

Landlord not liable for council tax

In an important judgement, the High Court has held that the landlord of a shared house was not liable to pay council tax to the local authority and that the liability remained with the tenants.

The case, *R (Goremsandu) v London Borough of Harrow* [2010] EWHC 1873, could have implications for other landlords who are being pursued by local authorities for council tax.

The case hinged around whether the property was an HMO, where landlords are responsible for council tax, or not. Local authorities have different interpretations of HMOs, depending on whether they are looking at the Housing Act or the Local Government Finance Act.

In this case, Mrs Goremsandu had let out a furnished property to four, and later three of the original four, tenants under a series of six annual shorthold tenancies.

The local council had treated the house as being let to the

tenants under a single tenancy that covered the entire house: and on that basis, the tenants were liable for council tax.

However, when the tenants left owing council tax of just over £11,000, the council went after the landlord, saying the property was an HMO.

The property was a bungalow with a conservatory. When the tenants moved in, they did not wish to use the furniture, and this was stored in the conservatory, which was locked.

Each tenant paid the landlord directly their share of the rent. However, the tenancy agreement provided for a single rent of £1,200 per month for the property, for which each tenant was jointly and severally liable.

A tribunal agreed with the council's case, saying that the property was an HMO partly because the tenants paid separately, and partly because the landlord had not allowed the tenants to use the conservatory, and that as a result, the tenants

had a licence to occupy part of the building only.

The landlord appealed to the High Court which held that the property was not an HMO, because the whole property had been occupied by the tenants who, by the terms of their tenancy, had been entitled to occupy the whole property including the conservatory.

It also held that the three tenants had been liable to pay rent in respect of the property as a whole, even though each had paid a separate cheque to the landlord.

For the purposes of the Local Government Finance Act 1992, an HMO is occupied by people who do not constitute a single household; or is inhabited by a tenant of part of the building; or by a tenant who has a licence to occupy but is not liable (whether alone or jointly with other people) to pay rent for the building as a whole.

The High Court found that the shorthold tenancies meant that

the tenants paid rent for the exclusive occupancy of the entire bungalow. The furniture was still being hired by the tenants, and they could have used it.

The court found the tribunal erred in law by not applying the statutory definition of an HMO.

The tribunal decided that individual rent charges gave rise to multiple occupation, which was the wrong test to apply. The statutory test it should have applied was whether the rent charges gave rise to a licence whereby the tenants only occupied part of the building.

But the individual rent charges were all paid to allow each tenant to occupy the entire property.

Whilst this was a complicated case, there are two clear lessons.

To avoid any potential liability for council tax, landlords should put all tenants on a single agreement.

And do not reserve any part of the property for the landlord's own use or storage.

Bed bugs bite back!

Landlords are warned that bed bugs are back with a vengeance.

The problem has been hitting headlines in America, where whole hotels, shops and offices have had to close.

New York's state government has passed laws requiring landlords to tell prospective tenants of any bed-bug infestation within the past year.

The London School of Hygiene and Tropical Medicine says that bed-bug complaints in the capital are growing annually, and according to Rentokil, the number of bed-bug call-outs rose 24% in the first six months of this year.



Bed bugs were last a problem in this country in the thirties, when every house in large swathes of London was infested.

One theory for the resurgence of bed bugs is that people travel more, and another is that today's chemicals are too 'kind'.

To avoid bed bugs, don't buy second-hand beds or mattresses and treat any complaints from tenants seriously – call in pest control quickly.

Ombudsman says all letting agents should belong to a redress scheme

The Property Ombudsman, Christopher Hamer, is pressing the Government to make it mandatory for letting agents to belong to a redress scheme.

Although housing minister Grant Shapps has made it clear that any form of legislation to regulate the lettings sector is not on the agenda, Hamer has called on him to review this stance.

He said it is "imperative" that consumers in the private rented sector gain some protection, and that the Government could easily expand the scope of the Consumers, Estate Agents and Redress Act 2007.

The call came after the Ombudsman's office received 70% more initial inquiries from

people about letting agents than about estate agents.

Although these translated into the same number of cases, 150, being opened for both the sales and lettings sector, Hamer said he was concerned because there are 46% more sales agents in the scheme than letting agents.

He said that all residential sales agents must join an approved redress scheme. "Encompassing a similar obligation for letting agents would be an obvious consistency," he said.

By the end of September, there were 7,908 member firms of the Property Ombudsman scheme, operating between them 11,310 sales offices and 7,756 lettings offices.