



Chambers of Timothy Raggatt QC

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Assured Shorthold Tenancies and deposits: recent changes in the law

In three recent cases, the High Court and the Court of Appeal have recently considered the sanctions that a court can impose when a landlord fails to comply with the requirements for deposits taken in connection with assured shorthold tenancies under the Housing Act 2004. For those unfamiliar with the working of this legislation, this paper contains a brief summary of its requirements and effects. It shall then go on to consider what the courts have recently decided in relation to section 214. It is clear that defaulting landlords have been thrown a lifeline by the Court of Appeal in respect of their s213 requirements.

Part 6, Chapter 4 of the Housing Act 2004: tenancy deposits

When a landlord receives a deposit in connection with an assured shorthold tenancy (AST) entered into on or after 6 April 2007, he must deal with that deposit in accordance with an authorised tenancy deposit scheme. This can be done by either (1) a 'custodial scheme' where the landlord transfers the deposit into a designated account held by an authorised scheme administrator, or (2) an 'insurance scheme' under which the landlord retains the deposit but pays over to the scheme administrator at the end of the lease any part of the deposit which is in dispute between the landlord and his tenant. The administrator is then responsible for paying out the disputed sums under the scheme, subject to a right of re-imbursment from the landlord, which is backed by insurance.

Under the Housing Act 2004, s213(3), the landlord must comply with the requirements of the scheme within 14 days of receipt of the deposit. He must also give the tenant information about the authorised scheme, his compliance with the requirements of the scheme, and about the operation of ss212 to 215, within 14 days of receipt of the deposit (the information to be given is prescribed in The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 S1 2007/797, although a tenancy deposit scheme will normally include all of this information on their standard forms and documents).

If the landlord does not comply with these requirements, he is effectively 'punished' in a number of ways:

- He cannot give a section 21 notice (s213). He can only give a valid section 21 notice when he has both paid the deposit into a suitable scheme and has given the prescribed information about it. It is therefore relatively easy to cure this problem.
- A tenant can apply to the court under s214, asking for (1) either repayment of the deposit or for the deposit to be paid into an authorised scheme (s214(3)), and (2) payment to him from the landlord of a sum of money equal to three times the deposit.

The court can only apply those s214 sanctions if it is satisfied that the notice requirements have not been complied with or the deposit is not being held in accordance with an authorised scheme (s214(2)).



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Recent cases

The Court of Appeal has recently considered s214 sanctions in two recent cases: *Tiensia v Vision Enterprises Ltd (t/a Universal Estates)* [2011] 1 All ER 1059, where the decision was handed down on 11 November 2010; and *Gladehurst Properties Ltd v Hashemi* [2011] EWCA Civ 604, handed down on 19 May 2011. The High Court also considered the issue in *Potts v Densley* [2011] EWHC 1144 (QB), handed down on 6 May 2011. All three cases concern when a landlord must comply with the Housing Act 2004 regime in order to avoid the effects of s214.

Tiensia v Vision Enterprises Ltd (t/a Universal Estates)

Universal let a dwelling to Ms Tiensia under an AST for six months. She paid a deposit of £2,400. She fell into arrears and Universal served a section 8 notice before bringing a claim for possession. Ms Tiensia counterclaimed for the return of her deposit and a s214 sum. After she indicated that she would counterclaim, Universal protected her deposit in a scheme and provided Ms Tiensia with the s213(5) information.

In a separate case heard by the Court of Appeal at the same time, Honeysuckle Properties (the landlord) claimed for unpaid rent and the tenants (Fletcher and others) counterclaimed under s214. Honeysuckle then registered the deposit under a scheme and served the prescribed information.

It was held, firstly, that where a landlord does comply with his s213 requirements before a tenant brings an application under s214 but outside the 14 day time limit for compliance under s213(3), the tenant will not have a claim.

Secondly, the relevant date when considering whether the s213 requirements have been complied with for the purpose of a s214 application is the hearing date. If the landlord complies with the s213 requirements the day before the hearing, the s214 application will fail (albeit with costs consequences for the landlord).

Potts v Densley

Tiensia was applied by Mrs Justice Sharp. Ms Potts, the tenant, gave notice of termination of the tenancy, refused the landlord's offer to pay the deposit back to her directly and required that it be paid into a custodial scheme. The deposit was paid into a custodial scheme two days after the tenancy ended and nearly a year before the hearing of the tenant's s214 application. It was held that the landlord had complied with the scheme, albeit late, and that the Judge at first instance was right not to order s214 sanctions.

Gladehurst Properties Ltd v Hashemi

Gladehurst Properties let a flat to Mr Hashemi under an AST. Their deposit was never dealt with under s213 but was kept by the landlord and returned to the tenants at the end of the lease. Hashemi then brought a s214 application on the basis that the initial requirements of an authorised scheme had not been complied with.



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The Court of Appeal came to the conclusion that the power of the Court to make an order under s214 is no longer exercisable once the tenancy has come to an end. It was held that to rule otherwise would create anomalies (e.g. the discretion to order either repayment of the deposit or payment into an authorised scheme would be nonsensical as the tenancy had come to an end).

CONCLUSION

Tiensia and *Gladehurst* have robbed s214 of almost all of its force. If there is still a tenancy at the time of the hearing, the landlord can comply with s213 the day before the hearing (albeit incurring costs sanctions for doing so). If the tenancy has come to an end, then under *Gladehurst*, the court has no power to order a 'penalty' to be paid.

Those acting for the landlord should keep in mind the Housing Act 2004 when bringing claims for possession. If the s213 requirements have not been complied with, a section 21 notice cannot be given. A section 8 notice can still be given, but possession could be slowed down by a s214 counterclaim.

DAVID SAWTELL

4 King's Bench Walk's Property and Housing Team has a wide range of experience and expertise, from junior barristers to part time legal chairmen of the Leasehold Valuation Tribunal. Many members of the team also accept Public Access instructions. For more information on the team, please see www.4kbw.co.uk or telephone the civil clerks, Sandie Smith sjs@4kbw.co.uk or Hilary Foster hff@4kbw.co.uk