

Landlord Law Conference- HMO Update

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Busy times

- A lot of change in Landlord and Tenant Law
 - Wales is going its own way
- Government policy seems to favour greater regulation
 - But not necessarily for everyone
- Financial pressures on landlords
- Made more complex by the election
- Clear that Brexit will remain the key item
 - But housing policy is clearly important to the PM
- Strong likelihood of more after the election
- Will the White Paper return?

Licence Conditions- Case law

- Restrictions on licensee type
 - It is lawful for a licence to specify the type of occupier
 - Came up in a case involving Nottingham
 - FTT imposed a students-only condition as rooms too small for permanent occupation
 - Nottingham appealed all the way to the CoA as they could not check easily
 - CoA upheld FTT condition
 - Therefore it is reasonable to propose this to the local authority
- Planning and licencing
 - Previously thought that HMO licensing was unaffected by planning
 - Lack of planning was not a reason not to grant a licence
 - UT does not agree
 - Support for condition requiring planning application



Fixed Penalties

Reasoning

- ▶ Local authorities do badly on costs in Magistrates Courts
 - ▶ To be fair so does everyone
- ▶ Fines are lower than government expected
 - ▶ Could be fixed in sentencing guidelines but MoJ won't do it
- ▶ Treasury gets fines so reluctance to prosecute
- ▶ Solution is fixed penalty notices
 - ▶ Local authorities get money
 - ▶ Possibly higher penalties
 - ▶ Quicker in process in theory

Structure

- ▶ Only applies to offences under Housing Act 2004
 - ▶ No licence
 - ▶ Overcrowding or breach of licence condition
 - ▶ Breach of management regulations
 - ▶ HHSRS improvement notices
 - ▶ Banning order
- ▶ Max penalty of £30,000
 - ▶ Per offence
- ▶ Some guidance from DCLG on how penalties should be applied
 - ▶ LHAs must have their own guidance
- ▶ Choice of penalty or prosecution
 - ▶ Cannot do both
 - ▶ Although the choice is for the LHA only

Process

- ▶ Intention notice with penalty and reasoning
 - ▶ Must be given within 6 months of offence
 - ▶ But ongoing conduct allows time limit to extend
- ▶ Representation within 28 days
- ▶ Final penalty notice
- ▶ Appeal by landlord to FTT within 28 days
 - ▶ FTT is a re-hearing so complete replacement of LA notice
 - ▶ No appeal means penalty applies
- ▶ Penalty can be converted by county court to court order
 - ▶ Bizarrely the penalty is not directly enforceable

Points to Note

- ▶ Increased enforcement?
 - ▶ Especially for matters that were previously seen as too small
- ▶ Possible overcharging as with prosecutions
- ▶ Likely to be significant initial appeals
- ▶ DCLG guidance requires adherence to code for crown prosecutors
 - ▶ Could be a problem for LHAs who were expecting an easy ride
- ▶ DCLG has an illustrative tariff matrix
 - ▶ However a set of fixed tariffs is probably unlawful
- ▶ FTT operates to criminal standard
 - ▶ Its rules don't really work for this



Rent Repayment Orders

Housing and Planning Act 2016 – How does it change RROs?

- Previously limited strictly to non-licence offences
 - Now expanded to cover all HA 2004 offences and eviction with violence
 - Upgraded from 6 April
- Tenants had to wait for local authority prosecution before
 - Tenants can now seek an RRO themselves
- England only
- All RROs are via FTT only
 - Unlike fixed penalties

Housing and Planning Act 2016 – Local Authority Application

- Landlord committed specified offence
- Must give notice of intended proceedings
 - Within 12 months of offence
 - Notice must state
 - Proposal to apply for RRO
 - Reasons why
 - Amount LA seeks to recover
 - Time to make representations (not less than 28 days)
 - Application to FTT after representation period
 - Criminal standard of proof if no conviction or penalty notice first

Housing and Planning Act 2016 – Tenant Application

- Landlord committed specified offence
- No need for conviction or local authority RRO first
- No notice
- Changes make it easier for tenants to apply for RRO
 - Be wary of local authority grace periods...
 - Which are not a limit on a tenant
- Criminal standard of proof
- 12 month time limit

Local authority application – How much to be repaid?

- Limit of 12 months
 - Prior to notice
- UC only
- Tribunal must consider
 - Conduct of landlord
 - Financial circumstances of landlord
 - Landlord convictions
- On conviction or financial penalty
 - FTT must award maximum allowed, unless exceptional circumstances
- Otherwise no set figure
 - Wording about such sum as is reasonable has gone but is assumed

Tenant application – How much to be repaid?

