

# Imposing financial sanction on landlords



Chapter 4 of the Housing Act 2004 (HA 2004) came into force on 6 April 2007. It sets out provisions in respect of safeguarding deposits paid by tenants in connection with assured shorthold tenancies and also includes provisions allowing courts to impose financial sanctions upon landlords who fail to comply with certain specified requirements. In the recent case of *Tiensia v Vision Enterprises Ltd; Honeysuckle Properties v (1) Fletcher (2) McGrory (3) Whitworth* [2010] EWCA Civ 1224, the Court of Appeal gave much needed guidance as to the circumstances in which the financial sanctions under the 2004 Act may be imposed against landlords.

- HA 2004, s 213 Act sets out the requirements of a landlord who receives a deposit from his tenant. Those requirements can be summarised as the obligation to comply with “the initial requirements” of an authorised deposit scheme within 14 days of receipt of the deposit and the obligation to give the tenant prescribed information as to the deposit protection within 14 days of receipt of the deposit.
- HA 2004, s 214 sets out the sanctions that a court can impose upon a landlord who has been or is in breach of certain subsections of s 213, the most significant sanction being an order requiring that the landlord pay his tenant a sum of money equal to three times the amount of the deposit.
- HA 2004, s 215 sets out that a landlord cannot give notice to his tenant pursuant to s 21 of the Housing Act 1988 (a notice served as a prerequisite for obtaining possession) in circumstances where he has not complied with certain subsections of s 213.

The appeal comprised two cases that had originally been heard in different county courts. In the first case the landlord brought a claim for possession and arrears of rent. In the second case the landlord brought a claim only for arrears of rent. In both cases the landlord had failed to comply with the obligations set out in s 213 within 14 days. The landlords had however complied with their

obligations late. In both cases the tenants counterclaimed for a liquidated sum (being three times the amount of the deposit) under s 214.

At first instance the tenants in both cases had been awarded the financial relief that they sought. In the first case a Circuit Judge had allowed an appeal by the landlord against the first instance decision. Permission to appeal to the Court of Appeal was subsequently given in both cases.

The tenants argued that if a landlord failed to perform his obligations under s 213 within the relevant 14-day period he would have no defence to a claim brought by his tenant to impose the financial sanctions specified in s 214. If, however, it were found, contrary to their primary argument, that the landlord could remedy his default after 14 days, the tenants argued that such remedy would have to have had occurred before the tenant’s application was issued by the court rather than (as was suggested by the landlords) before the date upon which the application was heard by the court.

The landlords argued that s 214 does not focus upon compliance within 14 days. Rather that section (which unlike s 213 makes no reference to 14 days) is concerned only that the landlord has complied with his obligations by the date of the hearing of the tenant’s application. As such a landlord could remedy his non-compliance at any time up until his tenant’s application was heard.

Rimer LJ (with whom Thorpe LJ agreed) considered that late compliance by a landlord with his obligations under s 213 would offer a complete defence to a claim under s 214. Rimer LJ noted that any reference within s 214 to s 213 conspicuously avoided those sub-sections that made reference to 14 days. Further he identified that s 214 says that on an application by a tenant the court will be concerned to assess whether certain requirements under s 213 “have been” complied with, not “were” complied with. Rimer LJ also found support for his interpretation by drawing a parallel between the way in which ss 214 and 215 were drafted. Like s 214, s 215 makes no reference to a 14-day compliance period.

If a strict 14-day compliance period were applied to s 215 that would in effect constitute a permanent bar on a landlord bringing s 21 possession proceedings against his tenant. Rimer LJ deemed that it was impossible to interpret s 215 in that way. Further he considered that the date by which compliance has to have taken place is the date of the hearing, although a landlord should anticipate costs consequences if his late compliance led to the tenant’s application.

Sedley LJ (dissenting) said that the effect of Rimer LJ’s decision was to make the scheme a “dead letter”. It was his view that to permit a landlord’s late compliance at any time up to the moment of judgment was to “eviscerate” the legislative scheme. He did however recognise the difficulty posed by s 215 and the application of a strict 14-day period leading to a permanent bar on s 21 proceedings – that difficulty being very serious economic and proprietary consequences for a landlord who fails, even through misfortune, to comply.

The decision is a significant victory for landlords. If the legislation was truly intended to punish errant landlords, that it is no longer its effect. Further, Sedley LJ identified that the decision benefits not only the innocent defaulting landlord but also the scheming one who can now easily evade any financial sanction. He comments that Rimer LJ’s interpretation of the statute has blunted its effect such that the only type of landlord who in reality will now end up being taken to judgment is the one who has appropriated the deposit and has no money to satisfy that judgment. Whilst agreeing with Rimer LJ, Thorpe LJ expressed his regret that this interpretation undermined what he imagined to be Parliament’s original intention – being to discipline landlords.

The judges were critical of the unhelpful way in which ss 213, 214 and 215 had been drafted. In light of those criticisms and the effect that this decision will have upon the balance of power between landlord and tenant, ss 213, 214 and 215 may now require reconsideration by Parliament.

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