

DON'T LET ARREARS GET THE BETTER OF YOU

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I have recently been involved with a case where a landlord unlawfully evicted their tenant. The tenant had been in the property for 3 months. The second month's rent was overdue and the third month about to fall due. Instead of waiting for the third month to be unpaid and then serve a Section 8 notice, the landlord sent their colleagues to the property and forcibly removed the tenant. As I understand, the local authority are about to undertake a prosecution of the landlord for harassment and unlawful eviction.

So this month I thought it would be useful for us to remind ourselves of the very severe penalties that can be given to landlords who break the rules regarding harassment and unlawful eviction, which are in fact relevant whether or not the tenant is in arrears.

For clarity, landlords should be aware that the rules apply regardless of the accommodation you are renting. Whilst for example Park Homes are often viewed differently in law, the Caravan Sites Act 1968 provides similar protection to tenants in these circumstances as the 1988 Housing Act. So whatever you have in your portfolio you should read on...

Harassment

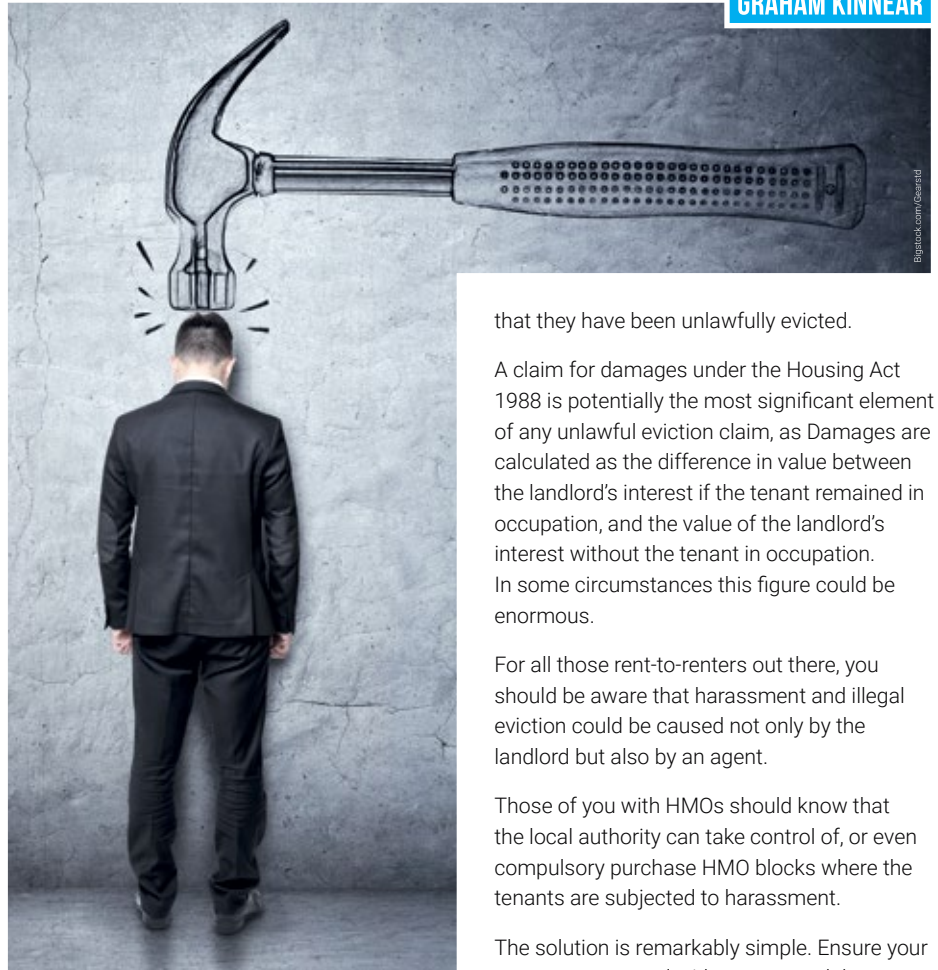
Harassment is defined in the 1977 Protection from Eviction Act as those acts **"likely to interfere with the peace and comfort of those living at the property" and/or "the persistent withdrawal of services that are reasonably required for occupation"**.

Regarding peace and comfort, the first thing to bear in mind is to be very careful to ensure that inspections to your properties are undertaken having first given the tenant appropriate notice. One case in Woolwich, London, back in 2010, highlighted that a failure to provide adequate notice could constitute harassment and a penalty of £2,000 was issued on that occasion. You should also not introduce other tenants to a building, who cause nuisance.

In terms of the withdrawal of services reasonably required to live at the property, we are looking at those such as electricity, heating and water. A landlord in Manchester found this out to his cost and the tenant was awarded £11,750 in a case in 2010.

Illegal Eviction

You must also ensure that you deal with situations of arrears correctly. Changing the locks and placing your tenant's possessions in the front garden is illegal and not the way to end a tenancy. Such actions cost one Essex landlord



£32,125 in a 2010 case.

Trickery and subterfuge are also frowned on by the court system. One Docklands landlord encouraged his tenant to temporarily move out so that repairs could be undertaken. Once completed, he would not allow the tenant to move back in as the tenant had been around £7,000 in arrears of rent. The landlord instead sold the property. His tenant claimed against him and was ultimately awarded £81,215.

As we can see, the penalties for non-compliance can be vast. Additionally there may be further consequences for landlords, such as you failing a "fit and proper person" test for your HMO (House in Multiple Occupation) or selective licence.

Whilst the 1988 Housing Act provided lots of safeguards for landlords, it also included what is known as Section 28, which permits tenants to claim damages from their landlords in the event

that they have been unlawfully evicted.

A claim for damages under the Housing Act 1988 is potentially the most significant element of any unlawful eviction claim, as Damages are calculated as the difference in value between the landlord's interest if the tenant remained in occupation, and the value of the landlord's interest without the tenant in occupation. In some circumstances this figure could be enormous.

For all those rent-to-renters out there, you should be aware that harassment and illegal eviction could be caused not only by the landlord but also by an agent.

Those of you with HMOs should know that the local authority can take control of, or even compulsory purchase HMO blocks where the tenants are subjected to harassment.

The solution is remarkably simple. Ensure your tenants are treated with respect and that you advise them in advance of your requirement to inspect the premises; and do not discriminate against your tenants on the basis of race, sex, age or disability. Additionally, do not persistently offer your tenant money to leave the premises, or turn off any required services. All of these can constitute harassment.

When ending a tenancy, ensure that you follow the rules. To do this, you must ensure the notice is correctly drafted and served, then obtain a possession order in the County Court and then, if your tenants have not left, appoint a bailiff to undertake a warrant of possession. Only then can you be reunited with your property without fear of a knock on your door!

By treating tenants as you would wish to be treated yourself, and by remembering that a tenancy can only end by voluntary surrender by the tenant or by a court order, I hope that you will continue to succeed with your property portfolios.

As always I am happy to assist YPN readers and can be contacted on **0844 414 8659** or at **graham@grahamkinnear.com**



Graham is author of **"The Property Triangle"**

