

Stock Transfer RPs and the use of mandatory ground 7A

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Red Kite Community Housing Limited v Finlay concerned the anti-social behaviour of Ms Finlay (**F**) which was directed towards a number of other residents and culminated in her serious assault of one of her neighbours in 2015.

F pleaded guilty to assault occasioning actual bodily harm (categorised as a "serious offence" under Schedule 2A of the Housing Act 1985), as a result F was sentenced to 35 weeks in prison.

Red Kite moved the victim of the assault to alternative accommodation and issued possession proceedings against F, who had an assured non-shorthold tenancy, based upon mandatory ground 7A together with grounds 12 and 14.

F was previously a tenant of Red Kite's predecessor, which was a local authority. Red Kite became F's landlord as a result of a large scale voluntary transfer (**LSVT**) of housing stock from the local authority in December 2011. In 2013, F signed a transferring tenancy agreement with Red Kite.

The tenancy agreement specifically stated:

"You shall remain an assured tenant, so long as you occupy your home as your only principal home. We can end a periodic assured non-shorthold tenancy only by obtaining a court order for the possession of your home on one of the grounds listed in schedule 2 to the Housing Act 1988....Specifically, we will not seek possession using grounds 1 to 6 of Schedule 2 of the Housing Act 1988; Ground 8 of schedule 2 to the Housing Act 1988, or Ground 11 of Schedule 2 to the Housing Act 1988.

...

The grounds listed below are the only grounds on which we will seek possession of your property... Specifically, we will not seek possession using Grounds 1 to 6 [or] 8 or [11]."

The tenancy agreement went on to list grounds 7, 9, 10 - 14, 14A, 15 and 16 as the ones Red kite would seek to rely upon to recover possession, the ones in existence at the time the tenancy was entered into.

Ground 7A was not in existence when the tenancy was entered into, as it was introduced by the Anti-Social Behaviour Crime and Policing Act 2014 and came into force with effect from 20 October 2014.

F was represented throughout the proceedings by solicitors and she argued that by relying on ground 7A, there had been an unlawful breach of contract or, in the alternative, breach of legitimate expectation. The reason for this is that F felt by specifically stating the grounds upon which Red Kite would seek to recover possession in the tenancy agreement, it had waived its right to rely upon this ground 7A.

The trial of the matter took place in January 2018. The judge at first instance dealt with the ground 7A issue as a preliminary issue and it was held that it would have been unreasonable to expect Red Kite to have excluded its ability to use ground 7A when, in 2013, it did not exist.

In addition to other issues, the Defendant appealed the Deputy District Judge's decision.

The appeal judge, Her Honour Judge Bloom, took the view that the tenancy agreement did not exclude the use of ground 7A and that Red Kite, on creating the transferring tenancy agreement, could not have intended to prevent themselves from relying on new grounds of possession introduced by future legislation.

Her Honour Judge Bloom felt the case of *North British Housing v Sheridan* [1999] 2 EGLR 138 was at least persuasive, if not binding. In this case the respondent was an assured tenant and his tenancy agreement contained a number of rights enjoyed by secure tenants including the wording of ground 14 before it was amended in 1996. He appealed against an order for possession made on the ground he had been convicted of breaching an order under the Protection from Harassment Act 1997 Act for harassing his daughter who lived nearby the premises. The respondent argued that the tenancy agreement incorporated a version of the Housing Act 1988, before its amendment therefore, possession based on the new ground quoted by the landlord should not be permitted. His appeal was dismissed.

The wording of F's tenancy agreement in this case is reflected in a large number of LSVT tenancy agreements on the basis that at that time the new landlords sought to ensure their transferring tenants were no worse off as a result of the LSVT in terms of the landlord recovering possession. In essence, the new landlord was stating it would only seek to recover possession on a number of the discretionary grounds in Schedule 2 of the Housing Act 1988 but not all of them and that they would not seek possession on any of the mandatory grounds. This was on the basis that there were no mandatory grounds for possession in respect of secure tenancies (although this position has changed in light the equivalent of ground 7A by section 84A of the Housing Act 1985).

The decision in this Red Kite case will be a source of comfort to other LSVT registered providers of social housing when they are seeking to recover possession based on ground 7A.