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Government Proposes to scrap no fault evictions



Sarah Baron
Solicitor

The government is consulting on its proposal to prevent landlords from evicting residential tenants without a reason. It is proposed that unless a Landlord can demonstrate a "good reason" such as that it wishes to sell the residential property with vacant possession or the tenant is in breach of its covenants then it will no longer be able to secure vacant possession. This will in effect mean that residential tenancy agreements become open ended.

Under the current law most rented homes are let under an assured shorthold tenancy for a fixed term, usually six months or a year. When the term ends the landlord may evict a tenant without giving a reason provided they give two months' notice. This status quo is set to be challenged. This also follows on from the proposal last year that residential tenancies should be for a minimum of 3 years with a mutual break at 6 months. We must wait to see the detail of the consultation as to how specialist accommodation (such as student accommodation) or rent increases are to be dealt with.

For further information please contact Sarah Baron on 01223 532732 or [click here](#) to email.

An Experts Decision is Final



James Simpson
Partner

A disgruntled tenant challenged an "expert" surveyor's rent review decision on the basis that it erred in law. The tenant argued that the surveyor had asked the wrong questions and the decision therefore, should not be binding. The surveyor had been appointed pursuant to the terms of the lease which stated that disputes would be referred to the expert whose decision was to be final on both fact and law. The court had "no hesitation" in agreeing with the Landlord that the expert's decision was final, conclusive and not open to review.

It is important that parties to leases include an appropriate mechanism in the lease to resolve disputes. If disputes are referred to a surveyor to act as an "expert", that decision cannot be challenged. This is often the most appropriate mechanism in transactions where it is a benefit to both parties that disputes are resolved relatively quickly at low cost. For more complex and higher value transactions it may be more appropriate to allow the parties to enter into arbitration and be able to challenge any determination. If parties want decisions to be open to challenge then the lease should allow for disputes to be arbitrated. Most importantly, parties should understand what they are agreeing to if they agree to "expert" determination.

For further information please contact James Simpson on 01223 532758 or to email [click here](#) to email James.

A Golf Club's covenant to "maintain and forever after keep in good repair" was unenforceable



Amanda O'Mahony
Senior Solicitor

A recent decision by the Court of Appeal has overturned a High Court decision holding that a covenant to "maintain and forever after keep in good repair...stock proof boundary fences walls or hedges" did not in fact last forever.

The High Court had decided that this obligation in a 1972 conveyance had created a fencing easement. As an easement the obligation would be inherited by (and enforceable against) subsequent owners of the land. However, if (as the Golf Club claimed) the obligation was merely a positive covenant then it could not be enforced against subsequent owners unless each successive owner had agreed to be bound. The Court of Appeal held that there was no justification in construing the obligation other than as a positive covenant and as such without a chain of indemnity the obligation was unenforceable.

It is a well-established principle of English law that positive obligations do not automatically bind successors in title and this decision reinstates this principle. The law surrounding fencing easements is not clear and so it is good practice to ensure the enforceability of such obligations by ensuring suitable legal mechanisms are incorporated into the relevant legal documentation.

For further information contact Amanda O'Mahony on 01604 463115 or [click here](#) to email Amanda.

Comply with your obligations at the beginning of the tenancy or lose the ability to serve a section 21 Notice!



Suzanne Bingham
Solicitor

Suzanne Bingham considers a recent unreported judgment in the County Court that confirms that failure by Landlords to supply a current gas certificate to residential tenants at the start of an assured shorthold tenancy may prevent them serving a section 21 notice to end that tenancy. A section 21 notice is served by Landlords when they want to regain possession of premises and there has been no default by the tenant. The case highlights that if the Landlord has not complied with its obligations under the Gas Safety (Installation and Use) Regulations 1998 to provide the Gas certificate before the start of the tenancy it will be prevented from serving this notice and so prevented from recovering possession in this situation indefinitely.

Landlords will still be able to rely on the service of a s8 Notice in instances where there has been a breach of the terms of the tenancy by the tenant to regain possession. For further information please follow [this link](#).

Development Plans have "reasonable prospect" of taking off.



Ross Johnstone
Partner

Tenants at an airfield contested their Landlord's notice to terminate their 1954 Act protected tenancies. The Landlord wished to promote the airfield site as a residential development. The Landlord served notice pursuant to ground (f) of the 1954 Act contesting renewal. This required the Landlord to demonstrate an intention to demolish/reconstruct the premises and also that it had a "reasonable prospect" of delivering upon that intention. The tenant argued that as the local authority's development plan was to retain and support aviation-related facilities at the airfield the necessary planning permission did not have a "reasonable prospect" of being obtained.

The High Court rejected the tenant's arguments and held that the development plan conferred a discretion on the decision maker not a mandatory obligation to retain airfield use. It also commented that planning control should not be used to force the landlord to reinstate aviation use.

For further information contact Ross Johnston on 020 7400 5034 or [click here](#) to email Ross.



The Real Estate Team would be delighted if you could join them for their **free** spring seminar events.

Taking place within **Milton Keynes** and **Northampton** these seminars will give a practical update on recent legislation and case law affecting the commercial property market.

- **23rd May 2019 - Northampton**
- **6th June 2019 - Milton Keynes**

All seminars start with a light breakfast at 7.30am, followed by a legal briefing and Q&A panel from 8.00am - 9.30am.

Due to venue capacity places are limited. To avoid disappointment early acceptances are recommended.

To reserve a space please email our Events team by clicking [here](#). Alternatively you can view our full range of Spring Seminars by visiting our Events page [here](#).



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Hewitsons offers a full real estate service which includes expertise in property acquisition and disposal, planning, construction, environmental issues, development and property management. This Bulletin will help to keep those involved in property up to date with the latest developments.

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