VOISIN LAW

The “rogue” tenant: aka “the asbo adorned, beer guzzling, zoo keeper” | 1

The media is awash with stories of Rachman-esque landlords charging their tenants extortionate rents for substandard and even hazardous accommodation. In some instances, the moniker “rogue” landlord may be well-deserved. However, at the other end of the spectrum are the reasonable (and lesser reported) landlords who are simply seeking to generate an honest income, perhaps a vital supplement to their pension. Unfortunately, notwithstanding their best intentions, those landlords can find themselves encumbered with a “rogue” tenant, who, for instance, fails to pay the rent on time, dirties or damages the property, illegally sublets the property, keeps pets in the property contrary to the terms of the lease and/ or is a noisy nuisance.

In Jersey, protection has been granted to tenants by way of the tenancy deposit scheme, launched under the Residential Tenancy (Jersey) Law 2011 (the “Law”) at the end of 2015. What protection, if any, is there for the landlord in the event that the tenant does not adhere to the terms of the lease?

Evictions are governed by the Law which applies to residential tenancy agreements (i.e. agreements for the exclusive occupation of a residential tenant, for value and for a specified term of 9 years or less or an unspecified term) made, varied or renewed after 1 May 2013. The Petty Debts Court has exclusive original jurisdiction over any matter relating to a residential tenancy agreement.

In the event that a tenant breaches the lease, the landlord is not entitled to declare the lease terminated, notwithstanding the terms of the lease or the nature of the breach. The Law requires that the landlord serves the tenant with notice to cease the conduct which constitutes the breach and/or take reasonable steps within 7 days after service of that notice to rectify the breach.

Only if the tenant fails to comply with that notice can the landlord summons the tenant to appear before the Court. At that hearing, the landlord may seek orders that the lease be terminated and the tenant evicted.

The Court has discretion to consider whether the breach is “sufficiently serious” to warrant an eviction. The Court may stay an order for eviction until a specified condition or period has passed. In this regard, the Law compels the Court to consider the following factors: (i) whether any rent is outstanding; (ii) whether either party has breached the lease; (iii) whether the party in breach has continued or repeated the breach or has not taken reasonable steps to rectify it; and (iv) if a stay were ordered, where the balance of hardship would lie as between the parties.

The Court’s orders for eviction and any ancillary orders such as for recovery of rental arrears and/ or costs are enforced by the Enforcement Section of the Viscount’s Department. The manner in which the Viscount executes an order for eviction is determined on a case by case basis. The Viscount may allow the tenant a short period to vacate subject to the tenant’s circumstances. Should the tenant fail to engage with the Viscount, the Viscount may forcibly enter the property (having given prior notice to the tenant).

The Law does not offer a “quick fix” to evicting a “rogue” tenant. Further, not only will the landlord incur legal costs and disbursements (or possibly loss of earnings if he/she is a litigant in person) in order to obtain an order for eviction, he/she may well continue to suffer loss of rent if the eviction is stayed and even more if extensive cleaning and repairs are required before the property is fit to re-let. Though the Court may grant orders for the arrest and sale of the tenant’s personal property or for a wage arrest, as is

always the case in litigation, you cannot get blood from a stone: the recovery rate may be very slow.

What can a landlord do to protect himself/ herself?
• Proper vetting prior to entering into the lease: obtain references from the prospective tenant’s last several landlords. Social media can be a useful research tool. Consider the prospective tenant’s employment history. Is it stable? Is the rent within their means? Will the tenant be reliant upon another individual, such as a spouse, to afford the rent? If so, ensure that both are parties to the lease. Meet with the tenant beforehand at his/ her property. What condition have they left it in?

• Credit checks and litigation searches: if you source the tenant through a letting agency, the agency will likely provide this service. Ensure that the agency checks against the prospective tenant’s previous names (if any).

• Insurance: against property damage.

• Guarantor: insist upon the tenant having a guarantor for costs arising from a breach of the lease, such as non-payment of rent.

• Monitoring: make provision in the lease to allow you to make quarterly checks on the property. Retain a spare set of keys.

• Deposit: the landlord must place this in the tenancy deposit scheme in respect of a tenancy agreement created, renewed or varied after 2 November 2015. The scheme offers a free dispute resolution service if there is disagreement as to how much of the deposit should be returned at the end of the tenancy.

• Keep all correspondence in writing: this includes following up meetings and phone calls with a written note. Should Court action become necessary, you can supply the Court with a clear record of the dispute.

• Comprehensive lease agreement: don’t do it on the cheap, instruct a lawyer (!)

In short, a landlord seeking eviction of a “rogue” tenant may well find himself frustrated with the process set out in the Law. My advice is to carefully vet prospective tenants so that you have a good idea of who you are allowing into your property and appoint a lawyer to draft a lease which protects you, as far as possible, should the tenant turn “rogue”.

For further information on this or any other enquiry regarding litigation please contact Frances Littler on 01534 500346 or email franceslittler@voisinlaw.com