

Legal Human rights law cannot triumph over landlords seeking to evict trespassers

Right to possession is trump card



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It's a well known saying among tenants' lawyers that with a good case they defend on the facts, with a borderline case they defend on the law and with a hopeless case they defend on the Human Rights Act.

Thanks to last week's landmark ruling from the House of Lords this third option should no longer be open to them. From now on any occupier who seeks to defend a possession claim on human rights grounds is likely to have the defence summarily dismissed.

The issue arose in two appeals brought by trespassers who claimed that although their landlords appeared to have a right to possession they were able to defeat this right by relying on article 8 of the European Convention on Human Rights. In the first case, *Kay and others vs Lambeth Council*, the council sought possession against former short life occupiers of London £ Quadrant Housing Trust.

In the second case, *Leeds Council vs Price and others*, the council sought possession against gypsies two days after they had

moved their caravans onto a recreation ground without permission (*Inside Housing*, 10 March).

In both cases the occupiers were trespassers who argued that the making of possession orders would infringe their article 8 rights under the European Convention. Article 8(1) states that everyone has the right to respect for their home. But article 8(2) allows a possession order to be made providing it is justified.

The trespassers argued that the court was obliged to consider their personal circumstances before it could be satisfied that possession orders were justified. The House of Lords realised that if the trespassers were right then this would require the courts to balance the merits of the landlord's case for possession against the defendant's personal circumstances.

Straightforward possession claims could get bogged down in a weight of evidence designed to show that a possession order was not justified.

To the relief of landlords up and down the country the House of Lords concluded that the trespassers' arguments were not right and that there was no need for courts to consider the

trespassers' personal circumstances.

Where the landlord has established a right to possession then courts should proceed on the assumption that the occupier's rights under human rights law are not breached. In other words the court can assume that the possession order is justified because it serves the 'legitimate aim of protecting the property rights of the landlord'.

Although the *Lambeth* and *Leeds* cases were concerned with possession claims against trespassers, the House of Lords' argument also applies to landlords who are seeking possession against tenants and licensees.

Their lordships ruled that article 8 would invariably be met by the landlord satisfying the 'formal requirements for the eviction laid down by the relevant statute or by the common law'. For example, a claim for possession against a secure or assured tenant on rent arrears grounds would satisfy article 8 providing the requirements of the relevant statutory scheme were met.

So, if an assured tenant comes to court saying that the housing association's use of eight weeks' rent arrears (mandatory ground 8) offends his/her human rights,

the county court judge should dismiss that defence and make a possession order.

The House of Lords did accept that there could be 'highly exceptional circumstances' where an occupier's article 8 rights would not be breached. The court gave the example of *Connors vs United Kingdom*, where the European Court of Human Rights recently decided that the absence of protection for gypsies under the *Mobile Homes Act 1983* was a breach of their article 8 rights.

But this defect in the law has already been remedied by Parliament passing an amendment to the *mobile homes act*. It is difficult to think of any similar circumstances where a human rights defence to a possession claim could now be mounted.

Nothing in the House of Lords judgement changes the procedural or substantive hoops that landlords must go through in order to establish their right to possession. But the judgement does make clear that providing this is done the defendant will not, save in a highly exceptional case, be able to defeat the landlord's right to possession by relying on human rights law.

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