

Housing Law interim e-bulletin

Introduction

Family Intervention Tenancies (“FIT”) have been introduced to the housing landscape by ss. 297 and 298 of the Housing and Regeneration Act 2008 (“HRA 2008”). The statutory provisions and some subordinate legislation¹ came into force on 1st and 5th January 2009 respectively.

Rationale behind FITs

FITs are part of a multi-disciplinary approach (Family Intervention Projects) towards tackling anti-social behaviour. Key features of these Projects are to (i) focus on the worst families first, (ii) make sanctions key, (iii) adopt a “whole family” approach and (iv) change behaviour by using a contract as a tool to establish what changes in behaviour are expected and what sanctions will be imposed if behaviour does not improve.

Social landlords involved in Family Intervention Projects had reported difficulties when seeking to move families involved in anti-social behaviour into dispersed accommodation or purpose built units due to uncertainty over whether to grant a licence or tenancy and were concerned not to give security to families who have been or are likely to be subject to possession actions on the grounds of anti-social behaviour.

In the context of housing, the model of intervention will be an intensive outreach programme to families in dispersed

accommodation. Families are provided with non-secure accommodation under the project, coupled with intensive tailored action, supervision and clear sanctions to improve the behaviour of persistently anti-social households. In order for FITs to work effectively, it is important they are clearly linked to behaviour support agreements. The length of the FIT will vary but the typical length is expected to be between six months and a year. If the family complies with the interventions and behaviour improves sufficiently then the tenancy can be made secure.

The provisions

Who can grant a FIT?

A FIT may be granted by a local housing authority, or by a registered provider of social housing or a registered social landlord (hereafter referred to as “social landlords”).

To whom?

A FIT can be granted to:

(a) a person (“the new tenant”) against whom a possession order under s 84 HA 1985/s 7 HA 1988 in respect of another dwelling-house-

- (i) has been made, in relation to a secure/assured tenancy, on ground 2 or 2A Part 2 Schedule 2 HA 1985/ 14 or 14A Part 2 of Schedule 2 HA 1988;
- (ii) could, in the opinion of the authority/landlord, have been so made in relation to such a tenancy; or
- (iii) could, in the opinion of the authority/landlord, have been so made if the person had had such a tenancy; and

¹ The Allocation of Housing (England) (Amendment) (Family Intervention Tenancies) Regulations 2008 (SI 2008 No. 3015), 1st January 2009; Family Intervention Tenancies (Review of Local Authority Decisions) (England) Regulations 2008 (SI 2008 No. 3111), 5th January 2009;

(b) for the purposes of the provision of behaviour support services: para 4ZA(3) HA 1985/para 12ZA(3) HA 1988.

Status of the FIT

A tenancy is not a FIT unless the local housing authority/social landlord has served a pre-tenancy notice on the new tenant before he or she enters into the tenancy: 4ZA(4) HA 1985/ 12ZA(4) HA 1988 (see below).

Second, where a local housing authority grants a FIT, it will not have the status of a secure tenancy unless the authority notifies the tenant that it is to be so regarded: 4ZA(2) HA 1985. Similarly, a FIT granted by a social landlord will not have the status of an assured tenancy unless the social landlord notifies the tenant that it is to be so regarded.

Third, SI 2008 No. 3015 states that the provisions of Part 6 of the Housing Act 1996 do not apply to persons lawfully occupying accommodation under a FITs. In other words, housing authorities will be able to allocate accommodation (either secure or introductory or a nomination to an RSL) to households who have a FIT, upon its termination, without having to comply with the allocation procedures and requirements under Part 6.

The pre-tenancy notice

This notice must contain

- (a) the reasons for offering the tenancy to the new tenant;
- (b) the relevant dwelling-house;
- (c) the main terms of the tenancy (including any requirements on the new tenant in respect of behaviour support services);
- (d) the security of tenure under the tenancy and any loss of tenure which is likely to result from the new tenant agreeing to enter into it;

(e) that the new tenant is not obliged to enter into the tenancy or (unless otherwise required to do so) to surrender any existing tenancy or possession of a dwelling-house

(f) the likely action by the local housing authority/social landlord if the new tenant does not enter into the tenancy or surrender any existing tenancy or possession of a dwelling-house; and

(g) guidance to the new tenant as to how he or she may be able to obtain assistance in relation to the pre-tenancy notice: 4ZA(5)&(7) HA 1985/12ZA(5)&(7) HA 1988

Behaviour support services

Behaviour support services mean relevant support services to be provided by any person to the new tenant or any person who is to reside with him or her, for the purpose of addressing their anti-social/domestic violence behaviour.

