Unlawful sub-letting – “Only or principal home”

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Housing Act 1985 – key provisions

- S.79(1): A tenancy under which a dwelling-house in England is let as a separate dwelling is a secure tenancy **at any time when** the conditions described in sections 80 and 81 as the **landlord condition** and the **tenant condition** are satisfied.
- S.81: The tenant condition is that the tenant is an individual and occupies the dwelling-house as **his only or principal home**; or, where the tenancy is a joint tenancy, that each of the joint tenants is an individual and at least one of them occupies the dwelling-house as his only or principal home.
- S.93(2): If the tenant under a secure tenancy **parts with the possession of the dwelling-house or sublets the whole of it** (or sublets first part of it and then the remainder), the tenancy ceases to be a secure tenancy and cannot subsequently become a secure tenancy.

LB Islington v Boyle [2011] EWCA Civ 1450

"First, absence by the tenant from the dwelling may be **sufficiently continuous or lengthy or combined with other circumstances** as to compel the inference that, on the face of it, the tenant has ceased to occupy the dwelling as his or her home. In every case, the question is one of fact and degree".

LB Islington v Boyle [2011] EWCA Civ 1450

"Secondly, assuming the circumstances of absence are such as to give rise to that inference:

(1) the onus is on the tenant to rebut the presumption that his or her occupation of the dwelling as a home has ceased

(2) in order to rebut the presumption the tenant must have an **intention to return**;

(3) while there is no set limit to the length of absence and no requirement that the intention must be to return by a specific date or within a finite period, the tenant must be able to demonstrate a **'practical possibility' or 'a real possibility' of the fulfilment of the intention to return within a reasonable time**;

(4) the tenant must also show that his or her inward intention is accompanied by some **formal, outward and visible sign of the intention to return**, which sign must be sufficiently substantial and permanent and otherwise such that in all the circumstances it is adequate to rebut the presumption that the tenant, by being physically absent from the premises, has ceased to be in occupation of it."

Two-home cases

- Same questions as in *Boyle,* but asking whether tenant intends to 'return' to their old way of living (as their only/principal home).
- *LB Havering v Dove* [2017] PTSR 1233:
  - Both tenants in long-term relationships, spending most nights at partners' homes.
  - Kept their original homes as a place to go back to, in case the relationship went wrong.
  - Held: both had a "settled way of life" in new properties; "no evidence that either Tenant 1 or Tenant 2 had any actual intention to change the settled pattern of life which they were living".
- Compare *Crawley BC v Sawyer* (1988) 20 HLR 98:
  - Judge accepted tenant's evidence that he was only staying with his girlfriend temporarily, while she saved up to buy a house.
  - He intended to return (and did, when they broke up shortly after the NTQ expired) – therefore it remained his principal home.

Weintraub v LB Hackney [2024] EWHC 845 (Ch)

Two homes and Intention to return

Rabbi Weintraub lived with his wife in a council flat. When his wife died, the Rabbi lived elsewhere out of fear for his safety being alone. He would occasionally sleep at the flat and used it as a place to eat and study.

Weintraub v LB Hackney [2024] EWHC 845 (Ch)

The Rabbi's intention was to purchase the flat under RTB and convert the basement to a separate flat where a relative could live with him.

The council said the flat was no longer his only or principal home and rejected his RTB application.

Weintraub v LB Hackney [2024] EWHC 845 (Ch)

- Zacaroli J:
  - This was a two-home case. To say the flat was not the only or principal home needs a finding as to which of the two homes was the principal home.
  - Returning to the old home to occupy as principal home need not be *as* tenant. It only matters whether in practice the tenant intends to resume occupation as their principal home (i.e. a resumption of an old way of life).
  - That intention was contingent on RTB being approved was irrelevant.

Joint Tenants

The tenant condition is satisfied in joint tenancies where “at least one of them occupies the dwelling-house as his only or principal home”: s81 HA85

Couples

Married and civil partner couples (but not de factos) have further protections under s.30 of the Family Law Act 1996:

“(4) B's occupation by virtue of this section—

…

(b) if B occupies the dwelling-house as B’s only or principal home, is to be treated, for the purposes of the Housing Act 1985…as occupation by A as A's only or principal home.”

Couples

S.30 of the FLA does not apply to a dwelling-house if it was not and never intended to be a matrimonial home – s.30(7) FLA 96.

Tips for preparing cases

Step one: Establish the circumstances of the tenant's absence from the property.

Step two: Establish the tenant's intention to return/resume old way of life and how realistic that is.

Tips for preparing cases – Evidence

- Financial checks;
- Utilities;
- Flight records;
- Agency records (DWP/LA/Police);
- Ask the neighbours

Intended return can be an extended term

In Notting Hill Housing Trust v Etoria (1989), there was a sufficiently substantial and permanent intention to return to the property where tenant was currently serving a life sentence for murder.

Questions