

Property Week Case

Business or pleasure?

Broadway Investments Hackney Limited –v- L Grant [20 December 2006] Court of Appeal

The Message:

A tenant of mixed business and residential premises failed to show that he benefited from statutory rights as a residential tenant to resist eviction.

The Case:

In 1995 the Council of the London Borough of Hackney granted Mr Grant a ten year lease of premises in Hackney. The premises consisted of a basement, ground and first floor. The lease was described on its front page as being of shop premises. The lease allowed for the use of the lower part of the premises for the sale of and catering for fish and the upper part for residential purposes only. Importantly, the tenant was obliged by the lease to keep the premises open as a shop during usual business hours.

In 2001 the Council made arrangements to dispose of its freehold interest in the premises and Broadway Investments Hackney Limited ("Broadway") bought the Council's freehold at auction in 2002. By February 2005 Grant owed Broadway arrears not far short of £25,000 and Broadway sought to recover possession of the premises.

The Court, at first instance, made a possession order. The district judge treated the lease as a business tenancy, which meant that Grant did not have the rights that he would otherwise have had if the lease had been treated as a residential tenancy.

Grant appealed against the possession order. The issue for the Court of Appeal was whether the tenancy created by the lease was a business tenancy governed by the Landlord and Tenant Act 1954 or, instead, an assured tenancy under the Housing Act 1988. If it was not a business tenancy, the judge would have been wrong to grant the possession order because of the statutory rights Grant would have had as an assured tenant and the particular procedural requirements under the Housing Act for obtaining possession.

The relevant part of the Landlord and Tenant Act 1954 applies if the premises are occupied by the tenant for the purposes of a business carried on by him, or for those and other purposes. The question for the Court was whether Grant occupied the premises for the purposes of his business.

Grant occupied the ground floor and basement for the purposes of his shop business. He was in fact required to do so by the terms of his lease. Whilst, no doubt, part of his purpose in taking the lease was to provide himself with a home, the terms of his lease were not consistent with a situation where Grant's business use of the premises was only incidental to his use of the premises as his home.

When Grant started to trade at the shop, he became a business tenant under the 1954 Act. The Court of Appeal, therefore, approved the lower court's order for possession, unless the arrears were paid off.