- Limit of 12 months
 - Prior to application
- Any UC must be deducted
- Tribunal must consider
 - Conduct of landlord **and** tenant
 - Financial circumstances of landlord
 - Landlord conviction
- Must award a sum subject to consideration
 - Again the wording about reasonableness has gone
- Unless convicted or financial penalty for non-licensing offence
 - Then maximum award

Other changes in HPA

- New duty on LHA to consider applying for an RRO
 - May mean more RROs being sought
- LHA empowered help a tenant apply for an RRO either by providing advice or by conducting proceedings
 - May be more applications for RROs from tenants as they become more aware of their rights
 - Possibility of joint applications



Electrical Safety

New Electrical Safety Standards

- ▶ H&PA allows Secretary of State to make regulations to enforce electrical safety standards
- ▶ Apply to any premises which is or includes a dwelling
- ▶ Can require certificates
- ▶ Potentially enforceable through local authorities
 - ▶ Fixed penalty notices
 - ▶ No max amount in Act
 - ▶ Could allow for local authority work themselves
- ▶ Possibility of making this implied clause in tenancy agreement
 - ▶ Would allow for tenant disrepair claims
- ▶ Would be possible to link this to s21 as well
 - ▶ By amending s21 regulations

Concerns

- ▶ Cost
 - ▶ Potential for substantial cost in older properties
- ▶ Electricians
 - ▶ Electricians may refuse to give certificates without additional work
- ▶ Standards to be adopted
 - ▶ Still not totally clear whether there will be an expectation that installations should be brought to current standards
 - ▶ Now talk of a new body to approve electricians to do this
- ▶ Looks likely that all properties will need an EICR every 5 years
 - ▶ PAT looks unlikely



Abandonment

Abandonment

- ▶ In Part 3 of the Housing and Planning Act
- ▶ Expected in force late 2017
- ▶ Still limited information
- ▶ Specific conditions
 - ▶ And notice structure
- ▶ Only for ASTs

Structure

- ▶ Requires three notices
- ▶ First two have no set format
 - ▶ But must do specific things
- ▶ Third notice is in a specified form
 - ▶ Not produced yet
- ▶ 8 week process
- ▶ Rent arrears must exist
 - ▶ 2 months arrears for monthly payments
- ▶ Tenant can apply to court for reinstatement

Service of the notices

- ▶ Notices must be personally served on the recipient
- ▶ If this cannot be done then you must do all of:
 - ▶ Leave at or send to property
 - ▶ Leave at or send to every other UK postal address known for tenant, named occupier, and deposit payer
 - ▶ Email to every known email address for tenant, named occupier, and deposit payer
 - ▶ Leave or send to every known UK address for any guarantor marked for tenant's attention

Timescales

- ▶ Pretty complex
- ▶ Notice 1
 - ▶ Must give at least 8 weeks notice of intention to take back possession
 - ▶ Can be given before unpaid rent condition is met
- ▶ Notice 2
 - ▶ Must be given between 2 and 4 weeks after first notice
 - ▶ Unpaid rent condition must be met for this notice
- ▶ Notice 3
 - ▶ Must be in any specified form
 - ▶ Must be given at least 5 days before take back date

Reinstatement

- ▶ Tenant can apply to court for reinstatement
- ▶ Must apply within 6 months of giving of first notice
- ▶ Court can give any order they see fit
 - ▶ If they consider tenant has good reason for not having replied to warnings
- ▶ Reason would have to be good
- ▶ Court will not be able to throw someone else out if the property has been re-let



Banning Fees to Tenants

Consultation proposals

- Ban on fees to tenants
- Widely expressed
 - Wider than Scotland which links ban to provision of tenancy or keys
- Prevention of charges through third parties
 - So cannot charge landlord and pass on
 - “Tenants should only be required to pay their rent and a refundable deposit”
- Specified exemptions allowed
 - Statements by ministers about costs not mentioned in consultation however
- Not preventing tenant passports but they cannot be forced

So what fees are allowed?

- Holding deposits to take property off market
 - Forfeited if tenant pulls out or fails references unreasonably
 - Returned on let or if landlord pulls out
- In tenancy property management service charges
 - Caused by tenant actions
- Possible allowance for bespoke, non-standard services
 - Some agents have considered or offered concierge services
- Agents should review charging models as some of these fees are not being used actively in the market

Enforcement

- This remains a major issue
 - PRS suffers from poor quality enforcement generally
 - And insufficiently serious penalties in some areas
- Trading standards to be lead enforcer
- Need for tenants to be made aware of ban
- Consultation mentions penalties at both £5,000 and £30,000 level
- Consideration of prosecution
 - And making it a banning order offence
 - Would allow for bans under new H&PA powers
 - Creates a degree of parallel with estate agency banning powers

Other mentions

- Deposit caps
 - Alternatives to current deposit model
- Discrimination
- Tenant education and empowerment
 - Updated How to Rent guide and new How to Let guide
- Data sharing
- Lead enforcement authorities
- Wider regulation of sector
 - National agent register
 - Compulsory code of practice
 - Minimum training requirement
 - Fit & proper person test
- These should be seen as a DCLG manifesto