

TENANTS' LEGAL RIGHTS

Scottish Monitoring Group on Housing & Homelessness Conference

Glasgow Govan, 26 February 2005

I would to thank the Scottish Monitoring Group on Housing & Homelessness for inviting me to speak here today. I have been asked to talk about tenants' legal rights, and I would like to examine the experience of tenants in Glasgow post housing stock transfer.

There is no doubt that the Glasgow Housing Association Ltd has a more commercial approach to the recovery of rent arrears than Glasgow City Council. In practice this translates to the earlier raising of proceedings and an expectation that tenants will pay back arrears more quickly. The expectation that arrears should be repaid at a higher rate can cause problems when 81% of your tenants are in receipt of benefits.

Outside London, Glasgow has the highest levels of poverty and deprivation in the UK. Deep rooted problems of poverty are not assisted by a commercially hungry 'social' landlord. Of course people need to repay their rent and arrears, but when you are living on £50 to £60 per week – and lets remember many people also have deductions from their benefit to pay back social fund loans – a social landlord needs to be 'reasonable'.

That is particularly so when you remember that no-one gets a council tax rebate for water and sewerage charges. So even if you are on income support or jobseekers allowance you are still required to pay a few pounds a week from your breadline benefit to pay for water rates.

The shift in rent arrears policy in Glasgow post stock transfer is compounded by the fact that the GHA Ltd is not only recovering its own rent arrears but historic arrears due to Glasgow City Council. It is not uncommon to see some clients with several thousand pounds of arrears the bulk of which were due to Glasgow City Council and incurred over a very long period of time. It is unrealistic to expect such arrears to be repaid rapidly where tenants are on a low income; and it helps no-one to try and evict such tenants because repayment offers are seen as to 'low'.

Shortly after transfer on 7 March 2003 the GHA Ltd sought to use old court actions raised by the City Council to evict its tenants. There were many thousands of these old actions – and indeed many remain, typically 'sisted' - frozen - for repayments.

Govan Law Centre was successful at the Court of Session in reducing an eviction decree obtained by the GHA Ltd in an old City Council case. This case involved some very detailed legal arguments, but suffice it to say the GHA Ltd has by and large stopped using former City Council eviction actions as a vehicle to recovery possession. That is good news as it means more tenants have a greater opportunity to repay arrears and avoid repossession proceedings.

There are also some worrying issues concerning the GHA Ltd in terms of professional ethics and general managerial competency. For example, I am aware of a case where the GHA Ltd said it would not implement an eviction decree which had previously been recalled if a large backdating of housing benefit – about £2,000 - was received.

This backdated sum was obtained with the help of City Council social workers and Shelter Scotland. However, after receiving this sum the GHA Ltd said it would still carry out the eviction. Glasgow City Council, nor I think any other RSL, has ever behaved in such an unethical manner.

More recently, the GHA Ltd instructed a physical eviction of a women in Govan even although the decree had been recalled, and the GHA had received service of the Minute for Recall by sheriff officers the week before the eviction. The tenant went out of her home to go to the local shops, and returned to find an eviction in progress. Eventually the GHA Ltd apologised, but indicated it was not prepared to make any other concession.

In terms of defending eviction actions tenants should be aware of their basic legal rights. In rent arrears cases 'substantive' defences will typically include:

§ Defending the action as 'not reasonable' to evict on all of the facts. For Scottish secure tenants in arrears of rent, section 16 of the Housing (Scotland) Act 2001 requires the sheriff to ascertain whether it is 'reasonable to make the order'. This may require an evidential hearing (civil proof).

§ Some rent 'not lawfully due'. For example the mutuality of contract principle in Scots law means a landlord cannot insist on rent if it is in breach of contract - so where landlord has failed to carry out notified repairs it could be argued that some rent is not lawfully due.

§ Some arrears may have prescribed under the Prescription and Limitation (Scotland) Act 1973 (as amended) - If over 5 years old and not pursued then certain debts will be irrecoverable.

§ Is there an outstanding housing benefit claim or appeal before the Appeals Tribunal? If so, it may be unreasonable (and premature) to proceed with eviction action while this is pending, depending on the facts and circumstances.

Some social landlords – including the GHA Ltd - operate a practice whereby a diet of proof is discharged on the basis that the tenant enters into a repayment plan and 'consents' to decree in the event this agreement is broken. Typically such arrangements are incorporated into a document known as a 'Joint Minute'.

