

Number 04

## Property Disputes

### Tenants who unlawfully sub-let beware

Can a landlord claim for the profit made whilst a Rent Act protected tenant has been paying the registered rent for the property but they are receiving a market rent for the property by unlawfully sub-letting it? This is what happened in the case of *The Church Commissioners for England —v- Weithy and Harrison* (Case No. CL053567 Central London County Court).

In December 1979 the Church Commissioners for England granted a lease of a second floor flat at a property in London W2, to the First Defendant, Mrs Welthy. She continued to occupy the flat when the lease expired in December 1978 and thus became a statutory tenant by virtue of the Rent Act 1977. Subsequently the rent was registered every year.

In February 1993 Mrs Welthy unlawfully sub-let the flat to the Second Defendant, Mr Harrison, and did so at a rent in excess of that which she continued to pay to her landlords. She took elaborate steps to maintain the deception and it was some years before the landlords realised that the tenant was not in occupation of the property. Proceedings were issued in August 2000 against both tenant and sub-tenant by which time Mrs Weithy had made herself wealthier at the landlord's expense! As a result of the issue of these proceedings the Second Defendant vacated the flat in November 2000 and shortly afterwards the First Defendant relinquished any rights she may have had in the flat with the result that on 23<sup>rd</sup> November 2000 an order was made for possession forthwith. In their claim against Mrs Welthy, the Church Commissioners for England included a claim for the profit she had made through sub-letting the property at the market rent.

The matter came before His Honour Judge Butter QC on 7<sup>th</sup> February 2001. There was a dearth of authority on this issue. The judge surmised that the reason was that in the majority of cases the landlord's main anxiety is to recover possession and/or the landlord may have sustained little or no loss. It is not often that the landlord gets concrete evidence of the profit made by their tenant through unlawful sub-letting. It was fortunate for the Claimants in this action that a great deal of information was provided to them by the Second Defendant.

Having established that the First Defendant remained a statutory tenant until abandonment of the flat, His Honour Judge Butter quoted Section 3(I) of the Rent Act 1977 which provided that: "so long as he retains possession, a statutory tenant shall observe and be entitled to the benefit of all the terms and conditions of the original contract of tenancy, so far as they are consistent with the provisions of this Act". He also stated that in *Trustees of Henry Smith's Charity —v- Wilison & Others (1983) IQB 316* Slade LJ said at page 325F "It is common ground that premises cannot be treated as having been lawfully sub-let within this meaning if the statutory tenant disposed of them to the alleged sub-lessee in breach of an express prohibition in his original contract of tenancy. Any such prohibition would inevitably be one of the contractual terms imported by Section 3(I) of the Act of 1977 into the First Defendant's statutory tenancy".

#### PROPERTY DISPUTE

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Having established this His Honour Judge Butter concluded that, by her admitted breach, the First Defendant was liable for such loss or damage “as may fairly and reasonably be considered either arising naturally (i.e. according to the usual course of things), or such as may reasonably be supposed to have been in contemplation of both parties at the time they made the contract of the probable result of the breach of it” (being a well-known rule expressed by Alderson B *Hadley —v- Baxendale*.) He concluded, in his Judgment, the loss claimed in this action could fairly be regarded as coming within one or other of the heads of loss or damage referred to by Alderson B. If the landlords had been made aware in February 1993, as they should have been, that the First Defendant was leaving the flat and/or was sub-letting it, they would probably have succeeded in obtaining an outright order for possession. The likelihood then would have been that they would have re-let the flat at a rent that was similar to the amount charged by Mrs Welthy to Mr Harrison.

## Comment

This Judgment is an important one for landlords, many of whom have experienced frustration when they have found out that tenants have made unlawful profits without their knowledge or consent. A simple claim for breach of contract should suffice provided the landlord has or can obtain details of the profit.

The result of this case shows that a tenant should not be able to benefit from his own wrong doing. Hopefully it will send a warning to tenants who are considering trying to make “easy money” at their landlord’s expense.

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Readers are advised to take specific advice before acting in reliance on the matters set out in this briefing. For further information on property disputes or litigation please contact:

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