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Property Litigation Bulletin

Autumn 2011

ROBOT WARS AND BEYOND

The current financial market means many tenants – commercial and residential - are vacating. But what can landlords do with the goods left behind?

According to figures the economic downturn has led to an increase in landlord and tenant disputes, 43% of which are of a value of £25,000 or more[1]. Tenants are requesting monthly, as opposed to quarterly, rents, break clauses and rights of assignment are being exercised, and forfeitures and possession claims are on the rise. This may result in dilapidations and damages for the landlord, but we also need to consider what happens to the seemingly abandoned tenant goods. What rights do the landlord and previous tenant have to these goods?

Often, tenants leave a property and do not remove all of their goods. This is increasingly common where possessions claims are pursued, despite the fact that tenants – residential or commercial – often have an obligation to remove goods at the end of the tenancy.

Robot Arenas v. Waterfield[2]

In this 2010 case, the landlord removed and disposed of stored equipment left by Robot Arenas, following the sale of the property. The goods turned out to be a dismantled Robot Wars Battle Arena for the Robot Wars Championship event. Robot Arenas filed a claim for almost £350,000 in damages.

"Involuntary bailee"

When goods are left at a property following the termination of a tenancy the landlord, often unwittingly, becomes "bailee" of those goods. As bailee, the landlord is obliged to take reasonable care of the goods and cannot simply destroy or dispose of them. This is an inconvenient situation for a landlord to find itself in and it is likely to result in expense and possibly a delay of a sale or reletting of the property.

Defence of abandonment

One method of discharging the duties of a bailee is to establish abandonment.

The burden of proof is on the landlord, but once abandonment is established, the goods may be thrown away or sold. Clear evidence of both intention to abandon and of some physical act of relinquishment will be required. A mere reasonable belief that abandonment had taken place will not suffice[3].

The landlord should serve notice of its intention to remove the goods on the tenant (if the address is known) and, in any event, a copy of the notice should also be attached to the premises. The notice must outline where the goods are kept; include a schedule of the goods in question; and if the goods are to be sold, state when and where the sale will take place, which should be a reasonable period of time after service of the notice. The notice should also detail that storage costs will be deducted from the sale proceeds.

If no response is received from the tenant, it should usually be reasonable to assume abandonment.

What can landlords do?

A landlord cannot be expected to store goods, indefinitely. However, a landlord must take reasonable steps to protect itself against claims for conversion and other interference with goods.

If there is no clear evidence of abandonment, it will be necessary for the landlord to make enquiries as to the status of the goods and any claim the tenant or third parties have over them.

The test is that the landlord must not be, or cannot reasonably be expected to be aware of the true ownership of the goods. As long as enquiries are made, and are considered reasonable in the circumstances, the landlord should be safe to dispose of the goods if no response is received.

Obviously, avoiding bailee status is preferable. It is therefore common for leases to be drafted in a way that clarifies what a landlord may do with goods that are left on the property at the end of a term.

For further information, please contact : Chris Rodda - cbr@royds.com or Lauren Briggs - lxb@royds.com

65 Carter Lane, London EC4V 5HF
Tel: 020 7583 2222 • Fax: 020 7583 2034 • DX 138762 Cheapside 2
email: info@royds.com • website: www.royds.com

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UPDATE: Tenancy Deposit Protection Schemes

Calling all residential landlords – late compliance will get you off the hook (for now, at least)! Lauren Briggs, Property Litigation Solicitor, reviews the recent case law affecting the Tenancy Deposit Protection Scheme regime.

Background to Tenancy Deposit Protection Schemes

Since April 2007 and under the Housing Act 2006, landlords renting residential premises to tenants under Assured Shorthold Tenancies are required, within 14 days from the date of payment by the tenant, to protect the tenant's deposits within an authorised tenant deposit scheme. If the landlord defaulted, the courts could order him to comply and, under section 214 (3) of the Housing Act 2004, could have ordered the defaulting landlord to pay the tenant three times the sum of the deposit by way of compensation. In addition, the landlord was prevented from serving a section 21 notice on the tenant and bringing the tenancy to an end.

