

First prosecution under 1987 Act sends warning to landlords



It is a criminal offence to breach the right of first refusal provisions of the Landlord and Tenant Act 1987 (“the 1987 Act”). Until very recently, there was no record of any prosecution in relation to any such breach, which may well have been a consideration for landlords in considering how to proceed with a relevant disposal. However, that is no longer the case as we have now seen the first prosecution under those provisions of the 1987 Act, albeit the prosecution was later withdrawn due to the summons being issued late.

The 1987 Act provides that when a landlord intends to dispose of a qualifying residential building, it must serve notices on the qualifying tenants in the building giving them the right of first refusal to purchase the interest being disposed of. It is a summary offence to fail to do so, with a potentially unlimited fine should a landlord breach these requirements without a reasonable excuse.

In this inaugural case, the landlord disposed of a block of flats at an auction and the subsequent completion took place one month later. They failed to comply with the right of first refusal requirements set out in the 1987 Act. Consequently, the local housing authority (the body tasked with prosecuting offences of this nature) issued a summons against the landlord 6 months after the date of completion. Section 127(1) of the Magistrates Courts Act 1980 confirms that there is a 6 month time limit from the time when the offence was committed to apply for a summons in relation to a summary offence. It was successfully argued that under s. 4A of the 1987 Act, a disposal takes place on the date of the contract (which in this case, was the date of the auction); not the date of completion. Accordingly the relevant summons were issued 7 months after the alleged offence and therefore, outside of the statutory time limit. As a result, the prosecution was withdrawn.

While this case did not lead to a successful prosecution, it has definitely fired a warning shot to landlords when



considering their obligations under the 1987 Act should they wish to dispose of an asset. It is now obvious that what was previously considered a very unlikely scenario is now a very real possibility.



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