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: tenancy deposit protection, the scope of the right to manage, and an unusual possession claim.

Readers may also be interested in the summaries of other cases prepared by our colleagues this month: there are updates about rights of first refusal,[1] the extent of 'the holding' under the Landlord and Tenant Act 1954,[2] and applications to modify covenants under s.84 Law of Property Act 1925.[3]

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Merryck Lowe v The Governors of Sutton's Hospital in Charterhouse [2024] EWHC 646 (Ch)

Summary

The High Court upheld the judge below's decision that a landlord had complied with the statutory requirements for the provision of prescribed information in relation to a tenancy deposit.

The appellant tenant contended that the information he had been provided was defective in a number of ways, and that as such he was entitled to penalty sums under s.214 Housing Act 2004.

Mr Justice Adam Johnson concluded that the landlord had complied with the requirements:

1. A reasonable recipient of the information provided would have understood it, despite it referring to an 'attached' tenancy agreement which was not in fact attached and to an incorrect clause number. Accordingly, the information required had been provided, or alternatively, information substantially to the same effect.
2. A signed covering letter enclosing an unsigned certificate and conveying that the landlord would be happy to give that certificate was 'substantially to the same effect' as having provided a signed certificate.
3. The deposit paid on grant of a contractual tenancy which was not a shorthold tenancy at the outset, but became one partway through the term, was paid 'in connection with' a shorthold tenancy for the purposes of s.215B (which governs deemed compliance when replacement tenancies are entered into).

[1] https://www.falcon-chambers.com/news/donovan-v-prescott-place-freehold-ltd
[2] https://www.falcon-chambers.com/news/sainsburys-supermarkets-ltd-v-medley-assets-ltd
[3] https://www.falcon-chambers.com/news/stephen-jourdan-kc-and-michael-ranson-appear-in-s.84-application

In addition, he concluded that:

1. A claim under s.214 is a claim for money 'recoverable by virtue of any enactment', and so the applicable limitation period is 6 years, pursuant to s.9 Limitation Act 1980.
2. Where there is a breach of the deposit protection requirements, a court may make an order pursuant to s.214(3) of the 2004 Act for the deposit to be protected in a scheme or returned to the tenant, but it does not have to do so.

Why it's important

There are relatively few binding authorities regarding the deposit protection provisions of the 2004 Act, and so this case will be of interest to any practitioner dealing with the area.

Overall, the decision is likely to be well-received by landlords: the court focused on the purpose for which landlords are required to provide particular information in deciding whether what had been done was sufficient. The decision also confirms that the saving for matters 'substantially to the same effect' applies not only to the form of the information, but also to the information itself.

Assethold Limited v Eveline Road RTM Company Limited [2024] EWCA Civ 187

Summary

The Court of Appeal found that an RTM company was entitled to acquire the right to manage four flats, notwithstanding that they had been originally constructed as two separate terraced houses.

The property had been constructed as two terraced houses, each of which had since been converted into two flats. The houses themselves were part of a larger terrace and so were not a self-contained building. The two houses together, consisting of four flats, met the definition of 'premises' in s.72 Commonhold and Leasehold Reform Act, but so did each of the original terraced houses.

The freeholder contended that two separate RTM companies had to be formed, one in respect of each original terraced house. The Upper Tribunal had rejected that argument, finding that the RTM company was entitled to manage all of the flats as one. The Court of Appeal dismissed the freeholder's appeal.

Why it's important

This case clarifies that there is no requirement for would-be exercisers of the right to manage to restrict their claim to the smallest possible 'self-contained building or part of a building': it is no bar to a successful claim if a self-contained part of a

building contains within it other self-contained parts of a building. In the particular circumstances of this case, the leaseholders would have had a choice as to whether to claim separately for each terraced house, or together in respect of both.

El Massouri v Omani Estates Ltd [2024] EWHC 534 (Ch)

Summary

The High Court determined, on a case with unusual facts, that the claimant was entitled to possession of a third floor flat.

The claimant was the long lessee of the 2nd floor flat, which was originally the top flat in the building. She applied for planning permission to construct a new third floor. The court found that she believed she was entitled to carry out the works, despite there being no apparent basis for that belief in her lease.

Subsequently, in 1996, in the context of another dispute in which the tenants of the flats in the building sought to acquire the freehold, the freeholder granted a lease of the space above the second floor flat to an associate, but did nothing to bring the existence of that lease to the tenants' attention.

In 2001, the claimant carried out her works and began occupying the newly-constructed third floor, in ignorance of the roof lease. The existence of the roof lease first came to the tenants' attention in 2006.

In 2017, the rooftop tenant transferred the lease to an associated company, the defendant. The defendant did nothing to assert its rights under the lease until 2021, when it objected to an application by the claimant to be registered as proprietor of the third floor on the basis of adverse possession. The defendant then commenced a sequence of actions at the property, including removing the claimant's front door, telling her tenants to vacate the premises, and knocking down CCTV cameras, as a result of which the proceedings were issued. The defendant counterclaimed, seeking, among other things, possession of the third floor.

Nicholas Caddick KC, sitting as a Deputy High Court Judge, found that:

1. D was estopped from claiming an order for possession of the third floor. The previous freeholder had known of the planning permission and had stood by in the knowledge that the claimant was likely to carry out the works. The claimant had believed she had a right to do the works and in standing by, the previous freeholder allowed that belief to continue. As the previous freeholder and the defendant company were connected, the previous freeholder's actions were relevant.

2. If that was wrong, then still D was not entitled to possession, because on these particular facts, it had never been in possession, nor could it have been (as the roof lease did not contain any rights by which the demise might be accessed), and it possibly also lacked the intention to possess, given that it had done nothing to assert any rights under the lease until 2021. For the same reasons, a claim for an injunction would have failed also.
3. Had D been entitled to damages in lieu of an injunction, it could only have received negotiating damages or damages for use and occupation, not both – that would be double counting.

Why it's important

The court's approach to the unusual facts of this case is a useful illustration of the flexible application of equitable doctrines. This is also an interesting example of a case where the presumption that the paper title owner has both the factual and mental elements of possession is shown to be displaced.

Practitioners should also note the judge's approach to quantifying the damages he would have awarded in lieu of an injunction: the parties had been obliged to put forward their full case at trial, and even though the material available to the court was limited, it proceeded to reach a conclusion on the basis of that material.

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