



# Renting Homes (Wales) Act 2016

2016 anaw 1

## PART 3

### PROVISIONS APPLYING TO ALL OCCUPATION CONTRACTS

#### CHAPTER 8

##### DEALING

###### *Sub-occupation contracts*

#### **59 Sub-occupation contracts: interpretation**

- (1) This section applies for the purposes of interpreting this Act.
- (2) A “sub-occupation contract” is an occupation contract—
  - (a) made with a landlord who is the contract-holder under an occupation contract, and
  - (b) which relates to all or part of the dwelling to which that contract relates.
- (3) “Sub-holder” means the contract-holder under the sub-occupation contract.
- (4) “Head landlord” means the landlord under the head contract.

#### **60 Sub-occupation contract never takes effect as transfer**

- (1) This section applies if the contract-holder under an occupation contract (“the head contract”) enters into a sub-occupation contract, and the term of the sub-occupation contract ends at the same time as the term of the head contract.
- (2) The sub-occupation contract takes effect as a sub-occupation contract (and not as a transfer to the sub-holder).

## **61 Failure to comply with conditions imposed by head landlord**

- (1) This section applies if an occupation contract (“the head contract”) permits the contract-holder to enter into a sub-occupation contract with the consent of the head landlord.
- (2) If the head landlord consents subject to conditions (see section 84), before entering into a sub-occupation contract with a person the contract-holder must notify that person of those conditions.
- (3) If the contract-holder does not comply with the requirement in subsection (2) and a sub-occupation contract is entered into, the contract-holder is to be treated as having committed a repudiatory breach of the sub-occupation contract (see section 154).
- (4) If the head landlord consents subject to conditions and a sub-occupation contract is entered into—
  - (a) section 32 is to be read in relation to that contract as if it provides (in addition to the other requirements under that section) that the written statement of the sub-occupation contract must set out the conditions imposed by the head landlord, and
  - (b) section 37 is to be read in relation to that contract as if it provides (in addition to the other provisions in that section)—
    - (i) in subsection (1), that the sub-holder can apply to the court for a declaration that the written statement sets out a condition incorrectly or sets out a condition which the head landlord did not impose,
    - (ii) that the head landlord is entitled to be a party to proceedings on the application, and
    - (iii) that the court, if satisfied that either of the grounds in subparagraph (i) is made out, may make a declaration setting out the correct condition or, as the case may be, may declare that the condition is not a condition imposed by the head landlord.
- (5) A sub-occupation contract is not made otherwise than in accordance with the head contract only because—
  - (a) the head landlord consents subject to conditions, and
  - (b) the conditions are not complied with.
- (6) In such a case the head landlord may choose to treat the sub-occupation contract as a periodic standard contract having the following characteristics—
  - (a) all the fundamental and supplementary provisions applicable to a periodic standard contract are incorporated without modification,
  - (b) any terms of the secure contract or fixed term standard contract which are incompatible with those fundamental or supplementary provisions have no effect, and
  - (c) otherwise, the terms of the periodic standard contract are the same as the terms of the secure contract or fixed term standard contract.
- (7) If the head landlord chooses to treat it as a periodic standard contract under subsection (6), the head landlord must notify the contract-holder and the sub-holder of that choice.
- (8) The head landlord may only give notice under subsection (7) after the sub-occupation contract is made and before the end of the period of two months starting with the day on which the head contract ends.

- (9) If the head landlord gives notice in accordance with subsections (7) and (8), the contract is to be treated as a periodic standard contract with the characteristics mentioned in subsection (6) in any question arising between the sub-holder and any person other than the contract-holder.

## **62 End of head contract**

- (1) This section applies (subject to subsection (6)) if—
- (a) the contract-holder under an occupation contract (“the head contract”) enters into a sub-occupation contract in accordance with the head contract, and
  - (b) the head contract ends after the head contract’s occupation date.
- (2) If the sub-occupation contract subsists immediately before the head contract ends—
- (a) the sub-occupation contract continues (as an occupation contract which is not a sub-occupation contract), and
  - (b) the contract-holder’s rights and obligations as landlord under the sub-occupation contract are transferred to the head landlord.
- (3) If the sub-holder asks the head landlord for a further written statement of the contract under section 31(4) (and subsection (5) of this section does not apply), the references to the contract-holder in sections 34(4) and 35(5) (failure to provide statement) include the person who was the contract-holder under the head contract.
- (4) Subsection (5) applies where—
- (a) a head landlord has given notice in accordance with section 61(7) and (8) in relation to a contract, and
  - (b) the contract continues because of subsection (2)(a) of this section.
- (5) Where this subsection applies, for the purposes of section 31(1) (written statement of contract) the occupation date of the contract is to be treated—
- (a) if the notice mentioned in section 61(7) is given to the sub-holder before the end of the head contract, as the day on which the head contract ends;
  - (b) if the notice is given to the sub-holder on or after the day on which the head contract ends, as the day on which the notice is given.
- (6) This section does not apply if the head contract is a fixed term standard contract which ends at the end of the fixed term.

## **63 End of head contract: further provision**

- (1) Nothing in section 62 affects any right of the head landlord under section 61(6) (power to treat sub-occupation contract as periodic standard contract).
- (2) Nothing in section 62 makes the head landlord liable to the sub-holder in respect of any breach of the sub-occupation contract committed by the contract-holder.
- (3) Nothing in section 62 makes the sub-holder liable to the head landlord in respect of any breach by the sub-holder of the sub-occupation contract that occurred before the head contract ended.
- (4) But the head landlord may be liable to the sub-holder, or the sub-holder to the head landlord, to the extent that any breach of the sub-occupation contract continues after the head contract ends.

