

The recent case of *Avondale Park Ltd v Miss Delaney's Nursery Schools Ltd* highlights the importance of ensuring that the basis of an occupier's interest is fully documented and issues that can arise where this is allowed to lapse.

### **Facts**

The case involved premises in Holland Park, West London, occupied by Miss Delaney's Nursery Schools Ltd (Miss Delaney's) and from which it ran a children's nursery school.

Avondale Park Ltd (Avondale) was a tenant of the premises under a head-lease that was not contracted out of the Landlord and Tenant Act 1954 (the Act), and the original permitted use was as residential accommodation. Miss Delaney's had been granted an underlease of the premises, expiring on 29 August 2022 and contracted out of the Act.

The underlease provided that, if Avondale had not produced a deed of variation permitting change of use to a nursery school by 14 December 2014, the underlease would be terminated. No such deed of variation was produced. However, Miss Delaney's ran a children's nursery from the premises from late 2014 until August 2022.

In August 2022, disputes arose between the parties concerning rent, and Avondale forfeited by peaceful re-entry. Miss Delaney's obtained interim injunctive relief to prevent interference with its possession and Avondale appealed against the continuation of the injunction.

The appeal was rejected for the following reasons:

- Failure to provide the deed of variation ensured that the underlease automatically terminated on that date
- The termination of the tenancy in 2014 and the continued occupation and payment of rent was consistent with the existence of an implied periodic tenancy, protected by the Act
- As regards any argument of estoppel (whereby Avondale tried to argue the parties had conducted themselves on the basis that the underlease remained in place and Miss Delaney's should be estopped from denying that mistaken assumption), the evidence was insufficient to support this

### **Issues With Implied Periodic Tenancies**

Had Miss Delaney's underlease not automatically terminated, given the underlease was contracted out of the Act, it would have come to an end upon expiry of the contractual term and there would have been no right for Miss Delaney's to remain in the premises.

In contrast, an implied periodic tenancy falls within the protection of the security of tenure provisions within the Act. This means a landlord cannot simply terminate the tenant's interest at the end of the relevant period. Instead, a landlord must serve notice and prove one or more of a number of statutory grounds for termination, such as redevelopment or landlord's own occupation (in respect of which statutory compensation may be payable).

### **Avoiding Implied Periodic Tenancies Arising**

In light of the pitfalls of implied periodic tenancies, it is important to consider how to avoid such tenancies arising. One of the most common ways an implied periodic tenancy is created is when a tenant remains in occupation following expiry of a contracted-out lease.

In this scenario, factors that point towards the existence of an implied periodic tenancy include:

- The longer the tenant remains in occupation after the contracted-out lease has expired, the more likely it is that they have an implied periodic tenancy.
- If negotiations for a new lease stall or cease but the tenant remains in occupation.
- Payment of rent – if rent continues to be paid and accepted periodically.
- Where the landlord has not indicated a desire to recover possession.

To avoid an implied periodic tenancy arising (or arguments over whether one has arisen), landlords are advised to keep a full log of the expiry dates of all leases as part of good estate management. Prior to the relevant expiry date, action can then be taken that includes early communication with the tenant to understand their intentions and reminders of the relevant expiry date. Records should also be kept of any potential early termination dates in the lease (whether automatically due to the terms of the lease as in the *Avondale* case or following service of notice). The tenant should not simply be allowed to remain in occupation following the termination date without any protective steps being taken.

If you require assistance determining whether you are party to an implied periodic tenancy, advice on protecting your position in respect of any potential periodic tenancy, or as regards the termination of an implied periodic tenancy, our real estate litigation team would be happy to assist.

## Contacts



**Holly Rowbottom**

Associate, Manchester  
T +44 161 830 5063  
E [holly.rowbottom@squirepb.com](mailto:holly.rowbottom@squirepb.com)



**Beth Casey**

Director, Leeds  
T +44 113 284 7037  
E [bethany.casey@squirepb.com](mailto:bethany.casey@squirepb.com)



**David Holland**

Partner, Leeds  
T +44 113 284 7014  
E [david.holland@squirepb.com](mailto:david.holland@squirepb.com)