

GROUND 14 AND CRIMINALITY IN POSSESSION ACTIONS

Two recent Court of Appeal cases have considered the issue of possession in relation to tenancies under the Housing Act 1988 where a crime has been committed.

Schedule II of the Act sets out the grounds for possession.

Ground 14 allows for possession to be granted where:
The tenant or a person residing in or visiting the dwelling-house is:-

- (a) guilty of conduct causing or likely to cause a nuisance
- (b) has been convicted of
 - (i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
 - (ii) an indictable offence committed in, or in the locality of, the dwelling-house.

This is a discretionary ground for possession and therefore under section 7(4) of the Act the Court should not make an order for possession unless "it considers it reasonable to do so".

INDECENT IMAGES

In **Raglan Housing Association Ltd v Fairclough** the tenant was originally in possession of a housing association property on an Assured tenancy he had inherited from his mother by way of his sister. He later moved to another property owned by the Housing Association a few doors away. He was then prosecuted for downloading and possessing indecent images of children and duly convicted. However, these offences had occurred while he was occupying under his original tenancy and not while occupying the new property. The Housing Association sought possession under ground 14 which was awarded. The tenant appealed to the Court of Appeal on the basis that the possession claim was based on offences committed at a different property and so ground 14 could not apply. The Court of Appeal dismissed the appeal. They held that ground 14 was not directed simply at removing individuals from a specific property for a specific offence but was aimed at the removal from "the locality of persons who have demonstrated by their previous behaviour that they are likely to annoy, intimidate, or otherwise make themselves a serious nuisance to other residents and thereby adversely affect their quality of life."

Therefore the Court held that any conviction which occurred during the tenancy, irrespective of whether it had occurred in another property was relevant and an actionable ground for possession. However, looking at the decisions it seems clear that the fact that the two properties were only a few doors apart was important.



DRUG USE

More recently, the Court of Appeal heard the case of **North Devon Homes v Nova Batchelor**. In this case the tenant had been convicted of possession of cannabis, possession of cocaine with intent to supply, and money laundering. The tenant had admitted during the prosecution proceedings that she would probably continue to use cannabis which was held by the Housing Association to constitute an ongoing breach of her tenancy agreement. The lower Court was not satisfied on the evidence before it that the tenant had caused a nuisance but it was accepted that the tenant had committed an offence and fell within ground 14. However the Court declined to award possession on the basis that it did not consider it reasonable to do so.

The Housing Association appealed to the Court of Appeal. There was no dispute over the fact that the tenant fell under ground 14. The issue before the Court of Appeal was simply one of whether the lower Court had exercised its discretion appropriately and whether more account should have been taken, as the Housing Association contended, of the tenant's admission that she would continue to smoke cannabis in the property. The Court of Appeal dismissed the appeal holding that "actions for possession are serious and regard must be had to the facts of the case".

Discussion

These two contrasting cases show that the position on ground 14 is not yet certain and that landlord's proceeding for possession on the basis of criminal conviction continue to find themselves playing roulette. While it seems to be the case that it is the date of conviction rather than the date of the offence that is important for ground 14 purposes each case will turn on its facts and the Court of Appeal demonstrates a clear reluctance to interfere with lower Courts findings as to whether it is reasonable to make an order. It seems certain that any offence committed will need to be serious and one which will cause ongoing threats or risks in the surrounding community. However, it seems clear that in each case the Court will make its decision based on how it feels about the case and a wide degree of latitude will be permitted.