



GROUND 15A: **Possession claim MUST be issued within time**

Introduction

1. In *London Borough of Hackney v Yavus Yildiz* [2019] EWCA Civ 1331¹, the Court of Appeal found that the landlord was not entitled to rely upon ground 15A of Schedule 2 to the Housing Act 1985 where the notice seeking possession had expired before issue. This is an important decision which all local housing authorities should be aware of.

Ground 15A

2. Ground 15A provides a potential ground of possession when someone has succeeded to a tenancy following the death of a family member. If the landlord is of the view that the property to which they have succeeded is more extensive than is reasonably required by the tenant, section 15A provides a mechanism for them to seek possession of the property.
3. Importantly, ground 15A contains time limits within which possession must be sought. Ground 15A reads:

“The dwelling- house is in England, the accommodation afforded by it is more extensive than is reasonably required by the tenant and—

¹ Handed down 24th July 2019

- (a) the tenancy vested in the tenant by virtue of section 89 (succession to periodic tenancy) or 90 (devolution of term certain) in a case where the tenant was not the previous tenant's spouse or civil partner, and
- (b) notice of the proceedings for possession was served under section 83 (or, where no such notice was served, the proceedings for possession were begun) more than six months but less than twelve months after the relevant date.

For this purpose 'the relevant date' is—

- (a) the date of the previous tenant's death, or
 - (b) if the court so directs, the date on which, in the opinion of the court, the landlord (or, in the case of joint landlords, any one of them) became aware of the previous tenant's death..."
4. The relevant date in what is now ground 15A (for England) is framed so that the 12-month period can potentially run from the date on which the landlord became aware of the previous tenant's death rather than the death itself as a result of the earlier decision of the Court of Appeal *Newport City Council v Charles* [2008] EWCA Civ 1541.
5. In that case, the defendant had succeeded to his mother's secure tenancy when she died in 2003 but the housing authority issued proceedings only in 2007 and without having served any section 83 notice. The reason was that the defendant had concealed his mother's death so that the authority had not learned of it until some three years later. Despite the concealment, the possession claim failed as it was brought out of time.

Section 83

6. Section 83 of the Housing Act 1985 provides that the court shall not entertain proceedings to which this section applies unless:
- (a) the landlord has served a notice on the tenant complying with the provisions of this section, or
 - (b) the court considers it just and equitable to dispense with the requirement of such a notice.

Facts

7. The tenant's father had occupied a four-bedroom house under a secure tenancy granted by the respondent local authority. Following his father's death in September 2014, the tenant succeeded to the tenancy pursuant to section 89 of the Housing Act 1985.
8. The local authority informed the tenant that he was under-occupying the property and would be required to move to alternative accommodation. The tenant refused offers of one-bedroom accommodation and, in June 2015, the local authority served a notice seeking possession on him. The notice stated that the local authority intended to apply for a possession order on the basis of ground 15A. However, as a result of a number of clerical errors, the local authority did not issue possession proceedings until August 2016.
9. The tenant defended the possession claim on the ground that the notice had lapsed. The local authority invited the court to dispense with the notice under section 83(1)(b) on the basis that it was just and equitable to do so. The landlord contended that a situation in which a notice had been served but allowed to lapse before proceedings were issued was distinct from one in which no valid notice had ever been served, since in the former situation the tenant would have been warned of the landlord's desire to recover possession. At first instance, the Deputy District Judge granted an order dispensing with the notice under section 83(1)(b). That order was upheld by a Circuit Judge on appeal.

Court of Appeal

10. On appeal, the tenant argued that the approach adopted by the courts below would "*drive the proverbial coach and horses through Ground 15A*". If it were open to a landlord to invoke ground 15A where proceedings had been brought neither during the currency of a notice under section 83 nor within 12 months of the previous tenant's death or the landlord learning of it, there would no longer be any ultimate longstop. Since the landlord could ask the court to dispense with a notice under section 83(1)(b), it could potentially invoke ground 15A many years later - which cannot have been Parliament's intention.
11. The Court of Appeal agreed with the tenant's argument. At paragraph 16, Newey LJ said:

“Where a landlord brings proceedings for possession relying on ground 15A, notice of those proceedings must, as I see it, have been served under section 83 less than 12 months after the “relevant date”. Section 83 provides, however, for a notice to cease to be in force 12 months after the date specified in it. The better view, I think, is that that means that a notice cannot constitute notice of proceedings begun more than 12 months later than the specified date. In other words, it is not good enough that the landlord at some stage, however long ago, served a notice which, pursuant to both its own terms and those of section 83, is now spent. A notice must still be current if a landlord is to issue possession proceedings on the strength of it. In the absence of a relevant notice (because either none was ever served or any notice that was served had expired), a claim for possession based on ground 15A will be possible only if the proceedings were begun less than 12 months after the “relevant date”.

12. This interpretation of ground 15A accorded with the fact that the time provisions in ground 16 (and now ground 15A) are there *“to ensure that the relative is not disturbed ... so much later [than the death] that he is settled into the property as his own long- term home”* (to quote from Laws LJ in the *Newport* case). It avoids, too, any question of a landlord being able to invoke ground 15A on the basis that he had served a lapsed notice within 12 months of the “relevant date” and a second one complying with section 83 later.
13. As the proceedings in this case were issued neither within 12 months of the “*relevant date*” nor while the 23 June 2015 notice was in force, Hackney was not entitled to rely on ground 15A. The appeal was therefore allowed and the possession order was set-aside.

Conclusion

14. This case demonstrates the importance of ensuring that the strict time limits set out in ground 15A are followed. Otherwise, the court will not allow a landlord to fall back on section 83(1)(b). In times of immense pressure being placed on local authority’s housing stock, it is particularly important to ensure that the time limits are flagged up and adhered to. If not, a landlord will lose the right to seek possession of an under-occupied property.

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