

Keeping a Pet Dog in Breach of Covenant

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General Editor

What is the court's attitude towards a tenant who keeps a dog on the demised premises in breach of the tenancy agreement? Is the landlord likely to obtain a possession order even though the dog's presence has not affected other tenants?

The relevant ground for possession under the Rent Act 1977 (protected/statutory tenancy), Housing Act 1988 (assured/assured shorthold tenancy) and Housing Act 1985 (secure tenancy) is that "an obligation of the tenancy has been broken": Case 1 of Schedule 15 to the 1977, Ground 12 of Schedule 2 to the 1988 Act and Ground 1 of Schedule 2 to the 1985 Act. The difficulty, however, is that, under all three Acts, the court is not entitled to make an order for possession "unless it considers it reasonable to make an order": s.98(1) of the 1977 Act, s.7(4) of the 1988 Act and s.84(2) of the 1985 Act.

In *Cumming v Danson* [1942] 2 All E.R. 653, at 655, Lord Greene M.R. stated that, in considering reasonableness, it was the duty of the court "to take into account all relevant circumstances as they exist at the date of the hearing . . . in a broad, common-sense way as a man of the world . . . giving such weight as he thinks right to the various factors in the situation". It is evident, therefore, that the court may consider the widest range of circumstances - there is no restriction (except relevance) as to what the court can take into account. The burden of proving reasonableness, however, lies squarely on the landlord: *Nevile v Hardy* [1921] 1 Ch. 404.

Deliberate and persistent breach

In *Sheffield City Council v Jepson* (1993) 25 H.L.R. 299, the Court of Appeal allowed an appeal against the County Court's refusal to order possession against a tenant who had kept a dog in breach of the terms of her tenancy agreement. In this case, the defendant was a secure tenant of a flat owned by the claimants. It was a term of her tenancy that she would not keep a dog in her flat. In breach of this prohibition, she kept a Staffordshire Bull Terrier. After requesting her to cease to keep the dog, the claimants sought possession of the flat under Ground 1 of Schedule 2 to the 1985 Act. At the trial, she admitted that she was in breach of the tenancy but argued that it would not be reasonable to make an order for possession since she kept the dog for her personal protection and because she had a four-month old child. There was evidence of complaints concerning nuisance caused by dogs in the flats but little evidence specifically about the defendant's dog. The Court of Appeal held that, in the face of

a deliberate breach of the tenancy, there was no basis upon which the trial judge could find that the claimants had failed to prove that it would be reasonable to make an order for possession. Ralph L.J. stated, at 303:

"The condition itself was necessary, as the judge found, for the well being of the tenants of the block. The breach was deliberate and persisted in after repeated requests that it cease. The fact of the making of complaints proved that the presence of the dog was affecting other tenants. There is no principle that the council can only prove such a breach of such a condition as will justify the making of an order if it proves also that the forbidden dog has been shown itself to have been the direct cause of specific consequences constituting nuisance."

It was argued on behalf of the tenant that the proper course of action for the claimants was to seek an injunction instead of initiating possession proceedings. This argument was firmly rejected by the Court of Appeal on the basis that "it is in the public interest that necessary and reasonable conditions in the tenancy agreements of occupiers of public housing be enforced fairly and effectively: at 303. In the Court's view, a suspended possession order (which could be extended or set aside) was a better remedy in most cases than the threat of a fine or imprisonment for breach of an injunctive order.

Protection from the Yorkshire Ripper?

In *Green v Sheffield County Council* (1994) 26 H.L.R. 349, the tenant kept a dog in the flat in breach of a term of the tenancy agreement, originally to protect his wife from the Yorkshire Ripper. Apparently, at the time of the activities of the Yorkshire Ripper, the tenant's wife was very frightened of attack as she came home from work and a senior police officer suggested that she should keep a dog which she should take with her as protection. By the time the landlords commenced proceedings for possession, however, the tenant and his wife had been divorced and the Yorkshire Ripper had been convicted and sentenced to imprisonment. The Court of Appeal, applying *Jepson*, held that there was no evidence before the trial judge that was capable of supporting the exercise of the court's discretion in the tenant's favour. On the contrary, the emergency occasioned by the Yorkshire Ripper (which required the tenant's wife to have a dog) was over and the marriage had been dissolved.

