



Squatters' Rights: A Guide for Commercial Property Owners

When squatting in residential buildings became a criminal offence in 2012, squatters headed for commercial properties instead. Martin Wilks examines the impact for landlords and explains how they can mitigate the risks.

The Right to Squat

Squatting is when a person knowingly enters a building without permission as a trespasser and lives there, or intends to live there.

It follows therefore that a tenant who enters a building with the permission of the property owner or a person who enters the property in good faith in the belief that they had permission to do so is not a squatter.

Commonly people talk about squatters' rights. In this respect they are referring to The Criminal Law Act 1977 which made it an offence to threaten or use violence to enter a property where someone is present and opposes the entry.

This law was introduced to stop landlords from using violence to evict tenants but remarkably it also applies where the person in occupation is a trespasser. Unauthorised occupiers may also raise arguments under the Human Rights Act such as freedom of assembly and freedom of expression.

New Rules

Following public concern about the harm that trespassers can cause, new legislation was introduced on 1st September 2012 in the form of Section 144 of the Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act. An offence is now committed where:

- a person occupies a residential building having entered it as a trespasser;
- the person knows or ought to have known that he or she is a trespasser; and
- the person is living in the building or intends to live there for a period.

The legislation, therefore seeks to protect residential property owners and local authorities who discover trespassers living in residential buildings that they own or control.

Commercial Property Owners Carry the Can?

While residential property owners are in a much better position than they were, the situation for owners of commercial property is worse.

This is because the legislation does not extend to non-residential buildings i.e. buildings not designed to be lived in. It follows therefore that squatting in offices, a public house, or a warehouse will not in itself be a crime. A landlord will therefore need to resort to civil law and obtain a court order to evict squatters from their commercial property.

There is evidence to suggest that the new legislation has simply shifted the problem on, with squatters now seeking out commercial buildings rather than face arrest for occupying a residential property. For example, since September 2012 office blocks, vacant pubs and empty bank branches – witness the Upper Bell Inn in Blue Bell Hill near Chatham and Lloyds TSB in Bristol have all been targeted and occupied.

For commercial landlords with empty property this is of considerable concern; they not only have to pay full business rates, but they also have to spend significant sums securing the property if they are unable to secure a tenancy. The alternative is to risk lengthy and costly legal proceedings to evict squatters.

In addition, the offence only applies if the property is used as a place to live. There is a significant amount of case law, which seeks to answer critical questions such as “what is a house?” Or “what is a building?” In some respects the answers to these questions remain uncertain. The new offence adds a further conundrum in that it fails to deal with the question of mixed-use property. For instance, will squatting in a public house with flats on the first floor be considered as an offence? It is unsurprising that calls are being made for reform.

The Path to Ownership

That being said, it is not easy for a trespasser to acquire ownership of a property.

In order to acquire ownership, as a result of adverse possession, a trespasser requires 12 years of occupation in the case of unregistered land and, pursuant to the Land Registration Act 2002, 10 years of occupation in the case of registered land.

A Worsening Situation

So, squatting is here to stay and it is the commercial property owner who is expected to pick up the pieces following legislation which has failed to eradicate a problem that Parliament intended to remedy.

Useful Tips:

- Ensure unoccