



Briefing Note

Landlord and Tenant Disputes

The dispute resolution team provides advice to both landlords and tenants on a number of issues, ranging from enforcement of lease provisions to the termination of leases and the recovery of rented property and rent arrears. The team has substantial experience in dealing with both residential and commercial leases and has a wealth of experience in successfully representing the interests of both landlord and tenant.

Protected Tenancies

The team provides advice on the termination of protected tenancies under the Rent (Scotland) Act 1984 both at the expiry of the lease and prior to the end of the period of let where there has been a breach of the terms of the lease by the tenant. The team is happy to provide advice to clients and land agents on the implications of a protected tenancy and if and how this can be brought to an end.

Protected tenancies offer a high level of protection to tenants and while the law has developed in such a way that new protected tenancies generally cannot be created, there are still many in existence. It is particularly important for landlords who believe that a protected tenancy may be in place to be aware of the high level of protection granted to tenants and the very limited circumstances in which vacant possession can be recovered.

Similarly it is important for tenants to be aware of the extent of their rights and to be aware that unless the terms of their lease are breached, it will prove difficult for the landlord to recover the property.

Assured Tenancies

Assured tenancies under the Housing (Scotland) Act 1988 were designed to replace protected tenancies and while different statutory provisions apply to assured tenancies they, like protected tenancies, offer the tenant a high degree of protection. The dispute resolution team regularly advises clients on the options available to landlords to repossess property and again frequently deals with the termination of these leases. The team's knowledge of these issues also makes them well placed to advise tenants who are facing eviction or court proceedings on the options available to them.

Short Assured Tenancies

As a result of the security of tenure afforded under protected and assured tenancies, it has now become common practice to grant short assured tenancies to tenants. The dispute resolution team at Turcan Connell has particular expertise in dealing with the termination of short assured tenancies and has conducted numerous successful court actions for recovery of rented property and for recovery of rent arrears.

The legislation in this area (the Housing (Scotland) Act 1988) is complex and it is vital that lease documentation and notices terminating the tenancy are drafted and served correctly and timeously. The team works closely with their Land and Property colleagues in this area to deliver a seamless service from creation of the lease to recovery of the let property.

The team's particular expertise in this area enables them to deal with the most complex cases and those which give rise to novel points of law.

Commercial Leases

The team has extensive experience in dealing with disputes arising from commercial leases and has again conducted many successful litigations in this respect. While commercial leases are subject to less statutory regulation than residential leases, the contractual provisions of commercial leases are generally far more lengthy and detailed. The team's experience in dealing with complex contractual disputes is invaluable in this respect. The basic provisions regarding irritancy of leases are to be found in the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985. The team also has significant experience in conducting mediations and arbitrations involving a number of different types of commercial leases.

For further information on Landlord and Tenant disputes please contact Lynn Richmond (lynn.richmond@turcanconnell.com) or Paul Forrester Smith (paul.forrester smith@turcanconnell.com), alternatively call 0131 228 8111.

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This note is intended to provide only an overview of some of the issues arising from the landlord and tenant. No responsibility can be accepted for any action taken in reliance of this note and specialist advice should be taken in every case. Turcan Connell would be happy to provide such advice. © Turcan Connell 2010

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