- (5) Subsections (3) and (4) do not affect any power conferred on the head landlord by the sub-occupation contract.

**64 Possession claim against contract-holder where there is a sub-holder**

- (1) This section applies if—
- (a) the contract-holder (“C”) under an occupation contract (“the head contract”) enters into a sub-occupation contract in accordance with the head contract, and
  - (b) after the sub-occupation contract is entered into, C’s landlord gives C a possession notice, or other notice informing C that he or she must give up possession.
- (2) At the same time as giving a notice mentioned in subsection (1)(b) to C, C’s landlord must give the sub-holder a notice—
- (a) stating that C’s landlord intends to make a possession claim against C, and
  - (b) specifying the ground on which the claim will be made.

**65 Extended possession order against sub-holder**

- (1) This section applies if—
- (a) the contract-holder (“C”) under an occupation contract (“the head contract”) enters into a sub-occupation contract in accordance with the head contract, and
  - (b) after the sub-occupation contract is entered into, C’s landlord makes a possession claim against C.
- (2) In the proceedings on the claim against C, C’s landlord may apply for an order for possession against the sub-holder (“S”) (an “extended possession order”); but an application under this subsection may be made only if—
- (a) the requirements set out in subsection (3) have been met, or
  - (b) the court considers it reasonable to dispense with those requirements.
- (3) The requirements are as follows—
- (a) C’s landlord must have given S a copy of the notice mentioned in subsection (1)(b) of section 64 in accordance with subsection (2) of that section, and
  - (b) at the same time, C’s landlord must have given S notice—
    - (i) of C’s landlord’s intention to apply for an extended possession order in the proceedings on the claim against C, and
    - (ii) of S’s right to be a party to proceedings on the possession claim against C.
- (4) Where C’s landlord may apply for an extended possession order against S, S is entitled to be a party to proceedings on the possession claim against C (regardless of whether C’s landlord makes an application for an extended possession order in the proceedings).
- (5) The court may consider C’s landlord’s application for an extended possession order only if it has decided to make an order for possession against C.
- (6) The court may make an extended possession order against S only if, had C made a possession claim against S, the court would have made an order for possession against S.

## **66 Exclusion of contract-holder after abandoning contracts**

- (1) This section applies if—
  - (a) a contract-holder (“C”) under an occupation contract (“the head contract”) enters into a sub-occupation contract in accordance with the head contract, and
  - (b) the sub-holder (“S”) believes that C no longer considers himself or herself to be a party to the head contract and the sub-occupation contract.
- (2) S may act to end the head contract in accordance with this section.
- (3) S must give C a notice—
  - (a) stating that S believes that C no longer considers himself or herself to be a party to the head contract and the sub-occupation contract,
  - (b) requiring C to inform S in writing before the end of the warning period if he or she does consider himself or herself to be a party to one or both of those contracts, and
  - (c) informing C that after the warning period the head contract may be ended and his or her rights and obligations under the sub-occupation contract may be transferred to C’s landlord.
- (4) S must give a copy of the notice to C’s landlord.
- (5) During the warning period, S must make such inquiries as are necessary to satisfy himself or herself that C no longer considers himself or herself to be a party to the head contract and the sub-occupation contract.
- (6) At the end of the warning period S may, if satisfied as described in subsection (5), apply to the court for an order—
  - (a) ending the head contract, and
  - (b) that C’s rights and obligations as landlord under the sub-occupation contract are to be transferred to C’s landlord in accordance with sections 62 and 63.
- (7) The court may not hear S’s application under subsection (6) if S has failed to comply with the requirement in subsection (4); but the court may dispense with that requirement if it considers it reasonable to do so.
- (8) C’s landlord is entitled to be a party to proceedings on an application made by S under subsection (6).
- (9) If the court is satisfied that C does not consider himself or herself to be a party to the head contract and the sub-occupation contract, it may make the order applied for under subsection (6); and if it does so it must specify the date on which the head contract ends.
- (10) But the court may not make an order under subsection (9) if—
  - (a) C’s landlord is a party to the proceedings,
  - (b) C’s landlord asserts that the court would have made an order for possession against S, had an application for such an order been made by C in a possession claim made by C against S, and
  - (c) the court is satisfied that it would have made an order for possession against S in those circumstances.
- (11) The warning period is the period of four weeks starting with the day on which a notice under subsection (3) is given to C.

**67 Excluded contract-holder’s remedies**

- (1) This section applies if the court makes an order against C under section 66(9).
- (2) Before the end of the period of six months starting with the day on which the order is made, C may apply to the court on a ground in subsection (3) for an order and declaration under subsection (4)(a).
- (3) The grounds are—
  - (a) that S failed to give C a notice under section 66(3) or failed to make the inquiries required by section 66(5);
  - (b) that C considered himself or herself to be a party to the head contract or the sub-occupation contract or both of them and there is a good reason for his or her failure to respond (or to respond adequately) to the notice under section 66(3);
  - (c) that, when S applied to the court, he or she did not have reasonable grounds for being satisfied that C considered himself or herself not to be a party to the head contract and the sub-occupation contract.
- (4) If the court finds that one or more of the grounds is made out, it may—
  - (a) by order rescind its order under section 66(9), and declare that the head contract continues to have effect in relation to the dwelling, and
  - (b) make such further order as it thinks fit.

**68 Power to vary periods of time relating to exclusion after abandonment of contracts**

The Welsh Ministers may by regulations—

- (a) amend section 66(11) by substituting a different period for the period for the time being referred to;
- (b) amend section 67(2) by substituting a different period for the period for the time being referred to.