



First prosecution under the Landlord and Tenant Act 1987 – what happened?

As residential landlord and tenant practitioners will know, it is a criminal offence for a landlord to breach Part 1 of the Landlord and Tenant Act 1987 (“the Act”), which gives qualifying tenants of flats the right of first refusal when their landlord sells its interest. S. 10A of the Act, which was introduced by the Housing Act 1996, creates a summary offence where the landlord does not comply with its obligations without reasonable excuse. The penalty is an unlimited fine.

Because the offence is summary only, there is a strict time limit for applying for a summons. By s. 127(1) of the Magistrates Courts Act 1980: *'a magistrates' court shall not try an information or hear a complaint unless the information was laid, or the complaint made, within 6 months from the time when the offence was committed, or the matter of complaint arose'*.

In what is believed to be the first prosecution brought under s. 10A, a local housing authority (which is the body tasked with prosecuting: s. 10A(4)) issued two summonses against my client. The alleged offences concerned the sale of a block of flats at auction. The auction contract was completed a month later. It is not necessary to go into details of the alleged offences here; suffice to say the defendant landlord pleaded not guilty.

The informations were laid and the summonses were issued exactly 6 months after the date of completion. What had been overlooked was that the relevant disposal took place on the date the auction contract was made (s. 4A of the Act). Completion in pursuance of the contract was excluded from being a relevant disposal by s. 4(2)(i) of the Act. The summonses were accordingly issued out of time. When this was pointed out, the prosecution was withdrawn.

The background to the current provisions dates back to a 1996 decision of the Court of Appeal, *Mainwaring v Henry Smith's Charity Trustees* [1998] QB 1. It was held that, under the Act as originally drafted, a relevant disposal took place on completion, and not on exchange of contracts. That decision made things very difficult in practice, and its effect was reversed by the Housing Act 1996, which also amended most of the rest of the Act. Since 1997, when those amended provisions came into force, the Act has applied to a contract, and not to completion pursuant to the contract.

The lesson to be learnt is to check the date when the summons was applied for, and see whether it was more than 6 months after the relevant disposal took place.

It was a pleasure to work with Cecily Crampin (also of Falcon Chambers) and Steve Nicholson of Altermans.

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