

Barrow and Amey v Kazim and others [2018] EWCA Civ 2414
(<https://www.bailii.org/ew/cases/EWCA/Civ/2018/2414.html>)

Can a head landlord give an effective notice pursuant to section 21 of the Housing Act 1988 as against a sub-tenant?

Rather than letting properties directly to residential tenants, some property owners instead enter into company let agreements that authorise companies to sub-let their properties to tenants on the basis of assured shorthold tenancies. This allows for such property owners to ensure a constant income for their properties, whilst the companies are able to sub-let the properties at a higher rent than those they pay to the property owners.

In such circumstances, the property owner would be the head landlord, whilst the company would be the intermediate landlord of the assured shorthold tenant pursuant to the mesne tenancy.

The question of whether such a head landlord could give effective notice pursuant to section 21 of the Housing Act 1988 as against a sub-tenant at a time when a mesne tenancy existed was considered by the Court of Appeal in the matter of Barrow and Amey v Kazim and others.¹

The Court of Appeal concluded that where such a mesne tenancy existed, the head landlord could not give an effective notice pursuant to section 21 as against the sub-tenant. Furthermore, even if the mesne tenancy had come to an end by the date specified in a section 21 notice, this would not render a notice given by a head landlord effective.

The relevant facts and the Court's reasoning

From 2012, the predecessors in title of the Respondents leased the building to Anthea Investments Limited ("the Agency") on the footing that Anthea was allowed to sub-let the premises, which were "to be used for sub-lettings as residential accommodation".

The Agency granted an assured shorthold tenancy of a flat within the building to each of the Appellants. Both tenancy agreements provided for a fixed term of 28 weeks, but the Appellants afterwards remained in occupation as periodic tenants in accordance with section 5(2) of the Housing Act 1988 Act.

The Respondents became the registered proprietors of the subject property in 2015. On 12 January 2016 they served a document headed "Notice to quit" on the Agency and the building's occupiers stating that possession would be required on 19 March 2016. The document was intended both to determine the Agency's mesne tenancy with effect from the

¹ [2018] EWCA Civ 2414

specified date and, as regards the sub-tenants (including the Appellants), to constitute a notice under section 21(1)(b) of the Housing Act 1988 Act.

It was accepted by all parties that the Agency's mesne tenancy was terminated with effect from 19 March 2016, and that the Appellants were then tenants of the Respondents.²

The Respondents brought and initially succeeded in possession proceedings as against the Appellants on the basis of the notices given on 12 January 2016. The matter came before the Court of Appeal, where the Appellants maintained that the Respondents were not the landlord of the sub-tenants at the time when the notice was given, and so could not give effective notice pursuant to section 21 of the Housing Act 1988.

The Court of Appeal agreed.

In coming to their conclusion, the Court of Appeal considered section 45 of the Housing Act 1988, which provides the following definition of the term for landlord:

"landlord" includes any person from time to time deriving title under the original landlord and also includes, in relation to a dwelling-house, any person other than a tenant who is, or but for the existence of an assured tenancy would be, entitled to possession of the dwelling-house;

In his judgment Newey LJ, with whom both Leggatt LJ and Henderson LJ agreed, reasoned that *"at the date of the notice, the Respondents were not a "landlord" of the Appellants for either section 21 or other purposes. The Respondents were not at that time persons who, "but for the existence of an assured tenancy would be ... entitled to possession" of the relevant premises. Had the Appellants' tenancies not existed, the respondents would still not have been entitled to possession: the Agency, whose tenancy was as yet in being, would have been."*

It is also of note that the Respondent's suggestion that the definition of a landlord should include someone who would be the landlord by the point when the time within the notice expired was rejected. The Court held that the above definition of the "landlord" could aptly be understood as simply referring to what the position would be if at the particular time the assured tenancy did not exist and that there was no need to look to the future.³

Conclusion

Whilst an intermediate tenancy continues to exist the head landlord will be unable to give an effective section 21 notice to any sub-tenant. Only once the intermediate tenancy has been determined and the sub-tenant becomes the direct tenant of the head landlord, will they then be able to give effective notice pursuant to section 21.

By Charles Sinclair
Barrister

² Pursuant to s.18 of the Housing Act 1988

³ See paragraph 20 of the judgment of Newey LJ