



BRIEFING PAPER

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Ending a joint tenancy (England)

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TENANCY AGREEMENT



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Summary

The situation frequently arises in social housing, particularly in cases involving relationship breakdown, where one party to a joint tenancy wishes to have the tenancy put in their sole name. Alternatively, the tenant who has left might find it difficult to secure rehousing if they are already a joint tenant of another property – in these circumstances they often ask for their names to be removed from joint tenancy agreements.

As a general rule, landlords, whether they are housing associations or councils, cannot unilaterally end a joint tenancy or remove names from a tenancy agreement at the request of a joint tenant. If one party to a joint tenancy serves a notice to quit this has the effect of terminating the whole of the tenancy leaving the tenant in occupation at risk of eviction by the landlord. This position has been established in several court cases, most recently [Sims v Dacorum Borough Council \[2014\] UKSC 63](#).

The county courts have powers to order the transfer of tenancies from joint to sole names in certain circumstances. Constituents in this position are best advised to seek professional legal advice.

1. The legal position

1.1 The decision to offer a joint tenancy

At the outset a tenancy can be granted to a sole tenant or up to four people jointly. The decision to offer a joint or sole tenancy lies with the landlord, having regard to relevant statutory guidance and the need not to unlawfully discriminate. The 2002 Code of Guidance for local authorities on the Allocation of Housing (now superseded) provided advice for authorities on the issue of joint tenancies:

3.7 The Secretary of State considers joint tenancies can play an important role in the effective use and equitable allocation of housing. Where household members have long term commitments to the home, for example, when adults share accommodation as partners (including same sex partners), friends or unpaid live-in carers, housing authorities should normally grant a joint tenancy. In this way the ability of other adult household members to remain in the accommodation on the death of the tenant would not be prejudiced. Housing authorities should ensure that there are no adverse implications from the joint tenancy for the good use of their housing stock and for their ability to continue to provide for housing need.

3.8 Housing authorities should ensure that applicants, including where they are existing tenants, are made aware of the option of joint tenancies. When doing so, the legal and financial implications and obligations of joint tenancies must be made clear, including the implications for succession rights of partners and children. Where housing authorities refuse an application for a joint tenancy, clear, written reasons for the refusal should be given.¹

The current [Allocation of accommodation: Guidance for local housing authorities in England](#) (2012) is silent on joint tenancies other than to make clear that they should not be offered to ineligible persons:

3.3 Under s160ZA(1)(b), a housing authority must not grant a joint tenancy to two or more people if any one of them is a person from abroad who is ineligible. However, where two or more people apply and one of them is eligible, the authority may grant a tenancy to the person who is eligible. In addition, while ineligible family members must not be granted a tenancy, they may be taken into account in determining the size of accommodation which is to be allocated.²

1.2 Ending a joint tenancy

As a general rule, once a tenancy has been granted in joint names the parties cannot simply agree to “take people off” the agreement. Nor can a landlord unilaterally terminate a joint tenancy or part of a joint tenancy at the request of one of the joint tenants.

¹ [Code of Guidance for local authorities on the allocation of housing](#), November 2002

² [Allocation of accommodation: Guidance for local housing authorities in England](#), December 2012, para 3.3

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If one party to a joint periodic tenancy³ serves a valid notice to quit⁴ on the landlord this has the effect of bringing the contractual tenancy to an end. In turn, this gives the landlord the right to recover possession of the property despite the fact that the other joint tenant(s) may not want to leave.⁵

The courts have considered the issue and established that where one of the joint tenants serves a notice to terminate the tenancy on the landlord this has the effect of terminating the whole tenancy:

In the *pre*-Human Rights Act 1998 case of *LB Hammersmith and Fulham v Monk* [1992] 1 AC 478; (1992) 24 HLR 360, the House of Lords held that – unless the tenancy agreement provides otherwise – a notice to quit given by one joint tenant without the concurrence of any other is effective to determine a periodic tenancy, with the result that the landlord obtains an unqualified right to possession. In *LB Harrow v Qazi* [2003] UKHL 43; [2004] 1 AC 983; [2003] HLR 75 (a joint tenancy/notice to quit case), the House of Lords held that there was no violation of art.8 where the law affords an unqualified right to possession on proof that the tenancy had been terminated. In later cases, the House of Lords likewise resisted attempts to use art.8 as a defence to possession proceedings by local authorities: see *Lambeth LBC v Kay* [2006] UKHL 10; [2006] 2 AC 465; [2006] HLR 22; *Birmingham CC v Doherty* [2008] UKHL 57; [2009] 1 AC 367; [2008] HLR 45.⁶

Sims v Dacorum BC [2014]

In this case the Supreme Court considered whether the termination of a joint tenancy and subsequent possession proceedings against the ex-joint tenant left in occupation (Mr Sims), represented a breach of his human rights under Article 8 and also Article 1 of Protocol 1 (A1/P1) of the European Convention on Human Rights:

In March 2002, Dacorum BC granted Mr Sims and his wife a joint introductory tenancy of a three-bedroom house. The tenancy subsequently became a joint secure weekly tenancy. The tenancy permitted a joint tenant to serve notice to quit and determine it.

After alleged domestic violence, Mrs Sims left the property in 2010 with two of their four children. She sought to be re-housed by Wycombe District Council, who told her that she would not be re-housed whilst she held a tenancy with Dacorum. She told Dacorum that she wanted to give up her tenancy and Dacorum suggested that she serve notice to quit, which she did.

Mr Sims asked Dacorum to let him stay in the property and transfer the tenancy into his sole name. They refused and subsequently issued possession proceedings. These were defended, *inter alia*, on the basis that the rule in *Monk* was incompatible with art.8. The Deputy District Judge made a possession order on December 16, 2011. The appellant appealed to the Circuit Judge who granted permission for a leapfrog appeal

³ As most social tenancies are.