In this case, a suspended order for possession had been made by the trial judge in the tenant's absence. The tenant had then sought, on appeal, to adduce evidence for the first time that the dog was not a nuisance and that there had been no complaints from other tenants. Although the Court of Appeal was unsympathetic in admitting such evidence (which could have been made available at the trial), nevertheless, it alluded to the possibility that the trial judge might have reached a different conclusion on the issue of reasonableness had the tenant's witness turned up as necessary to explain that the dog was harmless and friendly and not a nuisance to the public.

Exceptional circumstances

There is one reported case where the court was minded to refuse to make an order for possession despite a clear (continuing) breach of covenant. In *Bell London and Provincial Properties Ltd v Reuben* [1947] K.B. 157, medical evidence was given on behalf of the tenant that she had been in a nervous condition after a burglary at her flat and had been advised to get a dog, after which her health improved but was likely to deteriorate if she were deprived of the dog. The trial judge, in the circumstances, held that it would not be reasonable to make an order for possession. The Court of Appeal, upholding the ruling, concluded that, whilst the circumstances in which such an order would be justified would be exceptional, it was too wide a proposition to say that it could never be reasonable not to make an order if the breach was being deliberately continued by the tenant. In the words of Somervell L.J., at 165:

"If there was evidence in a case that a breach was doing no harm of any kind to the landlord or to his interests, and if there was also evidence that the breach and its continuance was avoiding substantial hardship to the tenant, I am not prepared to say that in those circumstances there would be no discretion."

In the instant case, the Court was satisfied that the trial judge had taken into account the threatened continuance of the breach as one of the relevant factors in considering reasonableness. That being the case, there were no grounds for interfering with the trial judge's exercise of the very wide discretion given by the legislation. The case must, however, be treated as exceptional. In this connection, Morton L.J. stated, at 162:

"This covenant against keeping a dog without the permission of the landlord is, it seems to me, perfectly reasonable. It is only in a very special case indeed that the court could properly refuse to give the landlord possession if a tenant broke that covenant and insisted on breaking it. As a rule (and it is a rule with very few exceptions indeed) it would, in my opinion be right to grant the landlord possession if the tenant knowingly breaks a covenant and says 'and I intend to go on breaking it'."

In *Bell*, there was a strong indication that the tenant's need for the dog would last no longer than her medical condition. Moreover, there was no evidence to suggest that the presence of the dog in the tenant's flat had given rise to any complaints. As we have seen, the court is entitled to weigh all the facts in coming to a conclusion on the issue of reasonableness. There is no rule that it can never be reasonable to refuse an order for possession against a tenant who threatens to continue keeping a dog without permission in breach of covenant: at 166, per Asquith L.J..

Renters Reform Bill

Section 9 of the Renters Reform Bill, introduced to Parliament on 17 May 2023, creates a right to keep a pet as an implied term in an assured tenancy agreement. It does this by inserting a new ss.16A, 16B and 16C into the Housing Act 1988. Under the new rules, tenants will have the right to ask their landlord for permission to live with pets at the demised

premises. The landlord must consider the request and cannot unreasonably refuse consent. There is a requirement that the landlord must also decide if the tenant can keep a pet at the property by the 42nd day after the date of the tenant's request. This can be extended by a week if a landlord asks for further information. As a condition of giving consent, the tenant will be obliged to inform the landlord (or the letting agent) in writing that he has insurance for their pets, or that he is willing to pay reasonable costs to cover the landlord's insurance in case of damage. The word "pet" is defined to mean "an animal kept by a person mainly for (a) personal interest, (b) companionship, (c) ornamental purposes, or (d) any combination of paragraphs (a) to (c)".

The Bill has yet to receive Royal Assent, after which time the Secretary of State will appoint a date on which the changes will come into force. It is proposed to implement the changes in two stages. It is currently estimated that the first implementation date will be in October 2024 initially affecting only new tenancies. If this is correct, the second implementation date would take place 12 months later in October 2025 affecting pre-existing tenancies.

The law is stated as at 15 April 2024.