

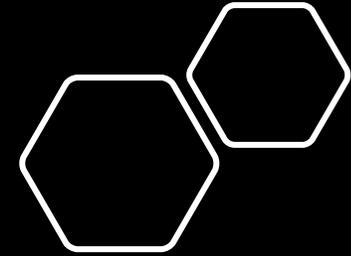


Landlord Law
Legal Cases
Webinars

**Rakusen
v. Jepson**

with

Justin Bates



Rakusen v Jepson: Rent Repayment Orders

Justin Bates

What are Rent Repayment Orders?

Created by the Housing Act 2004 and then expanded (in England) by the Housing and Planning Act 2016

Has the landlord been *convicted* of a “relevant housing offence”?

Or

Is the FTT satisfied beyond reasonable doubt that the offence has been committed *notwithstanding* the absence of a conviction?

If so, then the FTT can order up to 12 months rent to be repaid to the tenant(s).

What are the relevant housing offences?

Seven such offences

- (1) Using violence to secure entry contrary to section 6(1) of Criminal Law Act 1977;
- (2) unlawful eviction or harassment of occupiers contrary to section 1(2), (3) or (3A) of the Protection from Eviction Act 1977;
- (3) failure to comply with an improvement notice (HA 2004 section 30(1));
- (4) breach of a prohibition order (HA 2004 2004, section 32(1));
- (5) being in control or managing an unlicensed HMO (HA 2004, section 72(1));
- (6) being in control or managing an unlicensed property which is not an HMO (HA 2004, section 95(1)); and,
- (7) breach of a banning order (HPA 2016, section 21,).

Who can you make an RRO against?

Under the 2004 Act it was clear – it was the immediate landlord

But the 2016 Act used slightly different language. It referred both to “a” landlord and to “the” landlord.

So, in a rent to rent case, can you make an RRO against the immediate landlord or can you go against the head landlord?

Critical importance given how many rent to rent schemes are little more than dodgy scams designed to frustrate regulation – see the Safer Renting report

***Goldsborough (1) CA Property Management Ltd
(2) Mr and Mrs Gardener [2019] UKUT 311 (LC)***

Head Landlords – Mr & Mrs Gardener

5 year lease – CA Property Management Ltd

Sub-lease – Goldsborough and other tenants

Property was an unlicensed HMO. Rent repayment order sought against Gardeners. They contended it could only be made against CA Property Management Ltd

Upper Tribunal found for tenants. The 2016 Act provided for a rent repayment order to be made against “a landlord”. It was not limited to the immediate landlord of the tenant.

Rakusen v Jepsen [2020] UKUT 298 (LC)

Rakusen – head landlord

Property investment company – 3 year lease on terms which permit subletting

Sub-tenants – Jepsen and others

Property was an unlicensed HMO. Jepsen sought RRRO against Rakusen, relying on *Goldsborough*. Mr Rakusen said *Goldsborough* was wrongly decided.

- Lost in FTT (as he had to)
- Lost in UT
 - “a” landlord
 - All the offences can be committed by a headlandlord
 - Effectiveness of the RRO scheme would be undermined if rogue landlords could protect themselves against the risk of rent repayment by letting to a company as intermediate landlord with no assets beyond the short lease.

Rakusen v Jepsen [2021] EWCA Civ 1150

- Appeal to the Court of Appeal
- Safer Renting intervened to explain wider policy position
- Court of Appeal allowed an appeal
 - the purpose of RROs is, as part of the wider regulation of the PRS, to force landlords to raise standards *or* to force them to leave the sector
 - But...
 - the usual meaning of “landlord” meant the immediate landlord and if Parliament had wanted head landlords to be caught then it should have used clearer words
 - Moreover, this is penal legislation and so the presumption against doubtful penalisation applies
 - Parliament may want to consider amending the Act
 - (one for the Renters Reform Bill???)

Conclusion

Two points

Narrow point is that RROs *cannot* be made against head landlords, which is a great boon to the rent to rent sector (both legitimate and dodgy)

Broader point is the importance of pushing the argument if you believe you are right.

Questions?

Thank you for listening

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