

# Housing Management Brief

## Spring 2010



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## Welcome

As always, ASB features prominently in this edition of HM Brief and we continue to achieve successful outcomes for clients across the country. One of the themes for 2010 will undoubtedly be the continuing impact of the Weaver decision and the emphasis on Defendants' public law rights in possession claims. As some of the case reports in this edition highlight, this makes it all the more important in ASB cases to get across to the Court the impact of ASB conduct on neighbours. We must tell the victims' story and not let the Defendant's rights take centre stage.

**Nick Billingham, Partner, Head of Housing Management**

# Social Landlord takes Tough Action Against Anti-social Tenant

Gateway Housing Association recently obtained a suspended Possession Order against a tenant who had engaged in a campaign of harassment against a neighbour, which included shouting and threatening her whilst standing in her front door, and also banging on a party wall in the early hours with a blunt instrument.

Following complaints from a neighbour, Gateway took action and applied for a possession order in Central London County Court. The Court heard evidence from an employee of the Association who explained that incidents of anti-social behaviour that the tenant had been involved in included banging on the party wall separating the tenant from her neighbour in the early hours, verbally abusing her whilst standing in her front door and following her to her car whilst filming her movements with a mobile phone. The Defendant had also verbally abused her neighbour on a regular basis.

The Court heard evidence from the Defendant's neighbour who confirmed that she had been

because the tenant had two young children who would be made homeless should an outright order for possession be made, the Court suspended the order on condition that the conduct ceased. The Judge remarked that should the tenant again target her neighbour he would have no hesitation in evicting her from her property.

This case highlighted the importance of relying on CCTV evidence and audio recordings of a tenant's anti-social conduct in order to demonstrate to the Court the nature of the anti-social behaviour and how it can affect victims.

*"The Court remarked that should the Tenant again target her neighbour he would have no hesitation in evicting her from her property then."*

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the subject of a campaign of harassment by the tenant who was intent on driving her away from her property. An officer of the Local Authority also provided evidence that on one occasion he attended the defendant's neighbour's property late at night and heard the tenant aggressively banging on the party wall with a blunt instrument.

Importantly, they also saw video evidence of the tenant's conduct and heard a recording of the tenant verbally abusing the neighbour. The tenant was unable to deny her conduct when cross-examined at trial.

Following a two day trial in Central London County Court, the Court awarded Gateway a suspended possession order. The Court accepted that the tenant had engaged in a serious campaign of harassment directed towards her neighbour but

# Managing Your Local Authority Tenants

## Possession action – elderly tenants and unauthorised occupiers

Devonshires has recently been instructed in possession actions against unauthorised occupiers of Local Authority properties who have remained there after the departure of elderly tenants to residential care homes. Such occupiers, where they do not meet the criteria for succession, present problems for Local Authorities at a time when demand for social housing is high and the supply of available housing stock low.

In taking action against unauthorised occupiers, important factors can sometimes be overlooked. Outlined below are some guidelines to assist you in handling such cases effectively, and making sure that in addition to obtaining a possession order in the County Court, other issues caused as a result of the occupant's departure are also dealt with:

tenants, it is important that the matter is handled carefully and that a full and sensitive explanation is provided for the Council's decision to pursue Court action for possession of the tenant's former home.

## 3. Including a claim for a Money Judgement and Costs

On commencing Court action, you may discover that arrears of rent have accrued on the elderly tenant's rent account, due to them not having ended their tenancy in the proper way, and their rent account not having been terminated as a part of this process. However, whilst you may be within your rights to request a money judgement and costs in this situation, it is unlikely that a Court will grant a money judgement and costs against an elderly tenant who is impecunious and may also suffer from a physical or mental disability.

In such circumstances, the proper course of action would be to terminate the tenant's rent account on being made aware of their move to

*“In taking action against unauthorised occupiers, important factors can sometimes be overlooked.”*

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## 1. The Notice to Quit

If, despite your repeated requests, the unauthorised occupier has not left the property, service of a Notice to Quit will be the first step towards possession of the property. Ensure that your Notice contains the name of the tenant, and that the correct address of the property is cited. Whilst the NTQ is not a complicated document, it is a vital one, and it is essential that attention to detail is paid to its drafting. An invalid NTQ will result in any Court action being struck out and further delay incurred in obtaining possession.

## 2. Court action and Communication

When instructing Devonshires, or commencing Court action yourselves, ensure that the elderly tenant, as well as any care managers and next of kin, are kept informed of the proceedings. Due to the vulnerable circumstances of elderly

a care home. In order to make a money claim against any unauthorised occupier, an account for mesne profits (also known as the 'daily rate for use and occupation') should be set up, to claim against the unauthorised occupier for living at the property after the expiry of the NTQ. To claim against the unauthorised occupier, they would need to be named as a second Defendant in the Court action, and on the day of the hearing, a request be made to the Court to make an order against them specifically.

Taking care to follow these steps will help to ensure a swift and successful outcome for the LHA in Court on the day of the hearing.

For more information please contact: Jonathan Hulley on 020 7880 4308 or [jonathan.hulley@devonshires.co.uk](mailto:jonathan.hulley@devonshires.co.uk) or Sam Swann on 020 7880 4254 or [sam.swann@devonshires.co.uk](mailto:sam.swann@devonshires.co.uk)

# Successfully tackling Nuisance and Anti-Social Behaviour

The Defendant was granted a weekly assured tenancy by the Claimant. The Claimant is a social landlord which provides housing and rehabilitative support to vulnerable and/or disabled men and women. Two years after the tenancy commenced the Claimant started receiving complaints regarding the Defendant's drunken behaviour. Following an alleged assault of a fellow resident by the Defendant the Claimant served a NOSP on the Defendant. As there were further incidents possession proceedings were issued. The Defendant had put in a defence stating that he suffered from post traumatic stress disorder and was also attending Alcoholics Anonymous to address his alcoholism. The Claimant therefore decided to resolve these proceedings by way of consent order, which essentially provided an adjournment on terms for a period of 12 months.

There were no breaches by the Defendant for 12 months. However, there was a recurrence of the Defendant's drunken conduct shortly after the expiry of the consent order. The Defendant

organisations to help deal with his problems. Evidence was also provided by the Defendant's former Community Support and Rehabilitation Officer who said that the Defendant had never been in a better mental state and had continued to show improvements. However the Defendant admitted to recent drinking in "moments of weakness".

In the judgment the Judge accepted the Claimant's version of the events and stated that Grounds 12 and/or 14 of Schedule 2 to the Housing Act 1988 were made out. The Judge therefore had to consider whether it was reasonable to make a possession order.

The Judge accepted that it was reasonable to make a possession order given the significant distress and alarm caused, especially to elderly and vulnerable neighbours. He also believed that the Defendant's current engagement with various agencies and support organisations did not amount to an assurance that there would be no further breach.

*"This case highlights the importance of presenting evidence at a trial that demonstrates that it is reasonable that a possession order be made."*

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consumed alcohol heavily over a period of three days, which culminated in an incident during which he verbally abused and threatened to kill members of the Claimant's staff. The incident resulted in the Defendant's arrest and subsequent conviction for Public Order Act offences. Consequently, a further NOSP was served on the Defendant and following the expiry of that NOSP the Claimant issued possession proceedings.

At the trial, evidence of the Defendant's drunken and violent conduct was provided by the Chief Executive of the Claimant and the Tenancy Services Manager. The Defendant admitted most of the allegations and was very apologetic in his evidence. He admitted to suffering from alcoholism and post traumatic stress disorder. The Defendant produced evidence that he had also been very proactive with a number of

In deciding what order to make the Judge considered proportionality and the case of London Borough of Lambeth v. Howard [2001] 33 HLR 58. The Judge decided that if an outright order was not made the residents and staff would be remain in fear because of what has happened in the past. The Judge also referred to Canterbury City Council v. Lowe [2001] and confirmed that there was no point suspending an order if the inevitable outcome is a breach.

This case highlights the importance of presenting evidence at a trial that demonstrates that it is reasonable that a possession order be made. Highlighting the negative effect of the anti-social conduct on the victims is crucial in persuading a Court that it is reasonable that a possession order be made.

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# Handling Hoarders

Devonshires Housing Management Team was instructed recently by London & Quadrant Housing Trust in relation to a serious hoarding case, where a tenant had caused particular concern to residents by using a butane gas cylinder connected to a camp cooker in a block of flats.

Clearly this was an extremely dangerous situation for the tenant and the other residents of the block of flats, which was further exacerbated by the state of the tenant's flat which was full of clutter and in need of a deep clean.

London & Quadrant had done all it could to attempt to support the tenant, writing to him several times, visiting him and involving other agencies, however the tenant was not prepared to remove the gas cylinder as his own gas supply had been capped. Under the circumstances, London & Quadrant felt it had no option but to apply to Court for an injunction to compel the Defendant to remove the gas cylinder or alternatively to gain access to remove the gas cylinder.

were obtained that the tenant was prohibited from having any fuel cylinder in his flat in future and ordered him to keep the flat in a good and clean condition.

Whilst there are often mental health issues involved in hoarding cases, that does not mean that the tenant lacks capacity and once all other paths have been exhausted, social landlords should not shy away from instructing solicitors to try and resolve these problems. Sometimes a solicitors' letter alone will be enough to compel a tenant to engage with support services to clear and cleanse their property, and if it does not then often the commencement of legal proceedings will be enough to provide the motivation for a tenant to engage and restore the property back to an acceptable standard.

*“Sometimes a solicitors’ letter alone will be enough to compel a tenant to engage with support services to clear and cleanse their property”*

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After issue and service of the papers upon him, the tenant wrote to Devonshires to state that he was going to be going abroad for a period of 4 months on the same day as the hearing but would resolve the situation upon his return. Evidently, this would have created more danger to residents having an unoccupied flat with the cylinder in it, so Devonshires applied to Court to expedite the hearing and at the same time wrote to the tenant to invite him to allow London & Quadrant to remove the cylinder prior to the hearing.

The hearing was brought forward by 4 days, and at the hearing London & Quadrant were successful in obtaining an injunction that the tenant would (1) remove the butane gas cylinder; or alternatively (2) provide London & Quadrant with keys to the property so that they could remove the gas cylinder in his absence. Further terms

# Facing a Judicial Review Challenge?

Judicial Review is a dynamic High Court process in which a Judge reviews the lawfulness of a decision or an action taken by a public body.

Public bodies are wide ranging and now include most social landlords after the case of *London Quadrant –v- Weaver*.

You may be interested to know that there is a Judicial Review Group at Devonshires, which includes four members of our Housing Management Team. All members of the Group have had experience of handling Judicial Review challenges brought against public bodies in general and social landlords in particular. We also have experience in acting for social landlords in relation to decisions about the management and allocation of housing and also in bringing

## Diary Dates

11 May - A Practical Guide to Rent Possession Claims for Housing Officers Seminar - IoD Hub, New Broad Street House, 35 New Broad Street, London EC2M 1NH.

13 July - Dealing with Disrepair: A Practical Guide for Social Landlords Seminar - IoD Hub, New Broad Street House, 35 New Broad Street, London EC2M 1NH.

Further information can be obtained from our Marketing Department on 020 7628 7576 or email [info@devonshires.co.uk](mailto:info@devonshires.co.uk) or from the events section of our website at [www.devonshires.com](http://www.devonshires.com)

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Devonshires has taken all reasonable precautions to ensure that information contained in this document is materially accurate however this document is not intended to be legally comprehensive and therefore no action should be taken on matters covered in this document without taking full legal advice.

possession proceedings in the County Court where the tenant has threatened to bring judicial review proceedings.

Members of the Group can also advise on how to manage your housing stock in order to minimise the threat of judicial review and human rights challenges in both the High Court and County Court.

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