Relevant support services are the support services of a kind identified in a behaviour support agreement, designed to meet such needs of the recipient as are set out in the agreement.

A behaviour support agreement is a written agreement about behaviour and the provision of support services made between the new tenant and the local housing authority/the new tenant, the landlord and the local housing authority for the district in which the dwelling-house is situated): 4ZA(12) HA 1985/12ZA(12) HA 1988.

Terminating a FIT

For a local housing authority, the procedure for determining a FIT pursuant to s 298 HRA 2008 is somewhat complex. The process is as follows:

- (a) the authority must first serve a minded-to notice on the tenant. This written notice must state:

- (i) that the authority has decided to serve a notice to quit on the tenant;
 - (ii) the effect of serving a notice to quit;
 - (iii) the reasons for the authority's decision;
 - (iv) when the authority intends to serve the notice to quit; and
 - (v) that the tenant has the right to request, within 14 days from the service of the minded-to notice, a review of the authority's decision; and
 - (vi) how the tenant may be able to obtain assistance in relation to this notice.
- (b) If, within the 14 day period, the tenant does request a review, the authority must review its decision to serve a notice to quit and serve a second notice on the tenant informing him or her of its review decision, including its reasons: s 298(3)&(4);
- (c) The reviewer must not have been involved in the decision to serve a notice to quit. If the reviewer is an officer of an authority and conducts a review of a decision of another officer, then the reviewer must hold a more senior position;
- (d) a tenant may request a review by oral hearing within 14 days of receipt of the minded-to notice. If he does so, within 21 days of his review request, the he must send to the reviewer and the authority a copy of any written evidence he seeks to rely upon and the name and address of any person he intends to call to give evidence. If the authority wishes to respond, it must send its response to the tenant and the reviewer within 14 days of receipt of the tenant's information. The authority must give the tenant and any person providing behavioural support services to him at least 7 days' notice of the date, place and time of the hearing. The reviewer has the power to determine the conduct of the oral hearing but must allow both sides equal opportunity to put their cases. The tenant may be represented by another person, whether or not that person holds a relevant professional qualification. Within 7 days of the end of the hearing, the reviewer must notify the authority and the tenant in writing of his decision;
- (e) If the review is to take place by written representations, within 21 days of the service of the tenant's request for a review, he must send to the authority and the reviewer any evidence he wishes to rely upon. Upon receipt of that information, the authority has 14 days to send in its response. The reviewer must notify the authority and the tenant of his review decision:
- (i) within 28 days from the service of the tenant's request, where the tenant has not submitted any evidence;
 - (ii) within 14 days from the submissions of the authority;
 - (iii) within 28 days of the tenant's evidence, where the tenant has submitted evidence but the authority has not done so.
- (f) if the tenant does not request a review, withdraws a request for a review or the authority has served the review decision (and its reasons) on him, then the authority may serve a notice to quit in the usual format.

For social landlords: the FIT can be determined by the expiry of a validly served notice to quit in the usual form. However, the Government's (non-statutory) *Guidance on the use of Family Intervention Tenancies* states "*The Tenant Services Authority expects RSLs to offer a review process which closely parallels that offered by local authorities*": para.49

Commentary

- FITs are not intended to run on beyond the completion of the intensive support provided under a Family Intervention Project. A FIT's duration will depend on the support work required, but it is expected to last between 6 and 12 months and in extreme cases up to 2 years
- After that, housing authorities could provide the former FIT tenant with an Introductory tenancy; RSLs might consider granting an Assured Shorthold tenancy
- Guidance on the content of behaviour support agreements can be found in *Family Intervention Projects – A toolkit for local practitioners* (July 2007), at www.respect.gov.uk
- Landlords will have to take care and may need to seek advice in drafting the terms of the FIT to ensure its terms are clearly and appropriately linked with those of the Behaviour Support Agreement.
- It remains to be seen how popular FIT will be with housing authorities/social landlords and would-be tenants.

If you or your organisation would like the authors to provide a seminar on Family Intervention Tenancies, please contact Hayley Walker on 020 7405 6114 or at Hayley.Walker@fieldcourt.co.uk

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