The housing advice bulletin from Shelter for the National Homelessness Advice Service

Housing matters

Issue 106 June 2015

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Housing matters

Housing matters is produced by Shelter for the NHAS and aims to provide a source of up-to-date housing and homelessness news, focus on important case law, cover key legal issues, and produce information for public use.

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Housing matters welcomes contributions from NHAS members. If you would like to provide an article or update for *Housing matters* please email **JackieL@shelter.org.uk**

National Homelessness Advice Service

The National Homelessness Advice Service (NHAS) is a partnership between Shelter and Citizens Advice funded by the Department for Communities and Local Government.

The service aims to prevent homelessness and remedy other housing problems through increasing public access to high-quality housing advice in England, including online information on the NHAS website at **www.nhas.org.uk**

The NHAS provides the following to local authorities, CABx and around 100 other advice agencies in England:

- **a national telephone housing advice consultancy service** for local authorities, CABx and around 100 other advice agencies in England. Call **0300 330 0517** 9am–8pm, Monday to Friday, or send in an enquiry using the online enquiry form available on the members' areas of **www.nhas.org.uk**
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Alternatively, please use the 'contact us' page at **www.nhas.org.uk**

What's new?

Homelessness case law update

Three significant Supreme Court decisions have changed the interpretation of the law on various aspects of homelessness. See our Case briefs on pages 2 to 4 of this issue of *Housing matters* for an update on the approach a local authority should take:

- before making an 'out-of-area' offer (the case of *Nzolameso*), and
- in determining whether a homeless applicant is vulnerable (the joined appeals of *Johnson*, *Hotak* and *Kanu*).

In addition, in *Haile v Waltham Forest LBC [2015] UKSC 34*, the Supreme Court held that an event constituting an unintentional cause of homelessness can 'break the chain of causation' of an applicant's intentional homelessness where it occurs after the applicant's deliberate act caused her/him to lose accommodation that was reasonable for her/him to continue to occupy. Although Ms Haile (H) had voluntarily left a single person's hostel when she was pregnant, the authority should have taken into account the fact that the birth of her baby by the time it made its decision would have led to her certain eviction from that hostel. She was therefore not intentionally homeless.

Letting agent fees

From 27 May 2015, the Consumer Rights Act 2015 (Commencement) (England) Order 2015 SI 2015/965 brings into effect provisions of the Consumer Rights Act 2015 requiring letting agents to prominently display their fees in any place where face-to-face work with prospective customers is carried out, and on their websites. Information on fees must include:

- a clear description of the amount
- whether the fee is per tenant or per property
- what each fee relates to.

The name of the redress scheme that the agent belongs to must also be displayed. Enforcement is by local authority trading standards officers in the area of the property.

Regulation of registered providers

On 14 May 2015, the Homes and Communities Agency published a guide to the role, standards and approach of the social housing regulator. The publication, *A guide to the regulation of registered providers*, can be found on Gov.uk at **tinyurl.com/HCA-RPs**

Right to buy scheme

From 26 May 2015, section 28 of the Deregulation Act 2015 reduces the right to buy qualifying period from five to three years if the applicant's first public sector tenancy began on or after 18 January 2005. Where the applicant's first public sector tenancy preceded that date, the qualifying period remains two years. This does not have to be continuous, or in the same property, and occupation does not always have to be by the tenant. The *Right to Buy: summary booklet*, published by the Department for Communities and Local Government (DCLG), has been updated. to download a copy, go to **tinyurl.com/RTBsummary**

Delays adapting homes

Research by Leonard Cheshire Disability has revealed that 62 per cent of local authorities breached their legal duties under the Housing Grants, Construction and Regeneration Act 1996, by failing to fund and complete agreed disability-related adaptations within the 12 month deadline. The report, *The long wait for a home - councils are failing disabled people,* can be found at **tinyurl.com/LCD-longwait**

Pre-action Protocols

With effect from 6 April the following Pre-action Protocols have been updated:

- Housing Disrepair Cases
- Judicial Review
- Possession Claims based on Mortgage Arrears in Respect of Residential Property.

