



Property Guardianship and the Lease/Licence Distinction

The legal distinction between a lease and a licence is of fundamental importance, as it can have very significant implications for anyone owning or occupying premises.

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The 1985 case of *Street v Mountford*¹ confirmed that the grant of exclusive possession for a term² creates a lease as opposed to a licence, no matter what the parties may have labelled the arrangement. This legal distinction between a lease and a licence is of fundamental importance, as it can have very significant implications for anyone owning or occupying premises.

Lease/Licence distinction...

In particular, a licence is simply a personal, contractual permission for the licensee to do something – in this context to occupy land.

A licence does not confer any proprietary rights, it cannot be assigned and it does not survive any change in the ownership of the freehold/superior interest.

Crucially, a residential licence does not confer any statutory protections in relation to the state and maintenance of the property or any Housing Act security of tenure. In view of the latter, it is therefore much easier to evict a licensee.

In contrast, a lease or a tenancy (those terms are interchangeable) is much more than a contractual permission – it is an estate in land. A lease can therefore be bought and sold and it survives changes in ownership of any superior interests in the land.

Where it is a lease of commercial premises and the requirements of Part II of the Landlord and Tenant Act 1954 are met, a tenant's occupation cannot be brought to an end, even following expiry of the lease term, unless and until the landlord can establish (at court if necessary) one or more of certain limited statutory grounds for repossession. Where it is a lease of residential premises, a whole host of statutory protections apply.

...in the property guardianship context

The lease/licence issue arose recently in an interesting and increasingly prevalent context – property guardianship.

Property guardianship schemes are arrangements where one or more individuals move into vacant premises (which might be commercial or residential units), paying less than market 'rent', in return for them providing 'live-in' security and maintenance services and to limit the potential for vandalism and squatting.

In *Camelot Guardian Management Ltd v Khoo*³, Khoo and other guardians had been occupying rooms in a vacant office building. When the owner wished to redevelop, Khoo refused to move out, asserting that he had a tenancy.

Property owners and guardianship scheme operators will be relieved to note that the High Court decided that





Khoo's occupation did not amount to a tenancy, for the following reasons:

- The guardianship agreement (the agreement) was personal to Khoo and stated that it did not grant him exclusive occupation;
- The agreement allowed Khoo, in common with others, to occupy the whole of the premises – it did not grant exclusive possession of any part/room; and
- The specific nature of the guardianship arrangement was clearly known and understood by both parties and its operation, commercial purpose and continued existence depended on the agreement meaning what it said and amounting to no more than a licence.

Comment

Whilst this decision will be welcomed by property owners and guardianship scheme operators for its commercial and common-sense approach, it may not be the end of the story. Guardianship schemes are innovative arrangements that are growing in popularity and number.

There are likely to be other challenges raised in future, and it may be that a slightly different form of agreement or set of facts produces a different outcome. In the meantime, property owners and scheme operators should ensure that they take specialist legal advice on the wording of their guardianship agreements.

They should also undertake regular inspections of occupied premises with a view to ensuring that, as a matter of fact on the ground, no incidences of de facto exclusive possession of any premises (or any parts of any premises) arise.

Reference

- ¹ [1985] 1 EGLR 128
- ² and usually at a rent, although this latter is not necessarily essential/determinative
[2018] EWHC 2296 (QB)



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Zoe trained at Walker Morris LLP and has been with the firm for seven years.