



## Ask Gerard

Gerard O'Toole, Head of Social Housing at Glazer Delmar answers your questions

# Can this tenant succeed?

**Q** ONE of our assured tenants died recently, and I have only just discovered that there was someone else living there with him. He came to see us and claimed to have succeeded to the tenancy as the deceased man's same sex partner. Our tenancy agreement is silent on this point. Can this person succeed to the tenancy?

**A** IN GENERAL, most RSLs have extended succession rights to the survivor of a same-sex partner using the tenancy agreement. If same-sex couples had to rely on statutory rights alone, they would be at a disadvantage compared with heterosexual couples.

In theory, your applicant would not succeed, as they were not the tenant's "spouse" or "a person living with the tenant as his or her wife" – both alternative requirements for succession to assured tenancies under The Housing Act 1988.

However, the Courts have been willing to accommodate modern concepts of "spouse". In **Mendoza and Ghaidan**, the surviving tenant in a same sex partnership applied to succeed under the Rent Act 1977. The House of Lords held that the definition "living together as husband and wife", (a requirement for succession to a Rent Act tenancy) could mean "as if they were living together as his or her wife", so gay couples could be treated as spouses.

Since The Housing Act 1988 governing assured tenancies contains similar words to those used in the Rent Act, same-sex partners can now be

treated as though they were spouses of the deceased assured tenant. Provided that they resided with the deceased immediately before their death, they will be entitled to succeed – and probably, so will your tenant.

Succession rights to secure tenancies are given to spouses under 1985 Housing Act, if they are defined as heterosexually married – the words in Mendoza are not used. Unless there is a tenancy agreement saying a gay couple can succeed, they can only win that right as a family member, but they have to prove 12 months residency prior to the tenant's death.

The current law gives rise to the anomaly of different rights of succession for secure and assured tenants of RSLs. However, Housing Corporation guidance on extending succession rights should be followed until the Civil Partnership Bill becomes law, which will ensure equality of treatment regarding succession irrespective of type of tenancy.

If you would like Gerard to tackle another thorny question, e mail him gotoole@glazerdelmar.com

## brief encounters

### TAKE CARE IF TENANTS HAVE SPECIAL NEEDS

VULNERABLE tenants with mental health or addiction problems need to be treated with extra care by RSLs, two Clerkenwell County Court cases have shown.

RSLs must not forget that a tenant can still make an application to suspend a warrant for possession even after they have been evicted if they can show that the landlord has acted oppressively.

In *Islington LBC v Lazarou*, a secure tenant receiving incapacity benefit was allowed back into his former home after eviction for rent arrears. The tenant argued that a letter from the council saying he would be evicted unless he paid the arrears in full was oppressive. The letter did not mention his right to apply for the warrant to be suspended. The judge agreed that the council had acted oppressively because the tenant did not understand the eviction process. The warrant was set aside.

In *Haringey LBC v Williams*, the council tried to obtain a possession order for rent arrears against a tenant with mental health problems unable to sort out his housing benefit problems. The Court ruled the council had breached its duty to assess the tenant's needs under the Community Care legislation. The possession claim was stayed until it could be shown the council had made an assessment and taken steps to help him.

# glazer delmar solicitors

SOCIAL HOUSING / WINTER 2004

## A softly, softly approach to gas servicing pays dividends

### Look at the alternatives to forcing entry as it can land you in hot water

LANDLORDS have a legal duty to service their tenants' gas boilers and fires annually – but they have to take care how they get into the property.

This was highlighted by the case of the Brunel and Family Housing Association, which has fallen foul of the Audit Commission inspectors for using duplicate keys and forced entry.

Unless there is an emergency, forced entry is illegal, and the RSL risks a claim by the tenant. A landlord could be accused of taking the tenants' possessions, or interfering with their quiet enjoyment of their home.

The Bradford housing association has been placed under supervision for providing a poor service, which included forced entry. West Yorkshire and Three Rivers Housing Associations were also criticised by the Commission for failing to manage gas checks.

RSLs with access problems should keep detailed records of all the failed attempts to get into the house or flat. Then you can go to the law.

Injunction or possession orders can be used, but the

latter is more expensive and takes longer. Under the tenancy agreement, a landlord is allowed into the premises with reasonable notice.

Another option involves checking to see if the tenant has rent arrears and is in breach of a suspended possession order. If so, a possession warrant can be issued, which the tenant can have suspended if he or she allows the landlord to service the boiler.