In addition, from the same date, the Pre-action Protocol for Rent Arrears has been renamed as Pre-action Protocol for Possession Claims by Social Landlords, and amended to cover claims brought on mandatory grounds for possession.

The Ministry of Justice (MoJ) website is still out of date at the time of writing, but the protocols can be found on the PAP making document on the MoJ website at **tinyurl.com/MoJ-PAP4**

Affordable rents/flexible tenancies

On 12 May 2015, the House of Commons Library published two new briefings:

- *Affordable Rents (England)*
- *Flexible and Fixed-term Tenancies for Social Housing Tenants in England*

For a copy, go to **tinyurl.com/HoC-briefings**

Determining vulnerability

In this case brief, Chris Morris summarises a Supreme Court decision on homelessness, which revisits and clarifies the vulnerability test in relation to priority need.

Chris Morris is a managing solicitor at Shelter.

On 13 May 2015, the Supreme Court handed down judgment in *Hotak v Southwark LBC*: *Kanu v Southwark LBC*: *Johnson v Solihull MBC*.[1] This involved three joined appeals, and Shelter, Crisis, the Equality and Human Rights Commission and the DCLG all intervened to make submissions in favour of a clarification of the law on vulnerability.

The law

Under section 189(1)(c) in Part 7 of the Housing Act 1996, a person has a 'priority need' for housing if s/he is 'vulnerable as a result of old age, mental illness or handicap or physical disability or other special reason, or with whom such a person resides or might reasonably be expected to reside'.

However, the Act does not set out the legal test to be applied when deciding if an applicant is vulnerable for the purposes of this section.

The case was broadly concerned with:

- the correct vulnerability test
- whether an authority's lack of resources could justify a non-priority finding
- whether care to a homeless applicant provided by a relative could be taken into account when assessing vulnerability
- to what extent, if at all, the public sector equality duty under the Equality Act 2010 was relevant and, if so, how.

Importance of the case

This is the first time the UK's highest court has considered the meaning of vulnerability. Prior to this case, local authorities made their decisions by applying the 'Pereira test':[2]

'[whether the applicant] when homeless [will be] less able to fend for himself than an ordinary homeless person so that injury or detriment to him will result when a less vulnerable man would be able to cope without harmful effects'.

The 'Pereira test' is replicated in the Homelessness Code of Guidance,[3] but this part of the Code will now need to be read in accordance with the Supreme Court new formulation of the vulnerability test.

Assessing vulnerability

The Supreme Court outlined the following principles to be applied when assessing vulnerability under section 189(1)(c).

The correct comparator

'Vulnerable' is a word that implies a comparison with someone else. The Court has held that the right comparator is the ordinary person, not the ordinary homeless person or street homeless person. The correct approach is to take 'the ordinary person if rendered homeless and compare how the applicant would fare as against him', or, 'to compare him with an ordinary person if made homeless, not an ordinary actual homeless person'.[4]

Assessing the applicant carefully

A local authority should pay close attention to the particular circumstances of the applicant and look at her/his particular characteristics and situation when homeless 'in the round'.[5]

'Significantly more vulnerable'

In order to be vulnerable a homeless applicant must be likely to suffer more harm than others in the same position, and must be 'significantly more vulnerable than ordinarily vulnerable' when homeless.[6]

Relevance of resources

The fact that an authority may be very short of money and/or available accommodation is irrelevant in determining whether an applicant is in priority need.[7]

Preference for statutory language

In the decision-making process, the language used in the legislation should be favoured over colloquial expressions such as 'street homeless' and 'fend for oneself'. The Court stated that such expressions can be dangerous if employed in a document such as a decision letter which is intended to have legal effect, and should not supplant the statutory language.[8]

Role of statistics

The Court warned against using statistics to determine vulnerability.[9] In *Johnson*, the authority had relied on statistics showing

drug addiction and depression to be common among homeless people to argue that the applicant was no more vulnerable than an ordinary homeless person (see above, now the wrong comparator).