Such tactics have been disapproved of by the English Court of Appeal because the court must be satisfied as to whether it is reasonable to grant decree. In *Wandsworth LBC v. Fadayomi* [1987] 1 WLR 1473; [1987] 3 All ER 474; 19 HLR 512 the Court of Appeal stated that consent orders have no place in public sector proceedings because the court must be satisfied that the appropriate grounds and conditions are made out.

Tenants may also have 'procedural' defences, in other words the action has not been raised properly. In Glasgow, it is not uncommon to find cases raised following the service of a Notice of Proceedings for Recovery of Possession (NPRP), and thereafter the tenant signs a new Scottish Secure Tenancy agreement. If this happens it is possible to argue that the action is incompetent and should be dismissed as the service of the NPRP relates to the old tenancy agreement.

While the GHA Ltd will not hesitate to evict a tenant for rent arrears, they *will hesitate* when it comes to carrying out major repairs. The GHA Ltd had a logo which was like a sausage machine where tenants' rent was paid in at one end and repairs come out on the otherside. If only that machine were real.

The Scots law on repairs makes it clear that a tenant is legally entitled to a home which is free from dampness, and can be heated to a reasonable temperature without spending an inordinate amount on money on fuel costs.

In Govan and Ibrox we have a dozen multi-storey flats where tenants living typically on £60 a week or so regularly spend at least £20 a week on heating. Even then their homes are still cold, freezing & damp. Such conditions are conducive to very high levels of house dust mite, the faeces of which is a potent allergen which can sensitise human beings to developing respiratory diseases. The high rise flats suffer from water penetration due to their construction and the lack of structural maintenance. The walls soak up water like sponges making it impossible to avoid the presence of dampness and mould growth.

The GHA Ltd says it will not carry out major repairs because it might or might not knock these buildings down within 10 years. Dithering over the future of the multis in Glasgow is not a legal defence for failing to carry out repairs. The GHA Ltd is in clear breach of its legal obligations to tenants. It must either decant families and tenants to warm and dry homes, or carry out whatever works are necessary to make these flats 'tenantable & habitable'. This is all settled law.

Govan Law Centre recently posted online – www.govanlc.com - some photographs of the appalling living conditions which some GHA Ltd tenants have to endure: and endure while the GHA happily receives rent for these properties.

When I asked the GHA's Michael Lennon why he had done nothing for hundreds of families living in intolerable living conditions in Govan he told me I was an 'ambulance chaser' and that this was a 'cheap shot'. Well, Mr Lennon I call upon you to visit my client's homes for yourself. The tenants of Glasgow pay you a very generous salary, and it might be helpful if you earned that by thinking about them, as opposed to making silly statements.

Finally , we need to consider the impact of the housing stock transfer on homeless families.

Govan Law Centre has assisted tenants in lodging applications for tenants living in conditions which are not reasonably fit for human habitation. Such tenants can be legally homeless if it is not reasonable for them to continue to occupy their home – by reason of living in conditions which are not 'tenantable and habitable'.

Yet Glasgow City Council refuses to accept such applicants as homeless as they say all other local accommodation is equally damp and in a state of disrepair. We have a case where a family are in a damp rat infested flat – their 2 year old child was found holding the tail of a rat in the living room. The

Council refused to accept they were homeless – as other accommodation locally was allegedly just as bad! 21st Century Scotland?

We are in the process of challenging these decision by way of judicial review but why aren't the GHA Ltd spending public money – as promised – to render houses safe and fit to live in.

Dampness and mould (spelt 'mold') in the United States of America is no longer covered by many insurance companies because its impact on bad health is so well recognised. The following statement is taken from Rep Conyers Jr's website on why he has introduced a public health bill in Congress on this issue:

“The growth of "toxic mold" is becoming a problem of monumental proportions. Exposure to mold growth in residential, public and commercial buildings is believed to have caused serious medical conditions which include bleeding lungs, digestive problems, hair loss, nausea, loss of memory, reduced cognitive skills, and death. Property damage from mold growth has destroyed millions of dollars in real estate and forced homeowners to the curb. We cannot eliminate mold. However, there are steps that can be taken to minimize the dangers of indoor mold growth”.

(The Melina Bill, HR 1268, <http://www.house.gov/conyers/mold.htm>)

It has been almost two years since the GHA Ltd took ownership of around 82,000 homes in Glasgow. Why no major repairs when the health of hundreds if not thousands of families are being needlessly jeopardised by substandard living conditions?

For further details on how to defend eviction cases visit:

<http://www.govanlc.com/defendevict>

<http://www.govanlc.com/eviction03>

<http://www.govanlc.com/tenantevict>

Caselaw on dampness:

<http://www.govanlc.com/galloway>