Sometimes access can be complicated by the fact that a tenant has left and there is a new illegal occupant, so RSLs must make sure that maintenance and tenancy management departments share information.

### The Key Points

- \* Make sure gas appliances get their annual service
- \* Don't force entry or copy keys
- \* Use legal remedies, possession or injunction
- \* Check tenants' rent record as alternative
- \* Watch out for subletting and illegal occupation

For further information and advice, call Mark Martynski on 020 7639 8801 Ext. #242 or email him mmartynski@glazerdelmar.com

## Plans for LAs to rent out empty homes

LOCAL authorities (LAs) will be able to take over empty properties and rent them out, easing the housing crisis, if new proposals in the Housing Bill become law.

Pilot projects have been running around the country looking at the best way to tackle the empty properties problem. If properties have been empty between two and five years, the LA will be able to apply

for a temporary management order. The property can then be refurbished and rented out. If the owner can be traced, LAs can negotiate with them over the future of the house or flat.

The Government is also setting up a central tribunal system to work out a fairer way of dealing with tenancy deposits, which many tenants complain are withheld unfairly.

There will be a central coffer, and if it is established that the deposit has been withheld unfairly, it will be returned straight away.

Tenants of temporary park homes will get the same rights of tenure as other tenants if the Bill goes ahead. The Housing Bill has had its third reading in the Lords and the Commons, and is due for Royal Assent shortly.

As one of south east London's largest law firms, we're able to offer you a wide range of top-quality legal support and advice.

We're approachable, yet always professional.

We're reliable, consistent and each of us has a genuine desire to exceed your expectations.

We've been franchised by the Legal Services Commission since the scheme started in July 1994. We also work with leading providers of social housing, as well as on high-profile immigration and asylum cases.

We look forward to making a difference in your personal, family or business life.

> SOCIAL HOUSING

> PERSONAL INJURY

> RESIDENTIAL PROPERTY

> COMMERCIAL PROPERTY

> EMPLOYMENT & COMMERCIAL

> FAMILY & RELATIONSHIPS

> WILLS & PROBATE

> IMMIGRATION & ASYLUM



223-229 Rye Lane  
London  
SE15 4TZ  
Telephone: 020 7639 8801  
Fax: 020 7358 0581  
email: enquiries@glazerdelmar.com  
www.glazerdelmar.com

glazer delmar solicitors  
making a difference

# Update



### IN THIS ISSUE:

- > Dealing with Gas servicing
- > Link broken between costs and mediation
- > ASBO update
- > Service charge reform set to increase RSLs costs
- > Plans for LAs to rent out empty homes
- > Q&A with Gerard O'Toole

Published quarterly by Glazer Delmar.  
Edited by Gerard O'Toole and Sue Royal.  
Comments & suggestions should be directed to Sue Royal at sueroyal@mistral.co.uk



GERARD O'TOOLE  
Head of Social Housing  
Department

To contact Gerard, call 020 7639 8801 Ext. 212 or email him at gotoole@glazerdelmar.com



# Link broken between costs and taking up mediation

**People should not be compelled to use arbitration unless it has a reasonable chance of success, judges rule in landmark case**

CRACKS have appeared in the legal systems' love affair with mediation and recent decisions may give landlords more room to manoeuvre.

Alternatives to the high costs of court actions are usually welcome, and the Housing Disrepair Protocol, which offers a system for resolving repair disputes between RSLs and their tenants, is already in use.

But now there has been an acknowledgement that mediation is only useful if it helps the parties progress towards a resolution. It should be considered seriously, but it does not have to be used unless it has a reasonable chance of success.

In the past, anyone who refused to go to mediation risked losing costs once the case went to court. In **Dunnett v Railtrack**, for example, the Court of Appeal ruled that Railtrack should get no costs, as they had refused mediation, even though they won the case.

Railtrack argued mediation was pointless because they were not prepared to increase the sum they had already offered in writing.

In **Halsey v Milton Keynes NHS General Trust**, the trust won the case and was awarded costs, and the defendant appealed, citing the trust's refusal to mediate. The Court of Appeal held that costs would only be denied to the winning party if they had refused to mediate unreasonably, ie, if the

mediation was reasonably likely to succeed.

