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CONTENTS

COVER STORY

A central law against sexual harassment at the workplace, a crying need

Tenzing Choesang 08

LAW REFORM

Good News For Senior Citizens

Nisha Thambi 22

WARRANTS ATTENTION

Catch me if you can!

Krishna Shorewala
Dipti Kharude 24

LAW & PRACTICE

Security of tenure

David Watkinson 20

COMMENT

Disguised dowry

Tenzing Choesang 28

HAAZIR HAI

Interview with Mamta Jaitley -

Sijo Merry George 30

FEATURES

is a monthly magazine that uses law as an instrument of social change. It provides legal information for use by lawyers and activists on issues of socio-legal concern.

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Security of tenure refers to the legal rights of occupation that people have whilst inhabiting their accommodation. David Watkinson traces the trajectory of Acts of Parliament of the UK, which delineated tenure into secure tenancies, assured tenancies and assured shorthold tenancies and examines how erosion of security of tenure has exacerbated homelessness and forced evictions in the UK.

Tenant's Protection from eviction in the UK – Its Rise and Fall

To look back over the last 30 years is to contemplate the rise to its highest point, the decline and near fall of security of tenure both in the public and private sectors. By 3rd October 1980, all tenants of houses or flats in the private sector were protected by the Rent Act 1977. Protection in this context meant that, subject to certain exceptions, a tenant could not be evicted unless the landlord could prove to a court one or more reasons for possession (known as Grounds) which were confined to those set out in the Act. Moreover in respect of the most frequently used of those grounds, the court also had to be satisfied that it was reasonable in all the circumstances to make a possession order. The most frequently used were (and are) rent arrears, causing nuisance and annoyance to neighbours or the availability of suitable alternative accommodation. Other grounds included the landlord requiring the dwelling for his own occupation or that of a near relative, or that he had previously lived in the dwelling and wanted to return (the last not requiring proof of reasonableness).

Lettings for Holidays

Exceptions included lettings for the purposes of a holiday, where the landlord was resident in the same building as the dwelling let – unless it was a purpose built block of flats- or letting to a company rather than to the tenant, the tenant then being permitted to live in the dwelling by the company, or the grant of a licence rather than a tenancy as the Act applied to tenancies only. The use of such exceptions by landlords to disguise what were really protected tenancies in order to avoid Rent Act protection led to much lively litigation. After all, London is a year round holiday destination and it was surprising how many holiday makers went looking for accommodation in the remoter parts of town in winter. Landlords who requested their prospective tenants to produce their immigration documents so that it could be checked they were there for working (and able to pay the rent) ran the risk of landing themselves with protected tenants, however.

'Unfurnished' Private Tenants

Previous to 1974, protection had been enjoyed by "unfurnished" private tenants only i.e. the landlord did not provide furniture. This led to the "Rent Act lino" as it was called-where the landlord laid down cheap floor covering and claimed to have provided a furnished tenancy. However, largely inspired by a solicitor, practicing in housing law, and also MP for North Kensington in London, Bruce Douglas Mann, the courts developed a doctrine that resulted in what might appear to be a furnished flat held to be in law unfurnished. They did this by holding that the flat was unfurnished unless the value of the furniture to the tenant could be fairly attributable to a substantial part of the rent. So a flat might be fully furnished in appearance – but if it all came from a second hand shop at knock down prices then it could be held to be unfurnished[1] .However, all this doctrine became largely redundant when the Rent Act 1974 extended protection to unfurnished tenants.

Rent control

It is perhaps worth pointing out that Rent Act protection did not mean rent freeze (unlike say, the Bombay Rent Acts). There was rent control. The tenant could apply to an independently appointed Rent Officer for the rent to be registered. The Rent Officer, subject to certain qualifications, was required to register a market rent (although the Rent Officer's idea of a market rent rarely seemed to coincide with the landlord's!). That became the rent for the next two years and until re-registered, unless there was a significant change of circumstances.

By the Housing Act 1980, which came into force on 3rd October 1980 all local authority and most housing association tenants became secure with similar protection to Rent Act tenants (public housing in the UK is provided by the local authorities and two-thirds of rented property is such). Again there were some exceptions including where the tenants were also employed by the local authority, the land had been acquired for development, or the tenancy had been granted in pursuance of the council's duty to accommodate the homeless. Also there was no rent registration system for local authority tenants-the landlord simply being required to charge a reasonable rent.

