House or Flat Sharing and the Implications for Both Tenants and Landlords

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The recent case of Sturgiss & Anor v Boddy & Ors (2021) EW Misc 10 (CC) demonstrates a very common scenario as flat or house sharing is now a common way of living when the landlord does not live at the property.

By way of background, as most landlords of residential property are now aware, every deposit paid by most tenants of residential property should be safeguarded and paid into an authorised scheme. Should a landlord fail to join a Tenancy Deposit Scheme then they may be liable to financial penalties and may be prevented from recovering possession of the property at a later date.

This has applied since 6 April 2007. However, there are a number of older tenancies which still exist, running periodically under statute since the initial fixed term expired. This is very common in a house share scenario.

In a house share where there is only one tenancy agreement for the entire property (i.e. different to a HMO where each occupier has their own room and access to communal areas under a separate agreement) the tenants jointly pay a deposit for the property and share the monthly rent payments. One of the tenants then pays the full sum to the landlord. Over time, one of the tenants may leave and then swap in another tenant with the approval of the remaining tenants, who then take over their share of the deposit and occupies their room by paying their share of the rent. This could go on until the original tenants who took out the tenancy are no longer the ones in occupation at all. This informal set up usually suits the landlord as they are not involved in this process directly in most cases and still receive all of their rent. Sometimes landlords are aware of and approve the change but there is no alteration to the paperwork.

Like in the Sturgiss case, the original tenancy was in 2004 and the deposit was unprotected. Over the years, tenants changed and the outgoing tenants received their share by the return from the incoming tenant. Two departing tenants however made a claim for breach of deposit protection in respect of their shares. The Court decided that in this situation there was surrender and re-grant of the tenancy on the occasion of each new incoming tenant taking over from the outgoing tenants, even though this was not written down.

In this case, over the years some deductions had been made from the deposit and it was held that each time a new tenant came into occupation, the deposit held by the landlord is treated as having been paid by each new tenant and therefore the deposit should have been registered when the new tenancy arose and therefore a

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penalty for the landlord was imposed by failing to protect the deposit correctly.

This case is a reminder to landlords to be aware of who is in occupation of their property and to also ensure that they have complied with the requirements so as not to cause financial penalties later on or be at risk of not being able to gain possession.

The landlord in the Sturgiss case argued that the tenants were licensees. If this argument was correct and the landlord had tried to get possession once the original tenants had left the property, then they would have to serve notice to quit on the originally named tenants would prove to be very difficult if some time had passed (i.e. how they would be located and whether they would argue that they were no longer tenants). Therefore the surrender and re-grant analysis does make this an easier approach for landlords but creates quite an onerous practical and procedural task for landlords who can no longer leave tenants to work matters out between themselves.

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