Support from carers
The care given to a homeless applicant by statutory bodies, or by a carer (whether a family member or not), can be taken into account when deciding if s/he is vulnerable. Great caution should, however, be exercised in assessing whether that care will be effective when the person is homeless, and it must only be taken into account if it will be provided on a 'consistent and predictable basis'.[10] Even if the applicant will receive support when homeless that is every bit as good as s/he would receive if housed, the applicant may still be vulnerable.[11]

The public sector equality duty

Where an applicant may be vulnerable, an authority's public sector equality duty[12] is complementary to its duty under part 7 of the Housing Act 1996. At each stage of the decision-making process, the authority must ask whether an applicant with an actual or possible disability (or other protected characteristic) is vulnerable.

The authority must 'focus sharply' on:[13]

- whether the applicant is disabled[14]
- the extent of the disability
- the effect of the disability
- whether the applicant is vulnerable as a result.

The public sector equality duty could potentially be complied with by an officer ignorant of the existence of the Equality Act 'because the duty is one of substance, not form',[15] but simply paying lip service to the Equality Act 2010 will not save an otherwise poorly reasoned decision.[16]

Outcome of the cases

The court allowed the appeal in *Kanu*. The two key defects in the authority's decision were the use of the wrong comparator (ie the ordinary street homeless person), and the authority's assumption that the fact that a fit person was in the applicant's household meant that he could not be vulnerable.

Although the court found that the local authority had used the wrong comparator and had relied (wrongly) on statistics, it dismissed the appeal in *Johnson* because on the facts the review officer found that he did not suffer from depression, his drug problems were being (and would continue to be) well managed, and that his knee and back pain had no significant impact.

The parties in *Hotak* had agreed that the only issue was whether carers could, as a matter of principle, be taken into account. Had that agreement not been made the appeal would have been allowed. However, because the *Hotak* appeal was on this one issue alone, the appeal was dismissed.[17]

Impact of the decision

The Court's decision that the correct comparator is not the already vulnerable street homeless person but an ordinary person who becomes homeless may help some homeless applicants whose applications would otherwise be rejected. In particular it will assist suicidal and mentally ill applicants as the over-representation of these characteristics in the homeless population will no longer be relevant.

This decision urges authorities to focus on the applicant, and to be more careful in decision-making generally, and particularly so where an applicant is, or may be, disabled. Where an applicant is disabled or has another protected characteristic, an authority must investigate facts even more carefully, make fuller enquiries and give fuller and more transparent reasons for a negative decision.

As far as the Homelessness Code of Guidance promotes the 'Pereira test' as the basis for a vulnerability determination, it should not be followed.

Unresolved issues

The Supreme Court changes to the law on vulnerability will take some time to filter down to decision-makers; in the meantime, the following issues remain unclear:

- the Court held that the test involves looking at whether a homeless applicant is 'significantly more vulnerable', than an ordinary person who is homeless. This begs the question, what does 'significantly more vulnerable' mean?
- given that the test involves looking at vulnerability by comparing an applicant with an 'ordinary person', then what are the characteristics of the 'ordinary person'?
- what level of scrutiny will satisfy the requirement for a local authority to pay 'close attention' to the circumstances of a homeless applicant?

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11.1.1.36 Priority need - vulnerable people.

Footnotes

[1] [2015] UKSC 30.

[2] as set out by the Court of Appeal in *R (on the application of Pereira) v Camden LBC* [1998] EWCA Civ 863.

[3] para 10.13, Homelessness Code of Guidance, DCLG, July 2006.

[4] [2015] UKSC 30 paras 53, 54, 55, 58.

[5] [2015] UKSC 30 para 38.

[6] [2015] UKSC 30 paras 52, 53.

[7] [2015] UKSC 30 para 39.

[8] [2015] UKSC 30 paras 40-42.

