In this series of articles, we aim to highlight 3 of the most interesting cases in our field decided in the past month. This month, we have picked two cases under the 1954 Act, and one on rent repayment orders.

In addition, our readers may be interested in the telecoms case ***On Tower UK Limited v Gravesham Borough Council,*** concerning the availability of paragraph 20 of the Code where an operator has lost 1954 Act protection. The decision can be found here[1].

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B&M Retail Limited v HSBC Bank Pension Trust (UK) Limited [2023] EWHC 2495 (Ch)

Summary

The High Court dismissed a tenant's appeal against the terms of a new lease granted under Part II of the Landlord and Tenant Act 1954.

The appellant was the tenant of retail premises. It had served a notice under s.26 of the Act requesting a new tenancy. Owing to a mistake in the landlord's post room during the pandemic, the landlord was unaware of the tenant's notice and missed the opportunity to object to the grant of a new tenancy. Meanwhile, the landlord had entered an agreement for lease, conditional on vacant possession and planning permission being obtained, for a new tenant to redevelop the premises on the landlord's behalf.

At first instance, the judge granted a new tenancy including a rolling redevelopment break on 6 months' notice, exercisable immediately. The tenant, which had argued that no break clause should be included, appealed. The High Court dismissed the appeal.

The tenant argued that allowing the immediate service of a break notice was inconsistent with the purpose of the Act, namely providing security of tenure to the tenant. In rejecting that submission, the Court confirmed that the correct approach is to weigh the sitting tenant's desire for security of tenure against the competing interest of the landlord's wish to redevelop as soon as possible. Miles J found that the judge below had approached the balancing exercise in an appropriate manner, bearing in mind the risk that the development would not happen at all if the landlord could not get possession quickly..

[1] Please link: https://www.falcon-chambers.com/images/uploads/documents/LC-2023-000391_-On_Tower_UK_Limited_v_Gravesham_Borough_Council_Full_Reasons.pdf

Why it's important

The Court confirmed that there is no rule that there must always be a delay before a break clause can be exercised, and that the judge has a wide discretion whether to order an immediate break.

Here, the judge attached significant weight to the fact that the landlord's redevelopment plans were well advanced. Whilst it seems unlikely that an immediate break would be ordered where the landlord's plans were less well advanced, the same balancing exercise would be required when considering whether to allow a redevelopment break at any stage.

Gill v Lees News Limited [2023] EWCA Civ 1178

Summary

The Court of Appeal considered what must be established for a landlord to successfully oppose the grant of a new tenancy under the Landlord and Tenant Act 1954 on grounds (a) (state of repair of the holding), (b) (delay in paying rent) and (c) (other substantial breaches) of s.30(1).

The landlord opposed the tenant's request for a new tenancy. The judge at first instance found that at the date of the landlord's counternotice, there was substantial disrepair to the premises, there had been persistent delay in paying rent, and there had been other breaches of covenant. By the time of the hearing, however, the disrepair had been remedied, and the judge was of the view that both the rental arrears and other breaches were minor and would not recur. He made an order for the grant of a new tenancy. The landlord's first appeal was dismissed, as was this second appeal to the Court of Appeal. The tenant argued that "the state of repair of the holding" was to be judged at the date of the hearing, so that if the repairs had been done by that date, the ground could not be made out. The Court of Appeal rejected that submission and said that ground (a) could be made out even if the landlord's complaint was about the historic state of repair of the building.

The Court of Appeal then had to consider whether the tenant "ought not" to be granted a new tenancy. It accepted that the fact that the disrepair had been remedied was "plainly relevant", and reiterated that the test was whether it was fair to the landlord having regard to the tenant's past behaviour to compel him to re-enter legal relations with the tenant. It rejected the landlord's submission that the tenant's conduct in the litigation was a reason to deprive the tenant of a new tenancy.

Why it's important

This decision considers two important points of principle: the date on which disrepair must be established for the purpose of ground (a), and the correct approach to the value judgment entailed in deciding that 'the tenant ought not to be granted a new tenancy'.

The decision brings some welcome clarity on the former question (although there may be arguments in the future about whether there has to be disrepair at the date the notice was given).

As regards the value judgment, the Court confirmed that the correct approach is cumulative, not compartmentalised looking at each ground in isolation. Moreover, the court was to consider the actual landlord and actual tenant, such that it was proper to consider matters such as the landlord's approach to management of the tenancy.

Moreira v Morrison [2023] UKUT 233 (LC)

Summary

The Upper Tribunal dismissed an appeal by tenants about the FTT's approach to calculation of a rent repayment order.

The appellants were 3 of 5 joint tenants of a property for which the respondents had failed to obtain an appropriate licence for use as a house in multiple occupation (HMO), in breach of the requirements of the Housing Act 2004. The appellants applied to the FTT for a rent repayment order under s.44 of that Act. The FTT made an award, starting from the amount of the rent actually paid by the 3 tenants and then ordering a percentage repayment of that amount to reflect the seriousness of the offence and the conduct of the parties.

The appellants argued that as they had been jointly and severally liable for the full amount of the rent, the FTT should have taken the full amount as the starting point of its calculation. The Upper Tribunal dismissed the appeal.

Why it's important

This case explains that the focus of the rent repayment order provisions in the Housing Act 2004 is on actual payments made by individual tenants and repayments of those sums; if a tenant has not in fact paid rent, they will not be able to obtain a rental repayment order in respect of that amount. This is a key difference from the penalty for failure to protect a tenancy deposit imposed by s.214 of the same Act; the penalty is invariably calculated by reference to the full deposit amount, whereas if the court were to order repayment of the deposit, it may do so in respect of an individual tenant's share.

As is noted in the judgment, the outcome for which the tenants contended could have had draconian consequences for landlords; while evidently the best course of action is to obtain an appropriate licence, this is good news for landlords who have for whatever reason failed to comply.

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