Housing Team Legal Bulletin

Issue 36. June 2013

GARDEN COURT NORTH CHAMBERS of IAN MACDONALD QC

Track Changes Update

In our March 2013 bulletin we provided a reminder that, on 1st April, the Civil Procedure Rules would be amended so as to increase the small claims limit from £5,000 to £10,000 in most damages only claims where there is no personal injury (claims against landlord for unlawful eviction/harassment were not effected, nor were disrepair claims where there is a claim for both damages and specific performance where at least one part of the claim is worth at least £1,000).

In order to avoid the consequences of this change, practitioners were advised to consider issuing any applicable proceedings before 1st April. Where the claim was not ready to be pleaded, practitioners were advised to issue 'protective' proceedings in order to protect their client's position by ensuring that they benefitted from the pre-1st April rules on allocation.

A number of practitioners followed this advice and submitted claim forms prior to 1st April, but unfortunately in some cases the court did not issue the claim until after 1st April.

Whilst limitation stops running when a claim form is delivered to court, the CPR makes it clear that a claim is not issued until the court stamps the claim form with an issue date. Furthermore, the amended CPR applies to claims issued on or after April 1st regardless of when they were delivered to court. As a consequence, those claims issued on or after 1st April fall to be allocated under the new rules – which causes a potential problem if the claim is worth less than £10,000 in damages.

Fortunately, the value of the claim is not the only criterion that must be considered when deciding in which track to allocate a claim. CPR 26.8 lists a number of other circumstances in which cases may be allocated to the fast track, even if they do not meet the £10,000 threshold and practitioners should consider whether they apply in any claim, particularly where the claim form was delivered at court before 1st April. The matters to concentrate on are:

(i) 26.8(c) (complexity) - many of our cases, including disrepair, are likely to be of some complexity – there is usually expert evidence, sometimes from both parties and it is often disputed; in many cases there is an issue over what is and is not disrepair; there can be legal issues over whether effective notice has been received; and quantum is not a simple matter and is more comparable to calculation of personal injury damages than recovery of a debt or damages in a simple breach of contract claim. These types of claim are not straightforward disputes over a debt or a simple breach of contact (which was the basis, at least in part, on which the small claims level was increased);

(ii) 26.8(f) (the amount of oral evidence) – where, for example notice is in dispute in a disrepair claim, there may be a considerable need for oral evidence;

(iii) 26.8(h) (views of the parties) – save for simple cases, practitioners should argue that allocation to the fast-track is appropriate and where possible seek agreement from the other side; and

(iv) 26.8(i) (the circumstances of the parties) – which could include the fact that claims were prepared on the basis of the old allocation rules, that the claims were filed at court before the rules were changed and that, but for delay on the part of the court's administration, they would have been issued under the old rules (helpfully the court issue form tends to record the fact that claim form was delivered at court before 1st April, but a short witness statement from the solicitor with conduct of the case should be provided in any cases where this is not recorded confirming that the claim form was delivered to court before April 1st and in any cases where the court was expressly asked to issue the claim form before 1st April). Furthermore, the personal circumstances of the claimant would also be relevant, including his or hers inability to conduct the proceedings without legal assistance due to infirmity or disability.

It is worth remembering that even if a disrepair claim is allocated to the small claims track the

cost of complying with the pre-action protocol may well be claimable, usually where repairs are carried out as a consequence of going through the protocol process, on the basis set out in *Birmingham City Council v Lee* [2008] ECWA Civ 891. If such costs are recoverable, and particularly if the remaining claim is quite straightforward, it may well be appropriate to conduct the small claim on a CFA.

Tenancy Deposits

Superstrike Ltd v Rodrigues [2013] EWCA Civ 669

This case involved a deposit paid before 7th April 2007. There was, of course, no obligation on a landlord to protect a deposit received before the tenancy deposit protection provisions came into effect on 7th April 2007, pursuant to a tenancy granted before that date , but what happens when the fixed period of the tenancy ends and a statutory periodic tenancy arises ? The simple answer, as long suspected but now confirmed by the Court of Appeal, is that if the statutory periodic tenancy arises after 7th April 2007 and provided the deposit is not returned when the fixed term ends, the landlord comes under an obligation to protect the deposit and provide the prescribed information once the statutory periodic tenancy arises.

The pertinent parts of the judgment are at paragraphs 36 to 38. Those paragraphs make it clear that: (i) at the end of the fixed term tenancy a fresh statutory periodic tenancy is created (it is because there is a new tenancy that the deposit protection provisions will apply if they were in effect at that time); and (ii) that at the end of a fixed term, the deposit is to be treated as having been paid back to the tenant and then repaid to the landlord to hold under the new tenancy even though no cash changes hands.

As a consequence, if a tenant gave a deposit on a fixed term tenancy created before 7th April 2007, which then became a periodic tenancy after 7th April 2007,the tenant should be treated as having paid the amount of the deposit to the landlord in respect of a new tenancy. Any landlord who has failed to realise this will be unable to issue a section 21 notice (indefinitely if the deposit was not protected within 30 days of receipt and where it has neither been first returned or where there has first been no compensation claim by the tenant) and may find himself at risk of a compensation claim.

Marian Cleghorn
Garden Court North Housing Team
18th June 2013

Events

The following events may be of interest to readers:

The Public Law and Judicial Review North Conference (Public Law Project Conference)
Date : Thursday 11 July 2013
Speakers from Garden Court North:
Pete Weatherby QC, Kate Stone, Ben McCormack, James Stark, Kerry Smith, Phil Mcleish and Vijay Jagadesham

Ways to do legally aided welfare rights work now there's no legal aid for welfare rights (GCN)
Date: Monday 15th July 2013
Location: Palace Hotel, Central Manchester
CPD: 4 CPD points
Price: £65 + VAT per delegate

Informal Advice

Please bear in mind that barristers at GCN are always available to give informal advice on any housing matters. In the first instance please contact the clerks (Sarah Wright, Annmarie Nightingale or Nicola Carroll) on 0161 236 1840.

GCN housing team

Sonia Birdee
Andrew Byles
Laura Cawsey
Jared Ficklin
Peter Hodson
Ben McCormack
Philip McLeish
Rory O'Ryan
James Stark
Kate Stone
Camille Warren
Gary Willock