[9] [2015] UKSC 30 para 43.

[10] [2015] UKSC 30 paras 61, 65.

[11] [2015] UKSC 30 para 70.

[12] s.149 Equality Act 2010.

[13] [2015] UKSC 30 para 78.

[14] s.6 Equality Act 2010; and Equality Act 2010 (Disability) Regulations 2010 SI 2010/2128

[15] [2015] UKSC 30 para 75.

[16] [2015] UKSC 30 para 82.

[17] Note - post-judgment submissions are to be accepted by the Supreme Court on this case, and the Court has urged Southwark LBC to reconsider Mr Hotak's case favourably.

Out-of-area offers

In this case brief, Jo Underwood looks at the approach a local authority must take before it offers a homeless applicant accommodation 'out-of-area' in light of a recent Supreme Court decision.

Jo Underwood is a solicitor within the Shelter's Children's Legal Service.

Local authorities are increasingly placing homeless applicants into temporary accommodation in other authorities' areas. Nationally, out-of-area placements are at an all-time high. Department for Communities and Local Government (DCLG) figures show that 15,260 households were in out-of-area temporary accommodation on 30 September 2014, a 123% increase over three years.[1]

In *Nzolameso v City of Westminster*,[2] the Supreme Court considered when it is lawful for a local authority to accommodate a homeless applicant out of the area in which s/he was previously living.

Background

Ms. Nzolameso (N) applied to Westminster as homeless. She was HIV positive and suffered from diabetes, retinopathy and possible depression. She had five children, aged 8 to 14, all of whom attended schools in Westminster. She had a support network of friends in the area who helped with her children. Her GP was also in Westminster.

Westminster accepted a full duty to house N under section 193 of the Housing Act 1996, and offered her temporary accommodation in Bletchley, some 50 miles away from Westminster. The offer letter stated that the Council regarded the accommodation to be suitable and contained what appeared to be a standard paragraph, referring generally to the shortage of accommodation in its area. It also stated that the authority considered it reasonable to make an out-of-area offer to N.

N refused the offer and unsuccessfully pursued the matter through an internal review, the county court and the Court of Appeal. Westminster, in the meantime, discharged its duty to house her and, as she was homeless, took her children into care. The children were placed with foster carers.

Supreme Court decision

The Supreme Court unanimously upheld N's appeal, with Shelter Children's Legal Service and DCLG intervening. The Court reiterated the Council's statutory duties under sections 206 and 208 of the Housing Act 1996 which state that an authority must provide homeless applicants with suitable accommodation which, as far as reasonably practicable, must be within its own area. Failing this, an authority must try to place households as close as possible to where they were previously living.

These duties are fleshed out in the:

- Homelessness Code of Guidance[3]
- Homelessness (Suitability of Accommodation) (England) Order 2012[4]
- Supplementary Guidance on the homelessness changes in the Localism Act 2011 and on the Homelessness (Suitability of Accommodation) (England) Order 2012.[5]

The Court also emphasised that, under section 11(2) of the Children Act 2004, authorities have a duty to safeguard and promote children's welfare when making decisions regarding temporary accommodation placements. This duty requires a proactive approach: 'it is not enough for the decision-maker to simply ask whether any of the children are approaching GCSE or other externally assessed examinations… The decision-maker should identify the principal needs of the children, both individually and collectively...'[6]

In N's case, Westminster had not made wider enquiries, such as whether the placement would meet the children's need for school places or N's medical needs. There had been no consideration of whether they could be accommodated nearer to Westminster.

Local authority policies

Authorities must be able to evidence and explain decisions where out-of-area accommodation is offered. A standard paragraph of the sort used in N's case is not adequate.[7] Lady Hale suggested that authorities have an up-to-date, publicly available policy for procuring sufficient units of temporary accommodation and for allocating them to homeless households. That policy would explain the factors to be taken into account in offering units close to home, and if there was a shortage of such units, the factors which would make more distant accommodation suitable.[8]

London authorities considering placing a homeless household outside London can find general guidance in the London Councils Advice Note: 'Out of London Placements'.[9]

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11.1.1.74 What is suitable accommodation?

