

Landlord and Tenant - A Rent Book is not a Notice to change the nature of a Tenancy

This case concerned the circumstances in which an assured shorthold tenancy could become fully assured which attracts much greater security of tenure for the tenant. Downs Solicitors LLP acted for the executors of the deceased Landlord who were trying to recover possession.

Prior to 28 February 1997, a tenancy would only be shorthold if a specific notice had been served before the tenancy started. After 28 February 1997, this presumption was reversed so that an assured tenancy would be shorthold unless it fell within any paragraph of Schedule 2A of the Housing Act 1988. This new schedule was introduced by the Housing Act 1996, and required a notice to be served stating that the tenancy was not shorthold but fully assured. The tenant relied on a rent book which the Landlord had given to him which included the words "Assured Tenant" on the front. At the first hearing the District Judge concluded that the rent book was sufficient notice, however on appeal to a Circuit Judge the court found that by providing the tenant with a rent book the Landlord had not as a matter of law intended to serve notice changing the nature of the tenancy nor could any such intention be inferred from the surrounding facts. The words "Assured Tenant" was a generic term which did not differentiate between the various types of assured tenancy. The tenant appealed but the decision of the Circuit Judge was upheld unanimously by 3 Lord Justices in the Court of Appeal on 23 July 2007.

Whilst not setting any major precedent the case does provide support for the contention that if the parties intend to change the nature of a tenancy from shorthold to fully assured the Landlord must serve a clear and unambiguous notice.

Further details can be found at <http://www.bailii.org/ew/cases/EWCA/Civ/2007/762.html>