

JOINT TENANCY - THE RIGHTS OF THE 'DISPOSSESSED' TENANT BY GAIL PRICE

The conflict between the human rights of the individual and the property rights of another is most vividly illustrated in cases of domestic discord, in particular between couples who were joint tenants of a property. This particular issue has repeatedly been taken to the House of Lords over the last 15 years.

It is a basic principle in landlord and tenant law that where there is a joint periodic tenancy, the tenancy continues as long as all the parties, be it the landlord or the joint tenants are happy for it to continue. If the landlord wants to terminate the tenancy, he has to serve a notice either in accordance with s5 Protection from Eviction Act 1977 or in accordance with one or other of the various statutory regimes which regulate how a landlord can go about obtaining possession against the residential tenant. If the tenant wishes to terminate the tenancy, he must serve a notice to quit in accordance with the terms of s5 Protection from Eviction Act 1977. Where there are two or more joint tenants, any one joint tenant may serve a valid notice to quit and the tenancy will end at the expiry of the notice period. Section 5 requires a notice from a tenant to be in writing and given not less than four weeks before the date on which it is to take effect.

In *Hammersmith and Fulham LBC v Monk* [1992] 1 AC 478, HL, the House agreed with a 1982 Court of Appeal decision which held that, as in any other area of contractual law, one joint tenant could terminate the continuation of a periodic joint agreement. This was despite the consequent deprivation of statutory rights that the other joint tenant would lose. The matter did not rest there however. In *Harrow LBC v Johnston* [1997] 1 WLR 459, HL, a husband, the victim of domestic violence, obtained a county court non-molestation injunction against his partner which included an order that she should not exclude or attempt to exclude him from the home. He remained in the joint matrimonial home, a periodic secure tenancy. Mrs Johnston got her revenge by serving a valid notice to quit on the landlord, terminating the joint tenancy. In the possession action against Mr Johnston, he alleged that both his wife and the local authority were in breach of the injunction in them respectively serving and accepting a notice to quit. However, the Lords decided that the notice to quit did not infringe the injunction. The injunction was not designed to preserve Mr Johnston's rights created under the joint tenancy, but was intended to stop Mrs Johnston preventing him exercising his right of occupation under it. Once the tenancy was terminated, there was nothing to protect.

A similar result followed in *Newlon Housing Trust v Alisulaimen* [1998] 3 WLR 451, HL, where the husband was in occupation and the wife left and served a valid notice to quit terminating the joint tenancy. In possession proceedings brought by the landlord, the husband sought an adjournment on the basis that he intended making an application for a property adjustment order in divorce proceedings, to have the joint tenancy transferred to him alone. The Lords decided that as the notice to quit had expired six months before, there was no property capable of being transferred.

Joint tenants left high and dry in such instances began to feel that their human rights were being interfered with. In *Hounslow LBC v Adjei* [2004] EWHC 207 (Ch), a husband left in occupation of the premises with his 13 year old son, objected when the landlord sought possession following a valid notice to quit served by the wife who had left the family home. Mr Adjei contended that to evict him was clearly an interference with his rights to respect for his private and family life under Article 8(1) of the European Convention for the Protection Human Rights and Fundamental

Freedoms 1950, as set out in Sch I to the Human Rights Act 1998, in a way that was disproportionate to the purposes to be achieved by it and contrary to Article 8(2) of the Convention which provided that there should be no interference by a public authority with the exercise of the right except such as was in accordance with the law and necessary in a democratic society. The court held that the requirements of Article 8(2) were met where an unqualified right to possession was shown on termination of the secure tenancy. The individual circumstance of the tenant was not a relevant issue.

The House again considered this point in *Harrow LBC v Qazi* [2004] 1 AC 983, HL. On facts similar to those in *Adjei*, Mr Qazi was left in the former matrimonial home and claimed a violation of his article 8 right to respect for his home of eight years when the landlord sought a possession order against him on the expiry of the notice to quit served by his wife to terminate their joint tenancy. The House recognised that Mr Qazi's rights had been interfered with under article 8(1); however the interference was justified under Article 8(2). The Lords concluded that public authorities had an almost unchallengeable right to possession in cases such as these.

However in a subsequent European case, *Connors v UK* [2004] 4 PLR 16, the European Court ruled that the eviction of gypsies from a site they had occupied for 15 years on termination of their licence to occupy, was an unreasonable infringement of their Article 8 rights. The decision was based on the licensees not being given the opportunity to argue their case and their right to remain. However, tenants in positions similar to Qazi saw this decision as a new opportunity to challenge the right of the landlord to possession in cases where a joint tenancy is terminated.

In the event a seven member House of Lords in *Lambeth LBC v Kay* [2006] 2 WLR 570, HL, decided that Qazi was correctly decided on its facts. However they decided that the reasoning given in Qazi was too broad and therefore needed clarification. The position now is that it will only be in extremely rare cases with peculiar facts, as in *Connors*, that a valid challenge can be made. To plead the personal circumstance of the tenant left in possession and the inequitable actions of the departing spouse will not be a valid reason to question the right of the landlord to obtain possession of the property.

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