

Are you giving 30 days?

The Upper Tribunal has determined that the minimum 30 day statutory consultation period for major works starts from the date the notice is received by the tenant and must therefore exclude any time for posting. Notices giving less than 30 days after the tenant has received the notice will be invalid.

The statutory obligation under section 20 of the Landlord & Tenant Act 1985 to consult with tenants before carrying out major works has created a plethora of litigation with matters reaching a crescendo last year when the High Court decided that the £250 limit is an annual threshold and not, as everyone had thought, to be evaluated on a project by project basis (*Phillips v Francis*). However curiously, until now, there has been no authority on how the 30 day notice period required to be given in the section 20 notice should be calculated.

Should the 30 days start from the date of the notice or the date it is posted? Alternatively, should it start from the date the tenant receives the notice or is deemed to have received the notice? If the latter, how does the landlord know when the notice is deemed to have been served, if at all?

Trafford Housing Trust Limited v Rubinstein & Others

In *Trafford Housing*, the landlord had sent a section 20 notice to the tenants on 16 March. Although there was no evidence to confirm the actual date of service, the Tribunal concluded that it was reasonable to assume that the notice would have arrived on the second day after posting i.e. 18 March. The consultation period was stated to end on 15 April and the tenants argued that the notice was therefore invalid because they had been given less than 30 days.

The landlord argued that the 30 days should not be counted from the date the notice was actually received because the landlord is not required to prove service. Further, it should not be from the date the notice is deemed to be served because there are no deeming provisions in the legislation.

However, the Upper Tribunal found that the crucial function of the notice is to notify the recipient of the contents of the notice. That could only be done when the tenant received the notice. Accordingly, the 30 days must run from the date the tenant is deemed to have received the notice i.e. 30 days from 18 March. Since the consultation period in the notice ended on 15 April, the tenants had only been given 29 days' notice and the section 20 notice was therefore invalid.

Practical Problems

It has been the practice of most landlords and managing agents to calculate the 30 days from posting. Ergo, most section 20 notices served in the last 10 years are technically invalid.

Whilst the Court of Appeal's decision in *Daejan v Benson* means that most landlords facing a *Trafford* type technical challenge are likely to obtain dispensation (despite the landlord in *Trafford* being refused dispensation), landlords will inevitably want to avoid the risk of getting it wrong in future.

Giving a full 30 days seems simple enough; landlords need simply add an extra couple of days to allow for normal first class post. However, what happens when the tenant is overseas? The standard 2 day posting rule will not apply.

Landlords will need to consider on a case by case basis whether it has tenants overseas and, if so, how many days it is generally accepted to take. For example, a section 20 notice being posted to

a tenant in Australia will need to allow for at least 7 working days if being sent by Royal Mail so the consultation period should allow for at least 39 days. This assumes the landlord uses Royal Mail but what if they use some other mail service such as TNT, as the landlords did in *Trafford*?

In these modern times, where nearly everything is done by email, it would be easier and quicker if Parliament legislated for notices to be served by email, particularly in circumstances where an overseas tenant has expressly agreed to accept service in that way. However, there is still no clear authority allowing service by email and so a landlord does so at his own risk.

As a belt and braces approach, it may be sensible for landlords, in addition to posting a copy of the section 20 notice, to exhibit a copy in the common parts of the building. That way, a tenant who claims not to have actually received a section 20 notice can at least be deemed to have knowledge of it.