Housing Management Law

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Housing Management and the Localism Act
What is new?

• A fixed term tenancy regime for local authorities and housing associations
• Changes to the law in relation to succession
• Changes to the law in relation to mutual exchanges
• Changes to the assured shorthold fixed term tenancy regime
Probationary Tenancies

- Introductory and starter agreements are still available
- Local authority introductory tenancies will –
  - Convert automatically to flexible
  - Require notice in relation to the length of the flexible fixed term
- Housing association starter agreements –
  - May be a periodic assured shortholds followed by a new fixed term
  - May take the form of one tenancy with a starter element followed by a fixed term
Mutual exchanges

- Traditionally achieved by reciprocal deeds of assignment
- **S158 Localism Act** provides for surrender and re-grant of tenancies where one pre 1 April 2012 secure or assured tenant is exchanging with a fixed term tenant
- Exceptions include pre 1 April 2012 secure or assured tenants exchanging with those fixed term tenants occupying at an affordable or intermediate rent
Are all of the tenants wishing to exchange fully assured or secure tenants?

- Yes
  - Achieve exchange by mutual assignment

- No
  - Is at least one of the tenants wishing to exchange a fixed term tenant at a social rent and at least one a fully secure or assured tenant with a tenancy which commenced before 01/04/2012?
    - Yes
      - Achieve exchange by surrender and regrant
      - RESULT
        - The fully assured or secure tenant will be granted a new secure or assured tenancy. The fixed term tenant will be granted a new tenancy in accordance with the new landlords policy.
    - No
      - Achieve exchange by mutual assignment
      - RESULT
        - 1) If both tenants were fixed term tenants each will be assigned the balance of the fixed term of the property they are moving to
        - 2) Where one tenant is a fixed term tenant at an affordable rent and the other a pre-01/04/2012 assured or secure tenant, the assured/secure tenant will lose security of tenure and social rent status.
Mutual exchanges

Schedule 14 of the Localism Act 2011 provides grounds for refusal of surrender and re-grant; these include:

• Rent arrears
• Breach of tenancy
• A possession order obtained or proceedings begun
• Under-occupation
Mutual exchanges

May result in –

• Loss of security of tenure
• Loss of social rent
• Reduced succession rights

Or (for those playing a tactical game)

• Greater security of tenure or a larger fixed term
• Better succession rights
• Social rent
Mutual exchanges

How would you proceed with?

- An exchange between one assured tenant of a housing association (tenancy commenced 5 May 2012) and a secure tenant (tenancy commenced 3 June 2002)
- A secure tenant (tenancy commenced 3 December 2006) and a fixed term tenant at an affordable rent (tenancy commenced 10 October 2012)
- An assured tenant (tenancy commenced 3 March 2003) and a flexible tenant (tenancy commenced 01 February 2013)
- A secure tenant (tenancy commenced 7 November 2012) and a flexible tenant (tenancy commenced 4 September 2012)
Succession

Local authority – secure tenancy

Pre 1 April 2012 agreements

• Succession to spouse/civil partner etc living with the tenant at the date of death

• Succession to wide group of family members defined in s113 Housing Act 1985 (provided they occupied as principal or only home for at least 12 months prior to the tenant’s death)
Succession

Post 1 April 2012 Local Authority agreements

- Succession to spouse/civil partner etc unchanged
- Succession to family members only if provided in the tenancy agreement
Housing Associations – assured tenancy
Pre 1 April 2012 agreements

- Succession to spouse/civil partner etc living with tenant at the date of death
- Contractual succession to any wider group defined in the agreement and in occupation as principal or only home at least 12 months prior to the tenants’ death (tenancy does not automatically vest in successor)
Succession

Housing Association-Post 1/4/12 Agreements

• Succession to spouse/civil partner etc unchanged
• Where the agreement provides for a wider group of successors the tenancy will automatically vest – no need for a new agreement)
Cases where succession is contested

- The burden of proof is on the would-be successor.

