
PROPERTY AND HOUSING UPDATE

Possessions, Covid-19 and the Decision in

UCL Hospitals NHS Foundation Trust v MD

Daniel Wand (2016)

The spread of the coronavirus has caused disruption to our lives and the operation of society in ways that the vast majority of us have never experienced in our lifetime. The drastic measures adopted by the Government in response to the rapid spread of the disease, including putting the country into “lockdown”, required numerous amendments to be made to existing laws; this included those concerning residential and business tenancies and, more specifically, the rules relating to the eviction of tenants. The amendments increase the protections for tenants during the crisis.



The Coronavirus Act 2020

In respect of residential tenancies, Section 81 and Schedule 29 of the Coronavirus Act 2020 extend the notice period that landlords are required to give tenants to vacate a property, and before possession proceedings are issued, to three months in respect of notices served between 26 March and 30 September 2020. This applies to both Section 8 of Section 21 notices. It is also worth noting that the Coronavirus Act 2020 gives the relevant government Minister the power to extend the notice period for any period up to six months.

Notices that were served before the commencement of the Act remain valid for the purpose of issuing proceedings. This has been confirmed by the Master of the Rolls. Those proceedings will then, however, be stayed so that no eviction can be actually take place by operation of the amendments to the Civil Procedure Rules.

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Section 82 of the Act prevents commercial landlords forfeiting leases due to the non-payment of rent by tenants until 30 June 2020 or a later date to be determined by the relevant Minister.

Amendments to the Civil Procedure Rules: Practice Direction 51Z

The consequential amendments to the Civil Procedure Rules took matters even further. Practice Direction 51Z (“PD51Z”), entitled “Stay of Possession Proceedings, Coronavirus”, provided that *all* possession proceedings brought under Part 55 and all proceedings seeking to enforce an order for possession by warrant or writ of possession were stayed for a period of 90 days from 27 March 2020, the date on which PD51Z came into force.

University College London Hospitals v MB

The impact of PD51Z was considered by the High Court, before Mr Justice Chamberlain, in the case of University College London Hospitals NHS Foundation Trust v MB [2020] EWHC 882 (QB).

The Claimant issued a claim for possession in respect of the bedroom that the Defendant was occupying in the National Hospital for Neurology and Neurosurgery on the basis “*the bedroom is urgently needed for other patients; and because in any event it is contrary to MB’s interests to remain in the Hospital, where she is at increased risk of contracting COVID-19.*”

Mr Justice Chamberlain explained in his Judgment that the Claimant terminated MB’s licence to occupy the room, with the consequence that she was now a trespasser, and that “[o]rordinarily, the Claimant would be entitled to seek an order for possession pursuant to CPR Part 55” but he acknowledged that was “*not currently possible because of the general stay on possession claims effected by CPR 51Z PD*”.

Importantly, Mr Justice Chamberlain held that while possession claims were stayed, PD51Z did not affect claims for injunctive relief as per paragraph 3 of the Practice Direction. He stated that “[a] *property owner is in general entitled to an injunction to enforce its rights as against a trespasser...[a] hospital is no different from any other proprietor in this regard*”, and in support of his decision he referred to the Court of Appeal decision in Manchester Corporation v Connolly [1970] Ch 420 and the judgment of the Supreme Court in Secretary of State for the Environment, Food and Rural Affairs v Meier [2009] UKSC 11, [2009] 1 WLR 2780.

On the particular facts of the case an injunction was granted. It is uncertain, however,

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whether the courts will be willing to grant injunctive relief in less peculiar cases.

Clarifications to PD51Z

PD51Z was subsequently amended to confirm that the stay on possession proceedings brought under Part 55 does not apply to claims against trespassers to which Rule 55.6 applies.

Paragraph 2A also provides that the stay does not apply to applications for interim possession orders under Section III of Part 55 and applications for case management directions which are agreed by all of the parties.

Looking Forward

It is possible that as the situation develops and more issues arise with its application, there will be further amendments to PD51Z; as the Master of the Rolls confirmed, he is continuously re-appraising the impact of the Practice Direction.

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