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# The Housing and Regeneration Act 2008

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*Richard Adkinson, Barrister at King Street Chambers, Leicester, writes on the new Act which has serious implications for the relationship between social landlords and their tenants.*

## Introduction

The *Housing and Regeneration Act 2008* received Royal Assent on the 22.7.2008 and make numerous provision and amendments. So far as possession law is concerned it has done 2 things:

- Introduced *Family Introductory Tenancies*, and
- Removed the concept of the tolerated trespasser.

The Act has not yet come into force.

This article covers these new provisions.

## Family Intervention Tenancies

*Source: See Chapter 2 of the Act, ss. 297, 298*

*Amends: Housing Act 1985 sch. 1 by insertion of paragraph 4ZA, Housing Act 1988 sch. 1 by inserting paragraph 12ZA*

A Family Intervention Tenancy is a tenancy granted to enable the tenants to receive support to ameliorate their anti-social behaviour.

Family Intervention Tenancies are not secure tenancies, nor are they assured tenancies unless the landlord notifies the tenant it is to be treated as a secure or assured tenancy (as may be).

### *The criteria*

A Family Intervention Tenancy can only be granted if

- (a) The proposed tenant satisfies the criteria
- (b) The landlord serves a notice **before** the tenant enters into the tenancy that it is to be a Family Intervention Tenancy.

### *The person criterion*

A Family Intervention Tenancy can only be granted to a person

- (a) who was a secure tenant and has had a possession order made against him on ground 2 (ASB or convicted of relevant offence) or ground 2A (domestic violence)
- (b) who was a secure tenant and has had a possession order made against him which the Housing Authority are of the opinion could have been on ground 2 or 2A, or
- (c) who, had he been a secure tenant, could have had made against him a possession order based on ground 2 or 2A.

Mirror provisions apply to assured tenancies referring to the mirror grounds of 14 (ASB) and 14A (domestic violence)

### *The purpose criterion*

Any Family Intervention Tenancy must be granted for the purposes of the provision of behaviour support.

### *Behaviour Support*

Behaviour support means

- (a) support services
- (b) of a kind identified in a behaviour support agreement, and
- (c) designed to meet such needs of the recipient as are identified in the agreement.

The support services can be provided by any person (social services, voluntary sector) and the recipient can be either the new tenant and/or any person who is to reside with the new tenant (child, partner, brother), so long as they are identified in the agreement.

A behaviour support agreement is a written agreement about behaviour and the provision of support services. If the landlord is the local housing authority it is between the tenant and the housing authority (or people who include those – so it could include others). If the landlord is a RSL, then it is between at least the tenant, landlord and local housing authority.

### *Before the tenancy commences*

If a tenancy is to be a Family Intervention Tenancy the landlord must serve a notice **before** the tenant enters into the tenancy. A notice must contain:

- (a) the reasons for offering the tenancy to the new tenant;
- (b) the dwelling-house in respect of which the tenancy is to be granted;
- (c) the other main terms of the tenancy (including any requirements on the new tenant in respect of behaviour support services);
- (d) the security of tenure available under the tenancy and any loss of security of tenure which is likely to result from the new tenant agreeing to enter into the tenancy;
- (e) that the new tenant is not obliged to enter into the tenancy or (unless otherwise required to do so) to surrender any existing tenancy or possession of a dwelling-house;
- (f) any likely action by the local housing authority if the new tenant does not enter into the tenancy or surrender any existing tenancy or possession of a dwelling-house;
- (g) advice to the new tenant as to how the new tenant may be able to obtain assistance in relation to the notice.

The contents required can be amended or added to by regulations. None as yet have been published.

### *Eviction*

As a Family Intervention Tenancy falls outside a secure tenancy and assured tenancy provisions, it is this writer's opinion that the default position is that at common law. At common law, tenancies cannot be terminated if let for a fixed term until the end of that term or, if periodic, at the end of a

period. The exception is if the terms and conditions are breached by the tenant **and** a right to re-enter is reserved for that breach. Therefore care must be taken in drafting the tenancy and deciding on the term.

If the landlord is the local housing authority, it must follow a statutory procedure **before issuing a notice to quit**:

- (1) issue a notice which
  - (a) says that the authority has decided to serve a notice to quit on the tenant,
  - (b) explains the effect of serving a notice to quit,
  - (c) says the reasons for the authority's decision,
  - (d) states when the authority is intending to serve the notice to quit, and
  - (e) explains that the tenant has the right to request, within the period of 14 days beginning with the service of the notice under this subsection, a review of the authority's decision.
  - (f) contains advice about he can obtain assistance in relation to the notice.
- (2) It may only then issue a notice to quit if
  - (a) he tenant has not requested a review within the period of 14 days beginning with the service of the notice,
  - (b) any such request has been withdrawn, or
  - (c) the authority has notified him of the review outcome and reasons (and the review decides the notice stands).