Footnotes

[1] DCLG, Statutory homelessness in England: July to September 2014.

[2] [2015] UKSC 22.

[3] Homelessness Code of Guidance for local authorities, DCLG, July 2006 paras 16.7 and 17.41.

[4] Art. 2 Homelessness (Suitability of Accommodation) (England) Order 2012 SI 2012/2601.

[5] DCLG, 8 November 2012

[6] [2015] UKSC 22 para 27.

[7] [2015] UKSC 22 para 42.

[8] [2015] UKSC 22 para 39.

[9] see *Husing matters Issue 99 April 2014* for more information on the Advice Note; for a copy see **tinyurl.com/LCOut-of-Lon**

Deregulation Act 2015 and housing

The Deregulation Act 2015 contains provisions affecting various areas of law.

This feature provides a snapshot of the main provisions affecting housing, with their commencement dates, that are likely to be of interest to advisers.

From 26 March 2015 [1]

Tenancy deposits - ss.30-32

Changes to tenancy deposit protection legislation came into force on 26 March 2015. The changes apply retrospectively and are to be treated as if they were in force since 6 April 2007. Our feature on pages 6 and 7 provides a full analysis.

From 26 May 2015 [2]

Qualifying period for right to buy - s.28

In England, the qualifying period for a secure tenant to exercise the right to buy is reduced from 5 to 3 years.

From 1 July 2015 [3]

Section 21 notices: prescribed form/ requirements/information - ss.37-39

Section 37 gives the Secretary of State power to make regulations to prescribe the form of a section 21 notice to be served on or after 1 October 2015.

Sections 38 and 39 also come into force on 1 July for regulation-making purposes only, while related requirements will apply from 1 October 2015. These establish a ban on the use of a section 21 notice by landlords who fail to meet the 'prescribed requirements' and/or provide prescribed information. In summary, the provisions are that a section 21 notice may not be given when the landlord:

- is in breach of a 'prescribed requirement', ie one which relates to the condition of dwelling-houses (or their common parts), the health and safety of their occupiers, and their energy performance. The requirements are expected to include the annual gas safety and the energy performance certificates.
- has failed to provide information on the rights and responsibilities of both landlord and tenant of an assured shorthold tenancy as prescribed by Regulations.

From 1 October 2015[4]

Preventing 'retaliatory eviction' - s.33

A section 21 notice will be invalid if:

- it is served after the tenant has complained in writing to the landlord about the conditions in the property and the landlord has not responded adequately within 14 days, and
- the tenant makes a follow-up complaint to the local authority, which itself serves a 'relevant notice'[5] (broadly an improvement notice) on the landlord.

A section 21 notice cannot be served for six months after the landlord has been served with a 'relevant notice'. Certain landlords are exempt, including housing associations.

Expiry of section 21 notice - s.35

Where a tenancy is periodic from the outset a notice under section 21(4) is required. The requirement under section 21(4) for the notice to expire on the last date of a period of the tenancy is removed.

No section 21 notice within first four months and 'life span' of notices - s.36

A section 21 notice cannot be served within the first four months of an assured shorthold tenancy. When it is a replacement tenancy, the notice cannot be served within the first four months of the original tenancy.

Possession proceedings cannot be started after six months from the date of service of the section 21 notice. This prevents landlords from serving a section 21 notice early in the tenancy, leaving the tenant uncertain whether or not s/he is expected to leave.

Rent repayment – s.40

Where a tenant has paid rent in advance for a period of her/his tenancy, and that tenancy is ended following a section 21 notice, the landlord must repay the tenant overpaid rent for each full day that the tenant was no longer in occupation of the dwelling.

The provisions above in sections 33 to 40 will apply initially only to tenancies that begin after 1 October 2015. After three years from commencement, they will apply (except for section 39 - prescribed information) to all assured shorthold tenancies, including those that started prior to that date.

