Press Release of Safer Renting re *Rakusen v Jepson and others [2023] UKSC 9*

EMBARGOED UNTIL RELEASE OF JUDGEMENT

(expected at 10am on 1st March 2023)

We are of course disappointed that our appeal to the Supreme Court in the case of *Rakusen v Jepson and others* has been dismissed. It was held by the Supreme Court that a Rent Repayment Order cannot be granted against a superior landlord.

We are extremely grateful to Charles Bishop, Giles Peaker, Justin Bates, Edward Fitzpatrick and Timothy Baldwin for their relentless dedication and diligent work on the case, pro bono no less. Their dedication is an inspiration and a motivation for us moving forward – there is a lot left to fight for. The *Rakusen* decision shows that what is needed is effective policy change to shore up the lettings market against criminal landlords.

Negative impact of this decision

We would like to take this moment to discuss the negative impact of this decision on tenants seeking an RRO, particularly those in the "shadow" private rented sector living under "rent-to-rent" lettings.

Background to the Market

An RRO is a method of redress open to tenants whose landlords have committed certain offences. Commonly, this is failure to licence, and can be also used when a tenant has suffered harassment or an illegal eviction. A rent-to-rent letting, in its most simple construction, is when a property's owner (head landlord) rents their house to an individual or company, who then rents it to tenants. It is a "scam" when either this is done without the owner's knowledge or, more elaborately, with the cooperation of all the 'landlords,' but tenants are deceived as to who is their direct landlord.

Often, these individuals use fake names, have no known address, and no assets. For this reason, it is unviable to bring action against them as the "direct landlord." Likewise, shell companies are used to avoid liability. The companies often hold no assets and, again, are not worth pursuing legally. If they are pursued, the company can just dissolve and begin operating again under a different name. And so the cycle continues, with no prosecution or redress.

The final *Rakusen* judgement has systematised a loophole for landlords to operate outside of the law, without the risk of a Rent Repayment Order. The Supreme Court quoted the NRLA in their written submission stating that, "*it might be thought that [the] prospect of a property owner entering into such an arrangement solely to evade a potential RRO, while simultaneously leaving themselves open to prosecution for criminal offences, is a little* ***far-fetched***." We respectfully disagree.

Ben Reeve-Lewis, Strategic Manager, shared data compiled by Safer Renting in his Witness Statement. We showed that 25% of our cases involved a rent-to-rent model. Of these, in 58% of rent-to-rent lettings we found that the immediate landlord was a company, the majority of which had no known funds or assets against which an RRO could enforced. This suggests that the nature of rent-to-rent set ups are of a more formal and organised nature than presented in the judgement. For example, we found only 9% of these cases involved a tenant living in a property with a landlord who posed as the immediate landlord, when there was actually a different head landlord or owner. This shows that it is the structure of the lettings

industry and landlordism itself that is responsible for a vastly higher number of instances than isolated "rogue tenants" operating such models without the knowledge of the owner.

No Effective Redress Available

The decision of *Rakusen* means that tenants in a rent-to-rent letting seeking an RRO can only claim against their direct landlord, despite likely knowledge of the situation on the part of the head landlord. Our figures speak for themselves on whether an RRO is worth pursuing by tenants in this type of letting. Where an award in an RRO was given against a landlord with reliable status and quantifiable assets, the collection rate (without resorting to chasing the debt) is around 40%. But when we have applied against an insubstantial intermediary landlord, as described above, the collection rate drops dramatically to just 5%.

The application of *Rakusen* arbitrarily denies an effective and simple method of redress to many tenants. Regularly, our clients are illegally evicted or harassed by the head landlord. This could be because the direct landlord has dropped out of the picture and kept the rent the tenants paid them without paying the head landlord. In this situation, the head landlord intervenes, usually evicting the tenants illegally or harassing them to leave. These are both criminal offences, but now, post *Rakusen*, a tenant cannot pursue an RRO against the head landlord for illegal eviction or harassment.

The Supreme Court listed the range of sanctions available against rogue landlords, aside from RROs. This included criminal law and banning orders. In our report, *Offences under the Protection from Eviction Act 1977 in England and Wales: A report from Safer Renting*, we found 6,930 households were illegally evicted in 2020. Only 12 landlords were prosecuted. As for banning orders, in April 2021, the Guardian found that only 39 landlords had received banning orders since new powers came into force three years prior. These sanctions are toothless; a landlord or an agent engaged in a rent-to-rent scam can reasonably expect to face no negative consequences even if they commit the most serious offences of harassment or illegal eviction, both of which often include serious violence. RROs are by far the most effective penalty, and the only one which offers financial redress to the tenants themselves. Now, we have an arbitrary class of landlords who won't face this penalty, or any other penalties, despite committing criminal offences.

What Next?

We are disappointed by the outcome of *Rakusen* but we are not disheartened. There is opportunity to overturn this decision in the Renters Reform Bill. Tenants must be able to bring an RRO against the head landlord. Head landlords are more than likely to know if their property is run as an unlicensed HMO, for example, and are also capable of committing offences such as illegal eviction and harassment. There is no reason that they cannot be named as respondents in an RRO, for a judge to decide their level of their liability for the offence.

Under *Rakusen*, it is low-income tenants in the "shadow" private rented sector who are impacted the most; they are more likely to suffer harm under one of the RRO grounds but are now the least likely to be afforded redress. The decision of *Rakusen* is the end of our judicial fight, but the start of our campaign for legislative change to Rent Repayment Orders.

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