

Northern Housing Consortium

DEMOTED TENANCIES

The Legal Framework



Legal Background

- ASB Act 2003 sections 14 and 15
- Remedy for ASB only
- Demotion can be applied for only in respect of Secure or Assured Tenancies

Effect of a Demotion Order

- Tenancy terminated from the date specified in the Order
- Secure becomes Introductory
- Assured becomes Shorthold

Terms of the new tenancy

- The following terms remain:
 - Parties to Tenancy
 - Period
 - Rent Payable & Due Date
 - Arrears/Credit Carried Over
- Landlord can serve a statement of which other terms of the former Tenancy are to apply.

Security and rights

- Previous security of tenure lost
- No Right to Buy (no qualifying period)
- Any Preserved RTB is not restored
- No Right to Exchange
- No Right to Acquire

Succession / Assignment

- No succession for Assured
- Succession retained for Secure – spouse and family member occupying for 12 months and as only or principal home at death.
- No Assignment for Assured
- Assignment for Secure only if Court Order made.

Starting a claim

- Stand alone remedy or plead Demotion in the alternative to possession
- Basis for claim - The Court must not make a demotion order unless it is satisfied:
 - (a) **that the tenant or a person residing in or visiting the dwelling-house has engaged or has threatened to engage in conduct to which section 153A or 153B of the Housing Act 1996 (anti-social behaviour or use of premises for unlawful purposes) applies, and**
 - (b) **that it is reasonable to make the order.**

Section 153

Section 153A – anti-social behaviour

- “(3)The condition is that the person against whom the injunction is sought is engaging, has engaged or threatens to engage in housing-related conduct capable of causing a nuisance or annoyance to

Section 153B – Unlawful use of premises

- “(1).....conduct which consists of or involves using or threatening to use housing accommodation owned or managed by a relevant landlord for an unlawful purpose”.

Notices

- Notice must:
 - a) give particulars of the conduct in respect of which the order is sought;
 - b) state that the proceedings will not begin before the date specified in the notice;
 - c) state that the proceedings will not begin after the end of the period of twelve months beginning with the date of service of the notice.

Making out your case

- Evidence to establish conduct capable causing a nuisance and annoyance
 - witness statements
 - housing management statement
 - hearsay evidence (subject to rules)
 - CCTV, letters of complaint, nuisance diaries etc
- Address issue of reasonableness

The Order and duration

- On hearing of a demotion case the Court may decide to:
- Grant a Demotion Order
 - Which will remain in place for 12 months unless:
 - Tenant dies
 - Set aside
 - Landlord starts possession proceedings
- Refuse to grant a Demotion Order

After 12 months

- Demoted Tenancy reverts to either a Secure or Assured Tenancy.
- If RSL - can only become Assured.

Extending a Demoted Tenancy

- Can only be extended if notice served within the initial 12 month period and then until:
 - a) six months pass without possession proceedings being issued or
 - b) the notice of proceedings is withdrawn before 6 months or
 - c) if proceedings are issued within 6 months they are finally determined

Ending the Demoted tenancy

- Landlord can apply for Possession.
- Court can only check the procedure.
- Court cannot consider merits of Landlord's decision.

A tenant of a LA or HAT

- Notice of possession proceedings
- Notice must:
 - a) State that the court will be asked to make an order for the possession
 - b) Set out the reasons
 - c) Specify the date after which proceedings may be begun
 - d) Inform the tenant of their right to request a review and timescales

Right to a Review

- Tenant must request within specified time
- Comply with regulations
- Give tenant notice of review hearing
- Conducted by person independent of the decision to seek possession.
- *R (Gilboy) v Liverpool CC*

A tenant of an RSL

- Notice of possession proceedings (S21)
- No right to a review
- RSL may apply internal arrangements
- Use accelerated possession procedure



PO Box 125
Chorley
Lancs., PR7 2GD
Tel: 01257 266008
Fax: 01257 249704
Video Conference
IP: 84.92.211.113
ISDN: 44.01257.224872