

Subletters be Warned!

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Under the current law, a secure tenant who sub-lets or parts with possession of the whole dwelling-house ceases to be a secure tenant, and a tenant who is not in occupation of the dwelling-house cannot be an assured tenant, which enables a landlord to gain possession more easily. The 2013 Act goes further by creating 2 new criminal offences.

Under s. 1(1) of the 2013 Act secure tenants commit an offence if, in breach of an express or implied term of their tenancy agreement, they sub-let or part with possession of the whole or part of the property and know this action to be in breach of that tenancy agreement. However, the tenant ("T") will not have committed an offence under s. 1(1) if:

- T's actions were because of violence or threats of violence towards them or their family from a person living in the dwelling-house or in the locality of the dwelling-house.
- The occupier is a person entitled to apply to a court for a right to occupy the dwelling-house, or to have the tenancy transferred to them; or a person in respect of whom an application may be made to have the tenancy transferred to them (e.g. T's current or former spouse, civil partner or co-habitant, or child)

Section 1(2) of the 2013 Act creates an additional new criminal offence, where T has acted dishonestly. The acts comprising this offence are otherwise the same as for the offence under s. 1(1). The type of dishonesty intended is knowledge that a reasonable and honest person would consider the action in question to be dishonest. The offence under s. 1(2) carries a greater penalty than that under s. 1(1). Whether or not the action was dishonest will be a question of fact, but is more likely to be found where T made a profit from the transaction, e.g. by charging a market rent for the property. The defences of sub-letting because of violence or threats of violence, or occupation by a spouse etc are not available where dishonesty can be established under s. 1(2).

Section 2 relates to assured tenancies, and mirrors section 1.

In addition to a fine or imprisonment, the 2013 Act includes the provision to make an "unlawful profit order", an order requiring the offending T to pay the landlord an amount representing the profit made from subletting.

It remains to be seen whether the new 2013 Act will create the desired deterrent effect, and ensure that social housing.

Philippa Seal / 1st May 2013

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