

# The Deregulation Act of 2015 and its impact on tenant's deposits schemes and possession proceedings

## The landlord's obligations

As many practitioners are acutely aware, the issue of non compliance with the requirements of the Housing Act 2004 ("HA") (obliging landlords to place the tenants deposit into an 'authorized scheme' under s.213 (3) and providing the tenant with the prescribed information s.213 (5) and (6)) often culminated in sanctions for non-compliance in the form of fines being levied by the court (following an application being made pursuant to s.214) against the unwary landlord as well as the right to possession being thwarted.

The relevant provisions are found in ss212-215 of the HA which, were amended in 2012 by the Localism Act of 2011 ("LA") and more recently in March 2015 by the Deregulation Act ("DA").

## Developments leading to the Deregulation Act 2015

The amendments introduced by the LA, remedied two issues created by the unsuspecting draftsman making it possible for (a) post tenancy applications under s.214 and (b) landlords were no longer able to oppose fines being levied by the courts by way of retrospective compliance with the requirements.

Case law also played its part relating to the inception of the DA with two important Court of Appeal cases.

- ***Superstrike v Rodrigues* 2013 EWCA Civ 669** the tenant remained in occupation after the end of the tenancy in 2008 as a statutory periodic tenant. The landlord then elected to serve a notice under HA 1988 s.21 after six months and subsequently secured a possession order. The Court of Appeal held that the statutory periodic tenancy amounted to a new tenancy and as such the landlord should have protected the tenants deposit which was not the position at the time of the service of the s.21 notice and as such the possession order was invalid.
- ***Charalambous v Ng* 2014 EWCA Civ 1604** the tenancy commenced in 2002 at which point a deposit was paid by the tenant but was not protected given that the deposit protection scheme did not exist at the time. Renewal tenancies were then created each year until 2005 when a statutory periodic tenancy came into effect. A section 21 notice was served in October 2012 seeking possession. The court held that the deposit should have been protected in accordance with section 215 which provides that no section 21 notice may be given at the point in time when the 'deposit is not being held in accordance with an authorized scheme or section 213(3) has not been complied with in relation to the deposit'.

These cases were viewed by many academic commentators, practitioners and indeed by landlords, as constituting unfair retrospective application of the provisions.

## The effects of the Deregulation Act

Important changes were made following the commencement of the **Deregulation Bill 2015** including the following;

- Section 215A has been amended to provide that where a deposit was received before 6 April 2007 in connection with a fixed term assured shorthold tenancy and a periodic tenancy has arisen since that date (as with *Superstrike* above) the **landlord has until 23 June 2015** to protect the deposit and provide to the Tenant the prescribed information. If this is done, the deposit will be treated as if it has always been protected.
- Where a deposit was received prior to 6 April 2007 and no new tenancies or statutory periodic tenancies have arisen since then (as with *Charalambous*), section 215 has been amended so that the landlord must protect the deposit prior to service of a section 21 notice although there is no requirement to serve the prescribed information and the landlord is not liable to any financial sanction under s.214.
- However, the landlord is able to repay the deposit to the tenant under s.215 (2A) without having to pay the deposit into an authorized scheme.
- New section 215B applies to deposits received after 6 April 2007 where a landlord complied with the requirements when the initial tenancy commenced but new tenancies have arisen since. In such circumstances, provided;
  - (i) the landlord and the tenant are one and the same;
  - (ii) the premises let are the same or substantially the same, and
  - (iii) the deposit is still held within the same authorized scheme at the point in time in which the prescribed information was last given,there will be deemed compliance with the requirements relating to the new tenancy.

## Transitional provisions

- These are contained in section 215C which apply to proceedings which have been commenced but not yet concluded as at 26 March 2015.
- A word of caution to practitioners on such cases involves the issue of costs which cannot be recovered by a landlord relying on the provisions of the DA if he is successful in resisting a s.214 claim or is successful in resisting a defence to a claim for possession.

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