. By the same token, a decision to press ahead with possession proceedings taken following a re-consideration of the case subsequent to the notice to quit will be reviewable regardless of the legality of the earlier decision to commence the proceedings."

Pattern LJ's comments are of assistance to both tenants and public authorities. On the one hand, public authorities must have regard to all the evidence and the proper application of their policy (in this case, consideration of the alternatives) or

otherwise will leave their decisions open to challenge. On the other hand, previous (wrong) decisions can effectively be remedied by a subsequent proper consideration.

For a copy of the judgment

[> judgement](#)

Andrew Byles
8th March 2010

Garden Court North housing team are pleased to announce our programme of forthcoming seminars:

Recent issues in homelessness and allocations

Wednesday 28 April 13:00 – 17:00

Half day seminar: 3 CPD points

Bankruptcy, financial problems and housing

Thursday 20 May 09:30 – 17:00

Full day seminar: 6 CPD points

Disrepair and related Personal Injury claims

Tuesday 13 July 13:00 – 17:00

Half day seminar: 3 CPD points

Unlawful Eviction: Injunctions, Committal Applications and Damages

Tuesday 14 September 13:00 – 17:00

Half day seminar: 3 CPD points

Costs

Full day seminar: £80.00 + VAT (£94.00 inc VAT) & for voluntary organisations £60.00 + VAT (£70.50 inc VAT)

Half day seminars: £38.00 + VAT (£44.65 inc VAT) & for voluntary organisations £28.00 + VAT (£32.90 inc VAT)

Booking information

Please complete a booking form and return to chambers with a cheque in payment of your place. Make cheques payable to "Chambers of Ian Macdonald QC". For more information please contact Paula Morris or Chris Knowles on 0161 236 1840.

For more details and booking form please visit our [website](#).