

Big tenant headache - from a blank date left on a printed lease form

You'd be justified in thinking that residential tenancy agreements, often based on standard printed forms, are a 'plain and simple' kind of legal documentation.

A recent, salutary decision of our Supreme Court published earlier this year* however highlights how a standard lease form – inadequately handled – can end up in hot water.

The landlords in the circumstances of the March 2019 decision during their negotiations with their tenants wanted to keep their negotiating position somewhat open.

The landlords arranged for a standard form lease to be printed off from the Internet and handed it to their tenants and asking for it to be signed. But they also asked that the expiry date be left blank – no doubt to provide the landlords with a bit of flexibility, given ongoing conversations about length of term.

After a dispute about precisely that point later arose, the tenants stated that various representations were made to them to the effect that the term of the lease would be 5 years, or at least 5 years. The landlords denied this.

No solicitors were retained by either party during lease negotiations or documentation. The legal effect of that document with this blank date in it was that an unintended tenancy from week to week only was formed.

The judge sitting on the equitable jurisdiction of the Court however granted the tenants a 5 year lease on wider, equitable principles, holding –

"I am comfortably satisfied that were it not for the statements made about the lease being for at least 5 years, the plaintiffs [tenants] would not have proceeded with the lease, gone into possession of the property, or undertaken the works. When it was put to [the tenant] in cross-examination that she had been told right from the start that the lease would be either a one year lease or a periodic lease she answered:

No, it didn't. It was completely incorrect. The statement is incorrect. We would never have taken a lease periodical or for one year to move twenty head of cattle, three horses, three children, two cats for \$1,100 just for a house. We would never have even considered a lease of that amount.

"That evidence rang true."

Having a lease document professionally drawn-up by a solicitor - not least where there are special negotiations or conditions of some kind involved - stands to save the parties later headaches ... not to mention substantial litigation legal costs.

That is because it's more likely that a dispute will arise further on down the track where there is simply an informal arrangement in place between the parties. That could include (as was the case here) a jumble of verbal promises and a hand-drawn legal document using a standard printed form.

Andy Stucken
20/7/19