

# When tenancies go wrong .....



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Rollits  

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# Introduction

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Ralph Gilbert



# Introduction

- ◆ What can go wrong?
  - don't pay their rent
  - nuisance
  - damage
  - obstruct landlord in fulfilling duties
  - don't leave

# Grounds for Possession



Ralph Gilbert



# Grounds for possession

- ◆ Must get a Court order
- ◆ Type of tenancy
- ◆ RSLs
  - generally Assured Tenancies
- ◆ Private
  - generally Assured Shorthold Tenancies
- ◆ Notices
  - get them right!
- ◆ Particular problems with Shorthold notices



## S21 notice example

- ◆ 6 months fixed term tenancy
- ◆ Rent payable monthly
- ◆ Commencement 1 January 2006
  - a) If s21 notice served before 30 June 2006, can expire on any date after 2 months
  - b) If s21 notice served after 30 June 2006, must expire on last day of a month at least 2 months after notice

<b>Ground</b>	<b>Mandatory?</b>	<b>Notice Period</b>
S21 Assured Shorthold Tenancy	Yes	2 months
Rent arrears (8 wks/ 2 months) ( <i>Ground 8</i> )	Yes	14 days
Rent arrears (other ) ( <i>Grounds 10 &amp; 11</i> )	No	14 days
Breach of Tenancy ( <i>Ground 12</i> )	No	14 days
Condition of property / furniture ( <i>Grounds 13 &amp; 15</i> )	No	14 days
Nuisance or annoyance/ illegality / immorality / conviction for arrestable offence ( <i>Ground 14</i> )	No	No period required

# Pre-action protocol for possession claims based on rent arrears



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- ◆ Background
- ◆ Civil Procedure Rules
- ◆ In force 2nd October 2006
- ◆ Aim and scope
- ◆ Social landlords
- ◆ Initial contact
- ◆ After service of statutory notices
- ◆ Alternative dispute resolution
- ◆ Court proceedings
- ◆ Failure to comply

# Nuisance and Immoral/Illegal Behaviour



Chris Drinkall



## Ground 14

- ◆ The tenant or a person residing in or visiting the dwelling-house-
  - (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
  - (b) has been convicted of-
    - (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
    - (ii) an arrestable offence committed in, or in the locality of, the dwelling-house.



# Nuisance

- ◆ The tenant or a person residing in or visiting the dwelling-house
  - (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or



# Illegal/Immoral Behaviour

- ◆ The tenant or a person residing in or visiting the dwelling-house
  - (b) has been convicted of
    - (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
    - (ii) an arrestable offence committed in, or in the locality of, the dwelling-house.

# Repairs and Fitness for Habitation



Ralph Gilbert



# Disrepair and fitness for habitation

- ◆ The problem
- ◆ The law
- ◆ The solutions?
  - keep the property in good repair
  - don't take no for an answer
  - keep careful records
  - use appropriate procedure
  - be pragmatic

# “The Gas Man Cometh”

A case study



Andrew Digwood



# The landlord and tenant's obligations

- ◆ Landlord's obligations under Gas Safety (Installation and Use) Regulations 1998
- ◆ Backed up by tenant's obligations in lease to permit access to landlord and his agents for maintenance and inspection purposes



## Action taken by the landlord

- ◆ Numerous letters to tenant requesting access
- ◆ Arranged appointments with tenant – appointments not kept by tenant
- ◆ Solicitor's letters to tenant – Warned of consequences and advised to seek independent legal advice
- ◆ Interim injunction ordering tenant to permit access. Application supported by witness statement reciting history of all the above.
- ◆ Interim injunction made final.
- ◆ Application for committal to custody when tenant breached final injunction



## Practical tips for landlords from case study

- ◆ Take gas safety obligations to tenants and neighbours seriously, and ensure that tenants do too.
- ◆ Give tenant every reasonable opportunity to comply before escalating matters – A single letter won't be enough
- ◆ Keep meticulous records of all action taken and attempted visits made – be prepared to give evidence in court if necessary
- ◆ “Getting the tenant to engage” – Sometimes necessary to take drastic action in order to do so

# Harassment and Unlawful Eviction



David Watson

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# Protection from Harassment Act 1997

- ◆ Section 1
  - Prohibition of harassment
- ◆ Section 2
  - Offence of harassment
- ◆ Section 3
  - Civil remedy
- ◆ Section 3A
  - Injunctions to protect persons from harassment
- ◆ Section 4
  - Putting people in fear of violence
- ◆ Section 5
  - Restraining orders



# Protection from Eviction Act 1977

- ◆ Section 1
  - Unlawful eviction and harassment of occupier
- ◆ Section 2
  - Restriction on re-entry without due process of law
- ◆ Section 3
  - Prohibition of eviction without due process of law



# Housing Act 1988

- ◆ Section 27
  - Damages for unlawful eviction
- ◆ Section 28
  - The measure of damages



**Any questions?**