Editorial

Tenant Abandonment - New Procedure for Recovering Possession?

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General Editor

Part 3 of the Housing and Planning Act 2016 is not yet in force. Once enacted, however, it will enable a landlord to obtain possession of residential premises by a relatively quick procedure. Essentially, the relevant provisions (in ss.57 to 63 of the 2016 Act) will permit recovery of abandoned premises without the need to serve a s.21 notice under the Housing Act 1988 and without obtaining a court order. However, there are a series of hurdles that a landlord would need to overcome in order to successfully obtain possession under this new procedure.

Section 57 requires a landlord to give his tenant notice bringing an assured shorthold tenancy to an end on the day on which the notice is given. However, he can only do so if: (1) the unpaid rent condition is met under s.58; (2) he has given the three warning notices required by s.59; and (3) no "tenant, named occupier or deposit payer" has responded in writing to any of the three warning notices before the date specified in the notices. The unpaid rent condition is met if:

- rent is payable weekly or fortnightly and at least eight consecutive weeks' rent is unpaid
- rent is payable monthly and at least two consecutive months' rent is unpaid
- rent is payable quarterly and at least one quarter's rent is more than three months in arrears

If, however, the rent condition has been met and a new payment of rent is made before the notice under s.57 is given, the unpaid rent condition ceases to be met irrespective of the period to which the new payment of rent relates: s.58(2). If, therefore, the landlord receives a fresh payment of rent from the tenant (regardless for what period), this will disqualify him from using the tenant abandonment procedure under Part 3 of the 2016 Act. For the avoidance of doubt, the word "rent" in this context means rent lawfully due from the tenant: s.58(3).

Warning notice procedure

The warning notice procedure is somewhat complicated involving a series of separate notices. Under s.59(1), before bringing the tenancy to an end under s.57, the landlord must

give three warning notices at different times. The first two warning notices must be given to (1) the tenant; (2) any named occupiers; and (3) any deposit payers: s.59(2). A "named occupier" is defined as a person named in the tenancy as a person who may live at the premises to which the tenancy relates: s.59(11). A "deposit payer" is defined in s.59(11) as "a person who the landlord knows paid a tenancy deposit in relation to the tenancy on behalf of the tenant". So far as the third warning notice is concerned, this must be given by fixing it to some conspicuous part of the premises to which the tenancy relates: s.59(3). Each warning notice must explain:

1. that the landlord believes the premises to have been abandoned
2. that the tenant, a named occupied or a deposit payer must respond in writing before a specified date if the premises have not been abandoned
3. that the landlord proposes to bring the tenancy to an end if no tenant, named occupier or deposit payer responds in writing before that date

The "specified date" for the purposes of (2) above is any date the landlord wishes to specify but must be after the end of the period of eight weeks beginning with the day on which the first warning notice is given to the tenant: s.59(5). There are several other provisions which apply to these warning notices:

- the first warning notice may be given even if the unpaid rent condition is not yet met: s.59(6)
- the second warning notice may be given only once the unpaid rent condition has been met: s.59(7).
- the second warning notice must be given at least two weeks, and no more than four weeks, after the first warning notice: s.59(8).
- The third warning notice must be given before the period of five days ending with the date specified in the warning notices: s.59(9).

Service of notices

There are also detailed provisions as to the method of serving the notice under s.57 and the first and second warning notices under s.59:

- the notice may be given by delivering to the tenant, named occupier or deposit payer in person: s.61(2).
- if the notice is not delivered to the tenant, named occupier or deposit payer in person, it must be given by: (1) leaving it at, sending it to, the premises to which the tenancy relates: s.61(3)(a); (2) leaving it at, or sending it to, every other postal address in the UK that the tenant, named occupier or deposit payer has given the landlord as a contact address for giving notices: s.61(3)(b); (3) sending it to every email address the tenant, named occupier or deposit payer has given the landlord as a contact address

for giving notices: s.61(3)(c); and (4) in the case of the tenant, leaving it at or sending it to every postal address in the UK of every guarantor, marked for the attention of the tenant: s.61(3)(d). (A guarantor is defined as meaning a person who has agreed with the landlord to guarantee the performance by the tenant of any of the tenant's obligations under the tenancy: s.61(4)).

Take, for example, a tenant who was the sole occupier at the premises and the tenancy deposit was paid by him (as opposed to a deposit payer as defined in s.59(11), then the landlord would be able to serve the required warning notices by simply leaving them at, or sending them to, the premises to which the tenancy relates: s.61(3)(a). This assumes, of course, that there is no guarantor named in the tenancy and that the tenant did not give the landlord any postal or email address in the UK as a contact address for giving notices: s.61(3)(b), (c) and (d).

The final (s.57) notice can only be given to the tenant once all the conditions have been met, which has the effect of bringing the tenancy to an end on the day the notice is given. As mentioned earlier, this final notice is not a warning but simply states that the tenancy is ended. The Act does not specify when this final notice can be served, but it seems obvious that it cannot be done before the warning notices have expired as it ends the tenancy that day and s.57(d) states that the landlord must know that the warning notices have not been responded to "before the date specified in the warning notices".

Some reservations

Although, undoubtedly, the procedure under Part 3 of the 2016 Act is (to say the least) somewhat cumbersome (and has been criticised for that reason), it will provide landlords with a means by which they can recover possession of residential premises without the need to initiate court proceedings. An obvious reservation, however, is that s.60(1) of the Act permits the tenant to apply to the County Court for an order reinstating the tenancy if he has a good reason for having failed to respond to the three warning notices. If the court finds that the tenant had a good reason for his failure, it may make any order it thinks fit for the purpose of reinstating the tenancy. However, a tenant may not make an application after the end of the period of six months beginning with the day on which the s.57 notice was given: s.60(3). The danger here, of course, is that the tenant may come back and argue that he was only temporarily away (say, on holiday) and that he did not see the notices left at (or sent to) the premises. If, however, the landlord has acted reasonably in re-letting the premises in the meantime, it is doubtful that the court would order reinstatement given that this would cause inevitable injustice to both the landlord and the new tenant.

It is noteworthy also that, if the landlord is strongly of the belief that the tenant has moved all of his possessions out of the house (particularly if he has left behind the keys), this will give rise to an implied surrender of the tenancy allowing the landlord to take immediate possession of the property without recourse to Part 3 of the 2016 Act. It must also be

acknowledged that, due to the complexity of the Part 3 process (and the possibility of rent being paid at any stage between the first and third warning notice thereby rendering the whole process invalid), the procedure of serving a s.21 notice under the Housing Act 1988 and terminating the assured shorthold tenancy under the accelerated possession procedure (without a court hearing) may be prove to be just as fast and certainly not take any longer in recovering possession of the premises. Despite the new procedure, therefore, it may still be wise for a landlord to serve a s.21 notice at the same time so that, if the tenant replies or pays some of the rent, he would still have the option to take court action to evict him under the existing notice procedure within the 1988 Act.

At the time of writing, it is not known when Part 3 of the Housing and Planning Act 2016 will come into force.