

### **Access injunctions and reasonable force: the latest word**

Property practitioners will be very familiar with situations where residential tenants refuse access to their properties, in breach of the express or implied terms of their leases, to enable inspections, repairs or general maintenance to be carried out. It is uncontroversial that, where an appropriate contractual term exists, the Court has power to grant an injunction compelling the tenant to provide access, the breach of which may amount to a contempt of court or render the tenant liable to eviction. But what about authorising the landlord to use reasonable force to secure access himself? Unfortunately, the authorities cut both ways.

In *Sovereign Housing Association Ltd v Hall* (unreported, Bristol County Court, 10 July 2024) HHJ Berkeley held that the Court has power, under CPR 70.2A, to permit a claimant to use forced entry to secure access to a property where, in breach of a prior injunction, a tenant has failed to allow such access. As he put it at [12]:

*“I accept Mr Bigwood's submission in relation to CPR 70.2A. It seems to me that the court must be in a position to be able to enforce orders that it makes of this nature and I find that Rule 70.2A covers this precise circumstance. The defendant is clearly a “disobedient party”, being a person who has failed to comply with a mandatory order and/or a person who is the subject of an order for specific performance of a contract - the tenancy agreement. The court is therefore empowered to order that the claimant carry out the act required to be done, namely the granting of access to the property in question for the purposes of inspection. The fact that access is gained by unconventional means is nothing to the point in my judgment. The door belongs to the claimant and so any damage done to the door or the frame would not be to the defendant's property (although I am told that access can be gained without damaging either the door or the frame). In fact I doubt that damaging the defendant's property would be a bar to the making of an order under the paragraph, but it weighs in the balance in considering whether to exercise the court's discretion.”*

In the later case of *Southern Housing v Emmanuel* [2025] EWCC 58, however, DJ Cridge refused to follow that decision. As he put it at [5]:

*“My decision is that no judge can give a landlord permission to force entry into their tenant's home for things like inspections, repairs and safety checks. I think Parliament would need to change the law before a judge could make that kind of order.”*

In short, the judge's view was that:

- (a) Because the tenant is in exclusive possession of the land, he has the power to exclude all comers, including his landlord, unless he gives permission: see [53];
- (b) Previous decisions of the Court make clear that a judge has no power to authorise someone to enter someone else's home unless there is express law that bestows that power: see [54];
- (c) Certain statutory powers permitted the use of reasonable force but none of these applied to securing access to a tenant's home for the purposes of repairs, maintenance or inspection: see [55-58]; and
- (d) CPR 70.2A does not provide a solution to the above problem because:
  - (i) It is well settled that the CPR cannot change the substantive law without the express authorisation of Parliament: see [50-51] and [76]; and
  - (ii) In any event, all CPR 70.2A allows is the act ordered by the previous injunction to be done "*by another party*". Where an injunction requires a party to "*permit*" or "*allow*" access by another party, that cannot be done by another party: see [64-69].

In the recent case of *Taylor Clark Ltd v Mohamed* (unreported, Central London County Court, 5 March 2026), DJ Le Bas was persuaded not to apply the reasoning in *Southern Housing* on the basis that it was wrong in principle. The judge accepted the following submissions as compelling:

- (a) When making an access injunction (or later an order under CPR 70.2A), the Court was merely giving effect to the tenant's contractually binding consent, as evidenced by the covenants of the tenancy, that the landlord is to have access in certain situations. In obtaining access in those circumstances, the landlord is not a trespasser.
- (b) Where, therefore, the Court orders a tenant to "*permit*" or "*allow*" access to a particular property in accordance with an access covenant, express or implied, in the tenancy, the Court is not ordering the tenant to give permission for access to be granted – something which the Court could not, in principle, do – but rather to facilitate access in accordance

with the covenant and consent previously given by the tenant (i.e. by opening the door). That is a vital distinction.

- (c) As decided in *Hall*, in a case where the Court has made a mandatory order requiring a tenant to grant access to his property and the tenant has failed to do so, the tenant is clearly a “*disobedient party*” within the meaning of CPR 70.2A(1). The Court therefore has a discretion, in accordance with CPR 70.2A(2), to direct that “*the act required to be done may, so far as practicable, be done by another person*”.
- (d) The relevant “*act*”, in cases of this kind, is the facilitation of access – i.e. unlocking/opening the door. If the tenant will not open the door voluntarily, then the Court may grant permission for the door to be opened, *so far as practicable*, by another person (i.e. by forcing the lock).
- (e) In all the circumstances, the Court was not being asked – as was decided in *Southern Housing* – to use the CPR as a tool to overturn the substantive law. It was merely using the CPR to give effect to the underlying common law.

CPR 70.2A is, of course, a discretionary rule. The Court therefore gave the Defendant an additional period to provide access, failing which it permitted the Claimant to force the lock at the Defendant’s expense.

The above is yet another county court decision which has no binding precedential force. As is clear from the above, however, *Southern Housing* is far from the final word in this very topical debate. One thing is clear: clarification from the higher courts would be very much welcomed.

Thomas Rothwell successfully represented the Claimant landlord.