

A Funny Thing Happened On The Way to the Court of Appeal

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What to look out for...

Lease/licence distinction

- Property Guardians

s.8 notices

- Become experts on s.13 notices and rent increases

s.21 notices

- Tenant Fees Act 2019

Other interesting problems

- The fall-out from the Right to Rent scheme
- Pts 2 and 3 licensing, Housing Act 2004

Property Guardians

The lease/licence distinction for millennials

- Is it a lease? (1) *Camelot Property Management Ltd*, (2) *Camelot Guardian Management Ltd v Roynon* County Court at Bristol, 24 February 2017
- Or is it a licence? *Camelot Guardian Management Ltd v Khoo* [2018] EWHC 2296 (QB)
- How does it work for rating purposes? *10 Ludgate House, 245 Blackfriars Road London SE1 8NW*, VTE Appeal 584026075915/537N
- And what about Pts 2 and 3 HA 2004 licensing? *Colchester Borough Council v Camelot Guardian Management Company Ltd*, Chelmsford Mags, 28 March 2019

Section 8 notices – breathing new life into these

Assuming s.21 does get abolished, what will happen to s.8?

- Gov plans quite vague *but* (based on experience in Scotland and initial thoughts about the London Model) it looks like it will just mean that fixed term tenancies are replaced by statutory periodic tenancies (as happens now – s.5, HA 1988) but without s.21 existing
- So... tenancy continues *ad infinitum*
- How do you put the rent up?
 - Contractual provisions (and then operating them properly)
 - Section 13 notices?

Section 21 – yet more restrictions

Tenant Fees Act 2019

- In force 1 June 2019
- New concept of the “prohibited payment” (Sch.1)
 - Prohibited unless rent, deposit (‘tho note cap in Sch.1, para.2), *etc*
- Regulation of holding deposits (Sch.2)
 - Capped at 1 week’s rent

Landlord who receives “prohibited payment” cannot serve a s.21 notice unless money returned or applied as agreed (s.17, TFA 2019)

Landlords will obviously mess this up.

Fall out from the Right to Rent judgments

The Right to Rent scheme (Immigration Acts 2014 & 2016)

- Unlawful to let to someone who does not have a “right to rent”
- Offence punishable by up to five years imprisonment and unlimited fine
- Secretary of State serves notice on LL which, in effect, requires him to evict his tenant
- Scheme causes unlawful discrimination for which Secretary of State is liable: *R (JCWI) v Secretary of State* [2019] EWHC 452 (Admin)
- Service of the notice by SoS on LL is also racial discrimination. But SoS has personal exemption: *R (Goloshvili) v Secretary of State* [2019] EWHC 614 (Admin)
- But what happens when LL then serves notice on tenant? No exemption for LL... so breach of Equality Act?

Housing Act 2004 licensing

Part 2, Housing Act 2004 – mandatory licencing of HMOs (can be extended)

Part 3, Housing Act 2004 – optional licencing of non-HMOs

In either case need a licence from local authority otherwise you commit a crime and can't use s.21 HA 1988

R (Gaskin) v Richmond upon Thames LBC [2018] EWHC 1996 (Admin)

- Role of EU Directive 2006/123 and the Provision of Services Regulations 2009

Thank you for listening

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