

Courting Change

The courts have been busy with private rented sector related cases and in this edition we look at three of them. The decision around section 24 tax changes (not being able to offset mortgage interest at the highest marginal rate of the tax payer) was a judicial review of changes yet to have their full effect.

Following the budget announcement that landlords who pay higher rate tax will not be allowed to claim mortgage interest at the higher rate (phased in over four years) landlords got together and challenged this decision under judicial review procedures. It is important to understand that judicial review challenges the process, not the decision, so even if the landlords had won, it would still have been possible for the Government to follow the right process and still bring in the same decision.

This decision, if not changed by the new Theresa May Government, will mean that rent will have other deductions taken off gross rent and that figure will be added to a tax payers' income and if the total is over the higher rate, then they will be affected by the new rules. In fact even landlords who have a lot of borrowing costs and lose money monthly in cash flow terms, could end up paying higher rate tax!

A landlord who is highly geared (has a high level of borrowing to property value), is more likely to be negatively affected, and this is even more likely the larger the portfolio.

Every case is individual and landlords who feel they may be affected should seek advice from their tax advisor. The rules are being phased in with the first 25% of income not getting higher rate relief from the tax year starting year April 2017. It will be fully in force by April 2020 on the current plans.

In the recent case of Leeds City Council V Broadley [2016] EWHC 1893 the question hinged on who was liable for council tax on a property with a periodic agreement. The agreement was a hybrid agreement, in other words it granted the tenant the right to remain in the property for a fixed length of time and it also included the right for the tenant to remain there monthly thereafter.

Without going into the technical details, Leeds argued that it was not possible to have a single agreement that included a fixed term element as well as a periodic element. This meant that either the periodic element was a statutory periodic tenancy (a completely separate agreement) or the whole agreement was periodic. In both of these interpretations this landlord would have been liable for the council tax for the period.

The court decided that a hybrid agreement was valid (it making no sense that a fixed term agreement was valid and a periodic agreement was valid but a combination of the two was not). This meant the landlord was not liable for the council tax on the facts of this case.

Leeds appealed this case to the Court of Appeal but have just lost that case.

In another landmark court ruling, in the Court of Appeal, it has been clarified that if the court awards a suspended court judgement, the landlord cannot enforce the judgment without going back to court.

Historically, if the court awards a suspended judgement, say the tenant could only remain if they paid the current rent plus £50 per month off the arrears, then as soon as the rent or arrears were not paid the landlord would instruct the bailiff.

Following this court decision if the court award a suspended order, that the tenant then breaches, the landlord will have to make an application back to the court before the bailiff can be instructed.

Obviously this will increase the time taken to enforce the suspended order and it will also increase the real costs with further paperwork and costs needed.

There is a logic in that without the court reviewing the facts, an unscrupulous landlord could claim the tenant had not paid, and evict them, without the tenant having any right to argue they had made all the payments due. This judgement will bring court scrutiny of the facts to ensure it is not misused.

This judgement will obviously make finding mandatory reasons for possession even more attractive, like ground 8 rent arrears or section 21 notices, which are not affected by this judgement.

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Rees & Associates Property Management

Unit 7, Stow Court, Stow Road, Stow-cum-Quy, Cambridge CB25 9AS

T: +44 (0)1223 810055 F: +44 (0)1223 810059 E: info@reesassociates.co.uk W: reesassociates.co.uk