Footnotes

[1] s.115(1) Deregulation Act 2015.

[2] s.115(3) Deregulation Act 2015.

[3] Art.10 Deregulation Act 2015 (Commencement No.1 and Transitional and Saving Provisions) Order 2015 SI 2015/994.

[4] Art.11 Deregulation Act 2015 (Commencement No.1 and Transitional and Saving Provisions) Order 2015 SI 2015/994.

[5] ss.11 and 12 Housing Act 2004 (improvement notices relating to Category 1 and 2 hazards); s.40(7) Housing Act 2004 (emergency remedial action).

The deregulation of Superstrike

In this article, Jayne Atherton looks at how the Deregulation Act has amended the tenancy deposit protection rules.

Jayne Atherton is a training and support officer at Shelter.

The Deregulation Act 2015 became law on 26 March 2015 and important changes to the tenancy deposit protection (TDP) rules contained in the Housing Act 2004 came into force on that date. Most of the other amendments in the Act relating to assured shorthold tenancies will be brought in by statutory instrument later this year (see our feature on page 5).

TDP requirements and sanctions

Under the Housing Act 2004, landlords (and their agents) who take a security deposit from an assured shorthold tenant must:[1]

- protect the deposit in a government-authorised scheme, and
- give the tenant certain prescribed information within the set timescale.

The sanctions for failure to comply with the TDP requirements are that:

- the landlord cannot serve a valid section 21 notice,[2] and
- the tenant can bring a 'section 214' claim for compensation[3].

The TDP requirements in the Housing Act initially applied only to deposits taken on or after 6 April 2007. However, two Court of Appeal decisions, '*Superstrike*' and '*Charalambous*',[3] changed this and in due course triggered the amendments contained in the Deregulation Act 2015.

Developments

From 2007 to 2012

Landlords who took a deposit between 6 April 2007 and 5 April 2012 could avoid a section 214 compensation claim for failing to comply with TDP requirements as long as the deposit was protected, and the prescribed information served, by 6 May 2012.[5]

All deposits taken on or after 6 April 2012 had to be protected, and the prescribed information served, within 30 days of the date the deposit is received.[6]

2013 - the Superstrike effect

In 2013, the Court of Appeal decision in *Superstrike* widened the reach of the TDP provisions to include some landlords who had assumed they were exempt, or thought they had already complied with the requirements. The Court held that a statutory periodic assured shorthold tenancy was a new tenancy. Accordingly, a deposit paid at the start of a fixed-term tenancy that began before 6 April 2007 was to be treated as a new deposit when a statutory periodic tenancy arose on or after that date. As such, it became subject to the TDP requirements. Many landlords who had physically received a deposit prior to the commencement of the TDP provisions suddenly found themselves in a situation of non-compliance.

The implications of the decision in *Superstrike* went even further. Landlords who had taken a deposit on or after 6 April 2007 and initially complied with the TDP legislation found they were non-compliant where they failed to re-serve the prescribed information after a statutory periodic tenancy arose or a new fixed-term tenancy with the same tenants was entered into.

Superstrike now

The Deregulation Act does not reverse the decision in *Superstrike* but it does reduce its effect. Landlords and agents whose only breach of the TDP legislation had been the failure to re-serve prescribed information when a statutory periodic tenancy arose are now exonerated from this obligation (see Replacement tenancies, below).

The requirement in *Superstrike* that landlords who received a deposit before 6 April 2007 must protect it and serve the prescribed information if the tenancy becomes statutory periodic on or after that date remains the law. However, where this requirement has not been complied with, and there has been no subsequent renewal of the tenancy, landlords (and agents) have been given a further 90-day window,[7] ending on 23 June 2015, within which to comply. After this date, they will be subject to the usual penalties for non-compliance (see below for details). The only exceptions are where the tenancy no longer existed on 26 March 2015, or the deposit had been returned to the tenant by the same date, in which case compliance is deemed.[8]

Replacement tenancies

Where the TDP requirements have been complied with, the landlord is no longer required to re-serve the prescribed information when a new tenancy is entered into, or when a statutory periodic tenancy arises at the end of a fixed term, as long as:[9]

- the deposit remains protected in the same scheme as when the prescribed information was last served
- the landlord, agent and tenant(s) remain the same
- the premises let are the same or substantially the same.

