

PainSmith Solicitors Legal Update

28 August 2008

Tenancy Deposit Protection and the 14 Day Rule

There has been uncertainty for some time over the requirement to give a tenant notice of protection of a tenancy deposit within 14 days of the start of the tenancy. Section 213(5) of the Housing Act 2004 requires that the tenant is provided with the details of the scheme and the information prescribed by the Housing (Tenancy Deposits) (Prescribed Information) Order 2007. Section 213(6)(b) requires that this information be provided within 14 days. However, the penalty of three times the deposit which is set out in section 214 of the Act does not appear to apply to the giving of notice within 14 days required by section 213(6)(b). This argument has raged between tenants and landlord for some time in a number of County Courts. In the case of *Stankova v Glassonbury* (Gloucester County Court, unreported) it was suggested (with reservation) that a failure to register within 14 days was sufficient to require payment of the penalty.

This matter was revisited more recently in *Harvey v Bamforth* (Sheffield County Court, unreported) and an appeal was made to a Circuit Judge which gives the decision greater weight. In this case the landlord started proceedings for rent arrears and the tenant responded by counter-claiming for three times the deposit for failure to provide the necessary information. The landlord provided the said information before the tenant lodged their counterclaim with the Court but the tenant pursued their counterclaim. At appeal it was held that the provision of the prescribed information, although late, was acceptable. The Court did not clarify whether it was sufficient to provide the prescribed information prior to the tenant lodging their claim with the Court or before the hearing although most commentators feel that before the hearing is enough.

This decision clears up one important point, whether the tenant needs to be given the prescribed information within 14 days and makes clear that the 14 day limit is not absolute. However, the landlord in this case had registered the deposit within the 14 days although he had failed to provide proper notification. This case does not clear up the position where the landlord registers the deposit late as well although it is indicative that this may not be fatal.

As before the best advice is to register as soon as possible, even if late and work from there.

The information contained in this Advisory is a general guide and does not constitute legal advice. Information in this Advisory should not be relied on as if it were legal or professional advice.

Regard should be had to the publication date of this Advisory when reading it.

PainSmith Solicitors are regulated by the Solicitors Regulation Authority.

David Smith is a trainee solicitor with PainSmith Solicitors, a niche practice specialising in residential landlord and tenant law. He can be contacted on 01420 565310 or by email at david@painsmith.co.uk.