Milestone 1 – Tiensa v. Vision Enterprises Ltd[4]

Late compliance is compliance, nonetheless.

In 2010, this case reached the Court of Appeal. The landlord brought possession proceedings against the tenant, who counterclaimed for three-times the deposit sum, relying on the failure by the landlord to register the deposit.

The Court of Appeal found that the landlord, by registering the deposit with a scheme, at least by the date of the hearing, had complied with the requirements. The tenant's claim therefore failed.

Tiensa v. Vision was not supported by all the Judges sitting on the case and it is certainly a controversial decision, said to drain the deposit protection scheme of its intended effect[5].

Milestone 2 – Gladehurst Properties Limited v. Farid Hashemi[6]

What happens if the tenancy has ended and the landlord cannot comply?

Tiensa v. Vision did not address the issue of tenancies that had ended. In *Gladehurst*, the landlord rented a flat to the tenant. A deposit was paid to the landlord, but was never paid into a scheme. The tenancy ended and the check-out report recommended over £1,000 be deducted from the deposit, due to the state of the premises. The remaining sums were paid to the tenant. However, the tenant disputed the sum retained by the landlord and issued a claim, including a claim for three times the deposit for failure to register it with a scheme.

The court found in favour of the landlord. It said that the requirements of a scheme should be complied with at the start of the tenancy, but once the tenancy comes to an end, so does the opportunity for the landlord to fulfil the requirements. After a tenancy ends, the landlord is no longer capable of complying and the tenant's grounds for making an application to the court under section 214 (4) of the Housing Act 2004, fall away.

Conclusion – good news for landlords, bad news for tenants

In light of the developments, landlords will not be culpable or liable to pay the triple deposit penalty if he eventually complies with the initial requirements, even if this is months or years later. Nor can a landlord be culpable if the tenancy has ended and compliance is no longer possible.

A tenant is not barred from issuing a claim or pursuing a counterclaim, but if he does and, in the interim, the landlord registers the deposit, or the lease comes to an end, the grounds of the tenant's claim fall away. The tenant may face liability for costs and the Court of Appeal has said that *"no tenant could ever sensibly be advised to sue or counterclaim for the [triple deposit] penalty"*.

The above cases have been met with varying degrees of disapproval, and divided judges in *Tiensa*. It has been said that the scheme is, as a result of the cases, a *"dead letter"* with little remaining effect. The developments do not sit comfortably with many judges and commentators but whether the controversial developments survive, remains to be seen. However, for the time being, landlords are getting off lightly - on the deposit front, at least.

We would, of course, advise landlords to register the deposit, within 14 days, for the sake of landlord and tenant relations. In addition, the scheme provides a free dispute resolution service, which may save both parties time and money.

For more information on Landlord and Tenant disputes and Property Litigation, please contact Lauren Briggs on lxb@royds.com

1. Sweet & Maxwell, legal publishers. See: tinyurl.com/69vqo9r. 2. Robot Arenas Limited & Hoppitt v. Waterfield & Newton Nottingham LLP [2010] EWHC 115 (QB) 3. Palmer on Bailment; para. 26-0121 4. Tiensa v. Vision Enterprises Limited (t/a Universal Estates) and Honeysuckle Properties v. Fletcher, McGrory and Whitworth [2010] EWCA Civ 1224. 5. Lord Justice Sedley, dissenting, at para 58. 6. [2011] EWCA Civ 604.

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Royds Solicitors, 65 Carter Lane, London, EC4V 5HF Tel: 020 7583 2222 Fax: 020 7583 2034

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Surrey Office: 18 Crown Lane, Morden, Surrey SM4 5BS. Tel: 020 8542 1067 Fax: 020 8544 0246. Royds is regulated by The Law Society.

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