

Local authorities and prescribed information

Amelia Freeman provides a reminder that when defending housing possession claims, it pays to check the smallest details.



Amelia Freeman

The Housing Act (HA) 2004 and supplementary legislation placed a number of requirements on landlords regarding the protection of tenancy deposits and the service of prescribed information. In a recent case at the County Court at Romford, the requirement of service of the prescribed information on the relevant persons was considered.

Housing lawyers will be familiar with the scramble to find a defence to a notice issued under HA 1988 s21 (more commonly known as the no fault possession), particularly when a claim under the accelerated procedure (with days left to file the defence) makes its way across your desk. Have all the gas safety certificates been served? Check. Where is the energy performance certificate? Check. With fingers crossed you pray - what about the prescribed information? We are all familiar with that sinking feeling when you sit across from a tearful client and it becomes clearer and clearer that the letting agent or landlord has managed to do it all right and the ropes of the law will tie the judge's hands.

Such could have been the case on a grey March morning at the housing possession duty desk at the County Court at Romford. However, the defendant turned up to court following her last hearing being adjourned on the basis that the prescribed information for her deposit protection scheme had been served on her, but not on the relevant persons.

HA 2004 s213(5) stipulates the prescribed information must be served on the tenant and any relevant person. A relevant person is defined in s213(10) as 'any person who, in accordance with arrangements made with the tenant, paid the deposit on behalf of the tenant'. The defendant's deposit was paid by the local authority's rent deposit scheme, thus placing Barking and Dagenham LBC squarely in the definition of a relevant person for the purposes of Mrs H's possession claim.

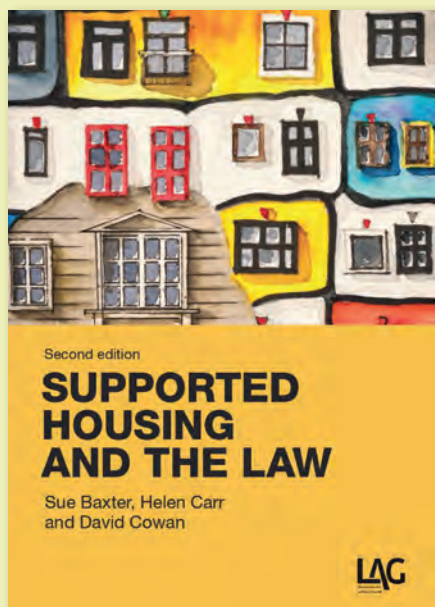
In a market with soaring rents (and therefore deposits), there are likely many tenants arriving at duty desks (and office desks) whose deposits have been paid by one of these schemes (through the rent deposit scheme or social services). Service of the prescribed information on the local authority would be an easy requirement for a landlord to miss. What's equally interesting (and a good opening for a technical defence) is: what constitutes service on a local authority for these purposes? What is the last known address for the department managing these payments? Does an email to an outsourced department suffice? A scarcely monitored generic inbox?

Another consideration is the role of a guarantor here and whether they have paid or contributed towards the deposit. What constitutes 'paid the deposit on behalf of'? Does 'paid' mean the money must be transferred directly from the guarantor's bank account to the landlord's? What does it mean to do something 'on behalf of' someone else? Does transferring the money to the tenant's account break the chain? What if the guarantor (or other relevant person) has paid a contribution, not the full amount? This would likely turn on individual facts.

Satisfyingly in this case, the local authority had given a witness statement attesting to the service of the prescribed information via email. Annexed to the statement was a certificate of service and a copy of the email. Unluckily for them, the email address on the certificate of service was the address cc'd to the email with the prescribed information and was not in the standard email format for this local authority. The deputy district judge was not satisfied. The case was adjourned with directions for further evidence of serving the prescribed information on Barking and Dagenham LBC.

As housing lawyers will know, it is these seemingly small points that make the difference between a possession order and a client keeping their home.

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