

Protecting tenants' deposits

The Message:

Landlords will be relieved over the time for compliance with requirements of tenancy deposit protection schemes.

The Case:

The Court of Appeal in *Tiensia –v- Vision Enterprises Limited* (and in another appeal heard together) [11 November 2010] has delivered an important judgment for landlords and tenants of assured shorthold tenancies where there is a deposit.

A tenant's deposit for an assured shorthold tenancy (AST) entered into on or after 6 April 2007 has to be protected in accordance with authorised tenancy deposit protection schemes established by the Housing Act 2004. The purpose is to ensure good practice in deposit handling, so that a tenant receives his deposit back when he is so entitled and landlords do not have *carte blanche*.

The legislation imposes various obligations on a landlord (or, for example, letting agent) who receives a deposit, including compliance with the "initial requirements" of the scheme (taking steps to protect the deposit); and giving to the tenant prescribed information relating to such protection, both within 14 days of the landlord receiving the deposit. The legislation requires a court in certain events to impose sanctions on a landlord who has breached those obligations, including a fine equal to three times the amount of the deposit.

Another important sanction relates to the landlord's ability to regain possession. A landlord can obtain an order for possession of an AST at any point after the first six months of the tenancy, providing that any fixed term has expired and the landlord gives the tenant at least two months' written notice. There had been some concern that landlords would be unable to regain possession of the premises using such 'notice only grounds', if the deposit had not been "safeguarded" (or protected) in accordance with the scheme and the prescribed information not passed onto the tenant within 14 days of the landlord receiving the deposit.

In the cases, the landlord did not protect the deposit and provide the information until well after the 14 days and after its claim for possession based on tenant's rent arrears had come before the court.

The issue was as to the circumstances in which such sanctions must be imposed. The Court of Appeal confirmed, by a 2:1 majority, that a landlord can regain possession using the notice only grounds (and does not have to pay a fine equivalent to three times the deposit), provided that the initial requirements are complied with and information given before the date of the court hearing for any proceedings brought by the tenant under the legislation in relation to the deposit (the landlords succeeded in the cases). Failure to comply with those requirements within the 14-day period following the landlord's receipt of the deposit will not prevent the landlord regaining possession on a notice only ground, provided that the requirements are complied with before such court hearing.

This interpretation of the legislation is consistent with its purpose, which is to achieve the protection of tenants' deposits, but not the punishment of landlords, who may for innocent reasons be just a day late in securing such protection.

This decision will be a relief to landlords. Some commentators have argued that the decision has the practical consequence of robbing the statutory provisions for the proceedings relating to deposits of virtually all their force. However, the counter-argument is that, in the vast majority of cases, the net result is the legislation will have achieved its primary objective, to protect the tenant's deposit.

The decision has heightened significance in view of the potentially greater number of deposits that will need protection under the schemes following the rise in the annual rental threshold for ASTs from 1 October 2010 meaning that there will be more ASTs.