⁴ i.e. it must be in a form and in terms that comply with the tenancy agreement and any other legal requirements.

⁵ This principle was established by the case of *Greenwich LBC v McGrady* [1982] 267 EG 515 CA and was confirmed in *Hammersmith & Fulham LBC v Monk* [1990] AC 478 and *Barnet LBC v Smith*, *The Times*, November 5 1990

⁶ Sweet & Maxwell, *Housing View Bulletin*, 17 November 2014

to the Court of Appeal, which dismissed the appeal ([2013] EWCA Civ 12; [2013] HLR 14).

Mr Sims appealed to the Supreme Court, contending that the rule in *Monk* was incompatible with art.8 and/or A1/P1. If that was correct, then the Supreme Court should either:

- (i) reverse *Monk*, so that a joint tenant's notice to quit was not effective to determine the tenancy; or,
- (ii) leave *Monk* in place and leave it to Parliament to address the incompatibility, but declare that, pending Parliament doing so, a public authority would act unlawfully by inducing or facilitating the service of a notice to quit by one of a number of joint tenants to whom it has granted a tenancy of its housing.

The appeal was dismissed. The rule in *Monk* was not incompatible with A1/P1. It had always been the case that the tenancy could be determined by his wife giving notice to quit and Mr Sims had therefore lost his tenancy in circumstances and in a manner which was specifically provided for in the agreement. The terms of the tenancy (and the common law rule in *Monk*) were not unreasonable; if *Monk* were reversed then one tenant could be forced to remain a tenant against her will or a landlord left with one tenant where he previously had two. Nor was there a violation of art.8. Mr Sims had been entitled to raise a proportionality defence in the county court and had done so. The Deputy District Judge had considered all relevant factors and found it proportionate to grant a possession order. The decision in *Buckland v UK* did not assist Mr Sims; it was only authority for the proposition that an occupier must have the opportunity to argue that no possession order should be made.⁷

The Sims tenancy agreement was very specific on the effect of termination by one party to a joint tenancy:

Where either joint tenant wishes to terminate their interest in a tenancy they must terminate the full tenancy as in (92) above.

We will then decide whether any of the other joint tenants can remain in the property or be offered more suitable accommodation.⁸

Relationship breakdown – what can tenants do?

It is not unusual for joint tenants' relationships to breakdown and for one party to move out – this leads to requests for joint tenants' names to be removed. As the section above explains, landlords do not have the power to do this.

It is open to any of the joint tenants to serve a valid notice to terminate the tenancy but before doing so they should seek professional legal advice on the implications. In some cases it might be possible to reach an agreement with landlord to ensure that on the expiry of the notice to quit, the party terminating the tenancy will be granted a new sole tenancy (this may be of another property depending on the circumstances). [The 2002 Code of Guidance](#) (now superseded) said:

3.9 Where a joint tenant serves notice to quit, housing authorities have a discretion to grant a sole tenancy to the remaining tenant.

⁷ Ibid.

⁸ [Nearly Legal website, Monk Silenced](#) [accessed on 12 October 2015]

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In exercising this discretion, they should ensure that there are no adverse implications for the good use of their housing stock and their ability to continue to provide for housing need. Where housing authorities decide that they may wish to exercise their discretion in this respect, they must reflect this in their allocation scheme.⁹

This guidance is not replicated in the current [Allocation of accommodation: Guidance for local housing authorities in England](#) (2012). However, the GOV.UK website advises:

Ending joint tenancies

If only one of you wants to end the tenancy and the other joint tenant(s) wants to stay in the property, your council may:

- give the remaining tenant(s) a new tenancy at the same property
- not give them a new tenancy, eg because the property could be offered to another couple or family¹⁰

Landlords will be cautious when advising joint tenants on the question of terminating a joint tenancy as they will want to avoid suggestions of having procured a notice to quit with a view to repossessing the property in question for re-letting.

Where a relationship breakdown between joint tenants (married or cohabiting as a couple) has involved domestic violence or threats of violence leading to one party leaving the premises (due to threats/violence made against them or a family member living with them by the other joint tenant), a local authority may seek to evict the remaining joint tenant where they believe the partner who has left is unlikely to return.¹¹

⁹ Ibid.

¹⁰ [GOV.UK](#) [accessed on 12 October 2015]. One factor that may be taken into account when deciding whether or not to grant a new tenancy to an ex-joint tenant is whether they would be under-occupying the property in question.

¹¹ Ground 2A of Schedule 2 to the *Housing Act 1985*.

2. The courts' powers to transfer tenancies

Where spouses or civil partners cannot agree about what should happen to a tenancy at the end of the relationship the courts can decide on their behalf. The county court can transfer a tenancy for couples who are married or in a civil partnership in conjunction with proceedings for divorce, dissolution, separation or nullity under the *Family Law Act 1996*.

A joint tenancy can be transferred into the sole name of one party and a sole tenancy can be transferred into the other party's sole name. In reaching a decision the courts must take account of the circumstances of the case and:

- circumstances in which the tenancy was granted
- housing needs and housing resources of each spouse or civil partner and of any children
- financial resources of each spouse or civil partner
- likely effect on the health, safety and wellbeing of each spouse or civil partner and of any children
- suitability of each spouse or civil partner as tenants (the landlord's views can be taken into account).

The courts also have the power to transfer a tenancy under the *Matrimonial Causes Act 1973* by making a 'property adjustment order'. Certain tenancies count as property. In making such an order the court must have regard to various matters, including the welfare of any child under 18 years of age.

Cohabitees may also apply to the county court to secure/establish their occupation rights following a relationship breakdown.

In all cases concerning tenancy transfers constituents are best advised to seek professional legal advice and assistance.

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