If any of the above change, the landlord must issue fresh prescribed information to reflect the current arrangements.

Prescribed Information

Amendments have been made to the Prescribed Information Order[10] so that references to landlords are to be read as if they were references to the landlord or her/his initial agent. This change is retrospective and treated as having been in force since 6 April 2007. It means that it is acceptable for the prescribed information to contain contact details for the initial agent only, rather than those of the landlord.

Section 214 claims

The Deregulation Act has amended section 214 of the Housing Act 2004 to make it clear that a section 214 claim for non-compliance with the TDP requirements will only be possible where the deposit was paid on or after 6 April 2007.[11]

Deposits count as having been paid on or after this date where the deposit was taken prior to the TDP provisions coming into force, and the tenancy became statutory periodic after that date. Landlords in this *Superstrike* scenario have until 23 June 2015 to comply with the amended legislation to avoid a section 214 claim.

Section 21: pre-6 April 2007 deposits

The Deregulation Act codifies the Court of Appeal decision in *Charalambous.* The Court decided that although a deposit was taken before 6 April 2007 and no new tenancy, whether a renewal or statutory periodic, had arisen after that date, the landlord could not serve a section 21 notice unless the deposit was returned or protected.

The Deregulation Act amendments to the Housing Act 2004 enshrine the position that *Charalambous* landlords are not liable to a section 214 claim for failure to protect a tenant's deposit, but will still be unable to use section 21 to seek possession unless they return or protect it.[12]

Section 21: post-6 April 2007 deposits

Where a deposit paid on or after 6 April 2007 has not been protected, or has been protected late, a section 21 notice can only be served if the deposit has been:

- returned to the tenant in full or with mutually agreed deductions, or
- dealt with via a section 214 claim (whether determined by the court, withdrawn or settled by agreement).

Late service of the prescribed information does not prevent the landlord from subsequently issuing a valid section 21 notice, provided the landlord has protected the deposit within the 30 day period.

Transitional provisions

The Deregulation Act amendments to the Housing Act 2004 are retrospective and are treated as having been in effect since the original legislation was implemented on 6 April 2007, unless either a section 214 claim or section 21 possession proceedings have been settled or finally determined by the court before 26 March 2015.[13]

Where a section 214 claim has been brought, or a defence has been entered to section 21 possession proceedings in a *Superstrike* case solely on the basis of the landlord's failure to comply with the TDP requirements but the proceedings have not been settled or finally determined before 26 March 2015, the new law will apply and the tenant will lose the case as long as the deposit is protected and prescribed information served by 23 June 2015, or by the time of the court hearing if that is earlier.[14]

Likewise, in a case where a tenancy which began on or after 6 April 2007 has become statutory periodic or been renewed, and where a section 214 claim has been brought or a defence to section 21 possession proceedings has been entered solely on the basis of the landlord's failure to comply with the TDP requirements, the new law will apply unless such proceedings have been settled or finally determined before 26 March 2015.

However, in all such transitional cases, a tenant cannot be ordered to pay the landlord or agent's costs.[15]

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11.1.11.8 Tenancy deposits and premiums.

Footnotes

[1] s.213 Housing Act 2004.

[2] s.215 Housing Act 2004.

[3] s.214 Housing Act 2004

[4] Superstrike Ltd v Rodrigues [2013] EWCA Civ 669; Charalambous & Karali v Ng [2014] EWCA Civ 1604.

[5] Art. 16 Localism Act 2011 (Commencement no.4 and Transitional, Transitory and Saving provisions) Order 2012 SI 2012/628.