Any notice to quit must also contain contains advice about he can obtain assistance in relation to the notice.

Under the *Protection from Eviction Act 1977*, a landlord must give not less than 28 days notice. An action for possession would then be founded on the grounds that the occupants were trespassers.

If the tenant requests a review then the local housing authority must (a) review its decision to serve a notice to quit on the tenant, and (b) serve a notice on the tenant informing the tenant of the decision of the authority on the review and the reasons for it.

There may be regulations made under the section. None as yet have been announced.

These provisions do not apply to RSLs. It may represent good practice that they are expected to follow.

## *Dangers*

The local housing authority has been given a lot of discretion to form its own opinions. In theory these will be susceptible to judicial review challenges and possibly public defences in the court. It is important therefore to keep a good record of all decisions and progress with the tenants and others being assisted.

## **Tolerated Trespassers**

*Source: See the Act, ss. 299 and 304 and schedule 11*

*Amends: Housing Act 1985, ss.82, 85, sch. 3 ground 1, Housing Act 1988 ss.5, 7, 9, 21, Housing Act 1988 ss. 127, 130, 143D*

These amendments concern tolerated trespassers who have become so because their secure, introductory, demoted or assured tenancy has ended by court order but the order has not been executed.

At common law the situation does not arise in practice because there is no scope for suspended or postponed orders.

### *When tenancies end*

The effect of *schedule 11* is as follows:

As a general rule, a tenancy does not come to an end **until a possession order is obtained under the relevant laws and it is executed.**

### *Resurrection of tenancies*

Upon commencement of the 2008 Act, subject to satisfying the statutory criteria, all tolerated trespassers covered by the Act will have new tenancies of the type that they held before the relevant possession order was made.

Therefore a person who held a demoted tenancy becomes again a demoted tenant, a former secure tenant becomes a secure tenant, an ex-assured tenant becomes an assured tenant etc.

### **Statutory criteria**

This assumes the situation satisfies all of the following conditions:

- (a) the dwelling is the tolerated trespasser's only or principal home,
- (b) it has been his only or principal home for the time between when he became a tolerated trespasser and the commencement of the 2008 Act ('the termination period'),
- (c) the landlord is entitled still to let the dwelling, and
- (d) the landlord and tolerated trespasser have not entered into a new tenancy.

In calculating the termination period or deciding whether it was the tolerated trespasser's home, one must ignore any time during which he was evicted under a warrant that was subsequently set aside.

### **Terms and conditions**

The new tenancy is to have effect on the same terms and conditions as those applicable to the original tenancy immediately before it ended, subject to

- (a) modification to reflect, so far as applicable, any changes made during the termination period to the level of payments for the ex-tenant's occupation of the dwelling-house or to the other terms and conditions of the occupation,
- (b) modification so that any outstanding liabilities owed by the ex-tenant to the ex-landlord in respect of payments for the ex-tenant's occupation of the dwelling-house during the termination period. These are treated as liabilities in respect of rent under the new tenancy.

The fact he was not consulted in any changes to terms and conditions during the termination period will not invalidate the new tenancy.

Be aware this will resurrection will give rise to possible claims (esp. disrepair) by tenants and to a right to buy that they otherwise would have lost.

### Court orders

A Court may discharge or rescind the order for possession if it thinks it appropriate to do so having had regard to—

- (a) any conditions imposed, and
- (b) the conduct of the tenant in connection with those conditions.

This writer thinks that a *Sheffield v Hopkins* approach will still be possible should the need arise.

Any possession order which led to the tenant becoming a tolerated trespasser is to be treated, so far as practicable, as to apply to the new tenancy.

Any other court orders made before commencement of the 2008 Act and which

- (a) are in force on that date,
- (b) relate to the occupation of the dwelling-house, and
- (c) were made in contemplation of, in consequence of or otherwise in connection with the possession order,

are to be treated, so far as practicable, as if they apply to the new tenancy.

### When the tenancy is to be treated as having continued through the termination period

The new and original tenancy are treated as one and the same and as if they continued throughout the period in which the tenant was a tolerated trespasser for the purposes of: succession, the right to buy and, in the case of assured tenancies, *ground 8 of schedule 2* of the 1988 Act (rent arrears).

Otherwise, for claims of breach of terms and conditions or statutory duty, whether by tenant against landlord or landlord against tenant in claims which started after the 2008 Act commenced or which started before then and have not yet finished, it is up to the court to decide if they are to be treated as one and the same.

### Successor landlords

Regulations can extend the Act to cover the situation where there are now successor landlords who are different to the original landlord.

### Right to buy

The right to buy cannot be exercised if the tenant is subject to an order of the court for possession of the dwelling-house.

This does not apply however if the tenant has served a notice under section 122 of the Housing Act 1985 (tenant's notice claiming to exercise right to buy) before the coming into force of section 304(1) of the 2008 Act and he has not withdrawn it.

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