

IN THE HIGH COURT OF JUSTICE
QUEENS BENCH DIVISION

Appeal ref: CC2009/PTA/0573

On appeal from the Clerkenwell & Shoreditch County Court
Sitting at Mayor's & City of London Court

BETWEEN:

MARTIN LYNCH

Appellant

and

WILLIAM KIRBY

Respondent

CASENOTE

Before Mrs Justice Nicola Davies QC

Sitting on 26th and 28th January 2010

The Facts

K rented out rooms in an HMO. L had friends there and approached K on 19th February 1997 looking for accommodation. L was on welfare benefits so K told him that he could only have a room if he secured housing benefit. The following day, 20th February 1997, L got a pre-tenancy housing benefit determination form, K completed the details of the proposed tenancy and both signed it. L moved in the same day – at trial K admitted L had exclusive occupation from 20th February 1997. L also submitted a housing benefit claim and was awarded housing benefit some six weeks later, backdated to his first occupation.

On 28th February 1997, the Housing Act 1996 amended the Housing Act 1988. Before that date, a tenancy was an assured tenancy unless the relevant notice was served. For tenancies starting after that date, the position was reversed so that the tenancy was an assured shorthold tenancy unless a notice was served. In 2007 K began possession proceedings on the basis that L had an assured shorthold tenancy which started on the date housing benefit was received, not when L had moved in. K claimed that he had allowed L to occupy the property between those dates purely as an act of generosity.

The county court judge held that L's occupation until housing benefit was awarded was entirely conditional and almost charitable so that the tenancy did not start until the later date. This meant that L had only an assured shorthold tenancy and K was entitled to possession. L appealed to the High Court.

Held

Davies J held that the three hallmarks of a tenancy identified in *Street v Mountford* [1985] AC 809 were present, namely exclusive possession for a term at a rent. The rent and the term were evidenced in the pre-tenancy determination form which was the only written evidence of any of the terms of the tenancy. The county court judge had erred in taking into account the landlord's subjective intention. A contract may be conditional, in the sense that obligations are suspended until the fulfillment of a condition precedent. There was an intention to create legal relations from 20th February 1997 which was when L's tenancy began. The appeal was allowed and the possession claim dismissed.

Nicholas NICOL
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