Assured Shorthold Tenancy Regime

However, as from the Housing Act 1988 (15TH January 1989) no more Rent Act tenancies could be granted (save for the narrowest of exceptions such as where the landlord seeks possession on the ground of suitable alternative accommodation). While an assured tenancy (essentially the creation of the 1988 Act), the Act also

provided for assured shorthold tenancies (ASTs). Any landlord able to get hold of the prescribed form of a notice under S. 20 of the Act and grant a not less than 6 month fixed term was entitled to recover possession without proof of grounds (after serving a 2 month notice under s 21 but that could be served during the 6 months). After the 1966 Housing Act as from 28th February 1997, notices under S.20 were no longer required and so all private sector tenancies were AST's unless expressed to be otherwise. And from the 1988 Act onwards, housing associations became private sector landlords effectively as they were removed from the secure tenancy to the assured tenancy/AST regime. Small wonder then that AST's are "now the form of tenure commonly available as a matter of practice and law in the private rented sector, there being 1.25 million properties let on such tenancies at any one time[2]"

In the meantime, local authority (LHA for local housing authority) tenants' security was being eroded. The 1996 Act allowed LHA's to set up an introductory tenancy scheme so that for the first year of the tenancy, the LHA would be entitled to a possession order from the Court without proof of grounds provided the tenant had been served with a notice giving the LHA's reasons and of a right to a review, conducted by the LHA itself. The Anti-Social Behaviour Act, 2003 further enables secure and assured tenancies to be demoted by court order, on application by the landlord so that they become in effect, introductory tenancies (Sections 13-14 of the Act – in force from 30th June 2004). All this was to enable LHAs to control tenants during their first year of tenure or to summarily evict them during the event of misbehaviour without further proof of grounds.

Where did it all go wrong – from the tenant's point of view?

The political complexion of the national Government made no difference. Nor as was apparent from the law Commission's Consultation Paper on Status and Security (Law Com Paper 162 -2002) is there any cry "Bring Back the Rent Acts" going round the corridors of power[3] . I think the answer is that security of tenure depends less on regard for it as a value in itself and more on the political needs of the government of the day. The Rent Acts themselves originated in the need to keep the Glasgow dockers and munition workers at their posts during World War I[4] . The Rent Act 1974 may not have been unconnected with the pressure for a Homelessness Act (focus of campaigning at that time) - to avoid the resulting pressure on LHAs by summary eviction from furnished properties. The Conservative administration of 1980 regarded security of tenure for local authority tenants as vital for the effectiveness of the right to buy provisions – else tenants would be evicted before they could take advantage of them. Reduction in security to meet the Conservative and Labour Governments' campaign against anti-social behaviour (ASB) led to introductory and demoted tenancies (ASB appears to be largely associated with the social sector, it seems). Security will not make a comeback until the politicians are persuaded it is advantageous or necessary for it to do so.

Win-Win

I am reminded of a landlord in one of my cases lamenting in his evidence about those who did not care for his properties and who left voids (of various sorts including in the furniture and carpets) – whereas Rent Act tenants cared for them as if they were their own-treated them as their homes when there was no threat of summary eviction. He saw that both landlord and tenant won from security of tenure (although he still wanted my clients evicted and succeeded – but he had to go to the House of Lords to do it!).

The ability to remain in one's dwelling is integral to an idea of it being 'home'.[5]

Footnotes :-

1. *see e.g .Woodward v Doherty 1974 1 WLR 966*
2. *Knight v Vale Royal BC 2004 HLR 106@ 114 para 18*
3. *The Law Commission is a statutory body that advises the Government on Law Reform. It's Final Report on Status and Security in May 2006 recommended a reinstatement of security of tenure in the local authority and housing association sectors. The Government has yet to make a response.*
4. *William Gallagher MP-Revolt on the Clyde – pub Lawrence & Wishart 1980*
5. *http://england.shelter.org.uk/policy/policy-6447.cfm*

David Watkinson has been a practising Barrister in the UK since 1973. He currently specializes in Housing and Planning Law. In 2005 he received the "Barrister of the Year" award from the Legal Aid Practitioners Group.