

Crow-v-Waters (15 May 2007)

– Exclusive occupation is absolutely fundamental for a tenancy to be created.

The Message: It is essential for an occupier to have been granted exclusive occupation of land for a tenancy to be created.

The Case: A claim for a declaration that a business tenancy had been entered into failed because the arrangement was held to be only a licence to occupy and, accordingly, was not protected by the Landlord and Tenant Act 1954 (Crow and Crow-v-Waters (15 May 2007)).

The Claimants are brothers who commenced occupation of land owned by the Defendant at Crowle Moor, Scunthorpe in 1988. The land comprised 2 large farm type sheds and a yard and some adjoining land and the Claimants used the land for peat extraction, paying £600 per month to the Defendant.

There was no written agreement between the parties and the Claimants alleged that they had been orally granted a periodic tenancy and that they were entitled to remain on the land as protected business tenants under the 1954 Act. The Defendant claimed that he had only granted a licence and that a letter that the Claimants sought to rely on was a forgery.

The Court re-affirmed that it is not the intention of the parties, or the label they put on the arrangement, that matters in deciding whether there was a tenancy or a licence. In order to establish they had a tenancy, the Claimants had to be able to show they had been granted exclusive possession of the land so that they were in a position equivalent to an owner of the land who could keep out any other persons from the land.

The Defendant claimed that the Claimants had never had exclusive possession as he had already granted a licence to a Mr Isle to farm some of the land and he had continued to do so throughout the Claimants' occupation. Furthermore, the Defendant claimed he had always had the right to enter the land himself and all he had granted the Claimants was a licence to extract peat.

There was a substantial dispute as to whether Mr Isle had farmed the land at all relevant times so that the Claimants had never been in exclusive occupation. The Claimants asserted that Mr Isle had not started farming until after they had taken occupation and they had simply allowed him to farm that part of the land they did not need each year. However, the Judge held that Mr Isle had been in occupation throughout and he particularly noted that Mr Isle had made no payments to the Claimants for his use of the land and that this was inconsistent with their case they had full rights over all the land.

The Judge also refused to accept the Claimants' argument that the Defendant had acknowledged they had a tenancy. The Claimants sought to argue that there had been correspondence with the Defendant in the past in which reference had been made to them being tenants and he had not denied this at the time. The Judge said the fact that a party had failed to respond to an issue did not constitute any admission and, in any event, what counted in this case was the actual nature of the arrangement entered into and not how the parties described it.

The Claimants placed particular reliance on a letter dated 19 March 2003 that they claimed the Defendant had signed and which referred to them having a lease. The Defendant denied ever signing or sending such a letter and a handwriting expert considered that the signature had been traced and was a forgery. The Judge noted that the letter actually misspelt the Defendant's name

and that he had immediately claimed it was a forgery when he had seen it. Although strong evidence was required to establish dishonesty, the Judge concluded on the balance of probability the letter was a forgery.

Accordingly, the Judge dismissed the claim that the Claimants had a tenancy. They had not been granted a lease or exclusive occupation and had merely been granted a licence.