[6] s.213 Housing Act 2004.

[7] s.215A(3)(a) Housing Act 2004.

[8] s.215A(4) Housing Act 2004.

[9] s.215B Housing Act 2004.

[10] Housing (Tenancy Deposits) (Prescribed Information) Order 2007 SI 2007/797.

[11] s.214(1) inserted by s. 31(2) Deregulation Act 2015.

[12] s. 215(1) Housing Act 2004 substituted by s. 31(3)(a) Deregulation Act 2015.

[13] s.215C(2) Housing Act 2004.

[14] s.215A(3)(a)-(b) Housing Act 2004.

[15] s.215C(5) Housing Act 2004.

Leaflet

Students and private renting

This leaflet looks at some common problems experienced by students aged 18 and over in relation to living in the private rented sector.

Students can get more advice from their college or university accommodation service if there is one, or from the National Union of Students.

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Shelter

Registered charity in England and Wales (263710) and in Scotland (SC002327).

Note

Information contained in this leaflet is correct at the time of publication. Please check details before use.

Finding a place

After the first year, when you may be offered a place in halls of residence, you will probably need to find a place yourself or with a group of friends. For advice on finding an accredited landlord or letting agent, see the National Union of Students website at **tinyurl.com/NUS-accredited**

Agent's fees

A letting agent must tell you what fees they charge and what they are for. It is against the law to charge an upfront fee just to give you a list of places, but they can charge for things like drawing up the agreement.

Help with the rent

Rents in some areas are very high. Get advice from your student accommodation service about cheaper areas or about finding people to share with. If you have children or are disabled, you may be able to claim housing benefit to help pay the rent. If you have been in care, you may qualify for help with housing costs from social services.

Need a guarantor

You may be asked to get a parent or other relative to guarantee that your rent will be paid. Make sure they carefully read what they sign up for, because if you are a joint tenant and another joint tenant stops paying, your guarantor could become liable for the entire rent, and not just your share.

Joint tenant isn't paying

You will have a joint tenancy if you live with other people and you all signed the same agreement at the same time. Each joint tenant is responsible for the whole rent. The landlord can ask you for any rent owing if one joint tenant isn't paying. You could take the defaulting tenant to court for their share - get further advice if you want to do this.

Moving a friend in

Your renting agreement might forbid extra occupiers. Otherwise this is a matter for you and the people you share with, as another person moving in might affect your bills or make the place overcrowded.

Getting repairs done

Your landlord must ensure that the heating, plumbing and electrics in your home are working and safe, and must fix problems with the structure of the building. Responsibility for other repairs depends on your renting agreement. Repairs should be carried out within a reasonable time of you reporting them.

Want to change rooms

Who occupies which room in a shared house, and whether you can change room if someone leaves, is usually decided between the occupiers. Agree what you will do about changing rooms before you all move in.

Moving out early

You are responsible for the rent until your tenancy ends. This applies even if you leave your course prematurely. Most agreements are for a fixed term, so check it to see if you can end your tenancy early. If you are a joint tenant you will need the agreement of the other tenants. Otherwise, ask your landlord if you can find someone to take your place.

Getting your deposit back

If you are an assured shorthold tenant (and most private tenants are), your landlord or letting agent must protect your deposit in an official scheme within 30 days of you paying it, and give you details of the scheme. The scheme will arbitrate on how much you get back in the event of a dispute. Joint tenants need to agree how to divide up the returned deposit. If you paid your share of the deposit to a tenant you replaced with your landlord's agreement, you are entitled to a share of whatever was originally paid. Try to get a written assurance that this will happen before paying to a departing tenant.

Further advice

You can get further advice from Shelter's free* housing advice helpline (**0808 800 4444**), a local Shelter advice service or Citizens Advice bureau, or by visiting **shelter.org.uk/advice** or **adviceguide.org.uk**

*Calls are free from UK landlines and main mobile networks.