Key cases:
- Islington London Borough Council –v- Freeman [2009]
- City of Westminster –v- Peart [1999]
- Southern Housing Group –v- Nutting [2005]
Succession and under-occupancy

- Ground 16/Ground 15A
  - The court must take into account the age of the successor, the period during which they were in occupation and any financial support provided to the tenant.
  - The date the court will consider under-occupation/suitable alternative accommodation is the date of the hearing.
  - The **Newport –v- Charles [2008]** trap has been remedied.
Succession: task

Miss Clarke wants to succeed to her deceased mother’s secure tenancy which began on 4 April 2012.

1. What advice would you give her? What more would you need to know?
2. Would your advice change if the tenancy was an assured tenancy?
3. Would your advice change if Miss Clarke was not daughter but deceased’s same sex partner?
Ending a fixed term tenancy

• The ability to serve a notice of seeking possession under s83 HA 1875 and s8 HA 1988 remains

• Some grounds for possession are not available against fixed term tenants (for example ground 16 of HA 1988)

• For assured, S21 will be used to terminate the tenancy at the end of the fixed term – when vacant possession is required

• Remedies for ASB (injunctions for example) remain unchanged
Abandoned Properties

- A notice to quit served by the landlord (during the fixed term is of no effect

Three possibilities-

- Serve notice under s146 LPA 1925 and forfeit the agreement via court proceedings;
- Take the property back – PEA 1977 and continuing tenancy will create risks;
- Issue a notice of seeking possession on ground 12
Tenant termination during the fixed term

- No common law right for the tenant to terminate unilaterally by serving notice to quit during the fixed term
- A contractual right may be included in the tenancy agreement
- Fixed term agreement may require notice in writing by the tenant to be accepted by Landlord
At the End of the Fixed Term

A landlord who does not intend to renew in line with policy must

• Serve a notice at least 6 months before the end of the fixed term. This notice must
  • Give reasons for the decision not to renew
  • Offer advice or assistance (or at least confirm where to get it) in relation to alternative accommodation
  • Offer a review of the decision
At the end of the Fixed Term

- A notice under s21 Housing Act 1988 must also be served giving 2 months notice
- The s21 notice may be served up to the last day of the fixed term (and arguably after it)
- Problems may arise if the 6 month “not minded to renew notice” was served late and the right to possession may be lost
Rights to buy and acquire and rent increases

- Remain in place
- The right to acquire is extended to assured shorthold agreements of more than 2 years by the Localism Act
- Section 13 Housing Act 1988 rent increase procedure does not apply to fixed term agreements. Increases will be in accordance with the contractual provisions of the agreement
• No need to execute as a deed following amendments made to the law in relation to fixed term agreements of 3 years of more
• Landlord’s s11 obligations to repair continue to apply
• Still some traditional requirements for a fixed term agreement- in particular the inclusion of a forfeiture clause
From a management point of view

- Staff will need to be equipped to advise upon the consequences of mutual exchange (on a case by case basis?)
- Documents will need to be in place for surrender and re-grant
- Policies on transferring and some exchanging tenants may need to be amended
- Abandoned properties will become more difficult to manage
- Diary notes will become especially important
- There will be an enhanced requirement to look at each tenancy individually (succession rights etc)
Other Developments and Case Law
Part - criminalisation of squatting

- To criminalise residential squatting where squatter enters as a trespasser
- **Be aware: court route where tenant leaves occupant behind!**
- Only where ‘known or ought to have known’ trespassing
- Penalties: up to 6mth prison and £5k fine
Defective premises


• Bannister removed by tenant 20 years ago
• Landlord liable for contractors accident on falling down stairs
• Bannister deemed as part of ‘structure’ of property
Can a notice to quit be revoked?

**Fareham Borough Council v Miller (CA) [2013]**

- NTQ served on non-secure tenancy
- T argued L had revoked NTQ
- Court relied upon *Tayleur v Wildin* (1868)
- T becomes tolerated trespasser until eviction
- Tenant’s security would depend on whether new tenancy created by subsequent acceptance of rent
- Question position with a section 21?