Landlords who believe their position is clear can offer mediation. They should put it forward as early as possible, particularly in disrepair cases. The Central London County Court is offering a low cost pilot mediation scheme to anyone involved in disputes about sums over £3,000. Billed as cheaper, quicker and less formal than proceedings, this Court is offering to provide low cost independent mediators to help resolve disputes if both parties agree. If the mediation is not a success, the case can go on to court.

Southwark council recently failed to force tenants before its own arbitration panel when it asked Lambeth County Court to freeze three damages claims, on the grounds that internal procedures should be exhausted first. The judge ruled that although arbitration should be considered, people could not be compelled to take it up.

Hackney council have launched its own arbitration service which, unlike Southwark's, will be serviced by an independent arbitrator. Hackney hopes to save £1 million currently being spent on tenants' solicitors' bills.

For further advice on service charge reform, call Gerard O'Toole on 020 7639 8801 Ext. #212 or email him gotoole@glazerdelmar.com

**It's good to talk: But not if you are going to get nowhere fast.**

## The Key Points

- \* Mediation can be effective and cheaper than court
- \* You no longer automatically lose costs if you reject mediation
- \* If you are considering mediation, offer it early
- \* Look at the Central London County Court pilot scheme
- \* Make sure arbitration is independent



# Service charge reform set to bump up RSLs' workload

**Leaseholders increased rights will cause headache for landlords in the form of extra paperwork and a rocky road to recover repair pay outs**

MANAGEMENT costs for RSLs could rocket under new proposals to reform variable service charge accounts. They could also face fines and criminal charges if they do not comply, and the services charges they can recover would be capped.

RSLs manage more than 150,000 leasehold properties nationally, and the new rules proposed under Part II of the Commonhold and Leasehold Reform Act 2002 to provide detailed breakdowns of service charges for each leaseholder, certified by an accountant, would put a considerable burden on the landlords.

Accountants fees would rise under the proposals, which aim to increase leaseholders' rights, and the RSLs would have to do considerably more paperwork.

Landlords would have to send the leaseholders a statement of their rights and obligations in relation to service charges with the more detailed accounts. Leaseholders would be able to refuse to pay their service charges if their new notices did not arrive.

And landlords will no longer be able to threaten a tenant that they will forfeit their lease if they have not paid small sums (there is a proposed £350 limit), owing. And the onus will be on the landlord

to prove that the leaseholder is in breach of their lease before it can be forfeited.

The Leasehold Valuation Tribunal (LVT), which handles disputes about services charges and repairs as part of its work, would also have its powers increased under the new legislation. In a dispute about forfeiture of leases, the LVT would decide, not the courts.

At the moment, leaseholders who pay variable service charges can request to see a breakdown of the accounts, but the landlord does not have to provide a regular statement, or get each one certified by an accountant.

Repairs and service charges are traditional areas of dispute between RSLs and leaseholders. Landlords are concerned that if leaseholders on an estate challenge service charges for work on their properties, it will be difficult to get repairs done, and the housing stock will deteriorate.

The proposed regulations are currently being debated and due to come into force by April 2006. RSLs have asked to be exempted from the charges on the grounds that it will be a burden and they have limited funds.

**Accountants fees would rise under the proposals, which aim to increase leaseholders' rights, and the RSLs would have to do considerably more paperwork**

# ASBO update

**Court rules RSLs can name ASBO offenders**

RSLs and other social landlords can name and shame those they have served with anti-social behaviour orders, the High Court has ruled.

Three youths who were identified in a Brent council leaflet handed to residents, which used their photographs, names and addresses after they were caught behaving anti-socially, did not have their human rights breached, said Lord Justice Kennedy and Mr Justice Treacy, in a Court of Appeal case in October.

The youths' details were also published on a web site and in a newsletter, but none of this breached Article 8 of the European Convention on Human Rights, which confers the right to respect for private and family life, the court held.

Liberty, the civil rights group, had claimed the council and Metropolitan police action had led to families of the youths being threatened and their siblings being bullied at school. The group said it is not planning to appeal.

Unless the subjects of ASBOs were identified, the order was not likely to work as a deterrent, said Lord Justice Kennedy. Any publicity needed to include photographs, names and addresses to be effective, he said.

Social Landlords Crime and Nuisance Group organiser Tim Winter said RSLs were delighted with the decision, which would help residents feel protected and clarified what landlords could do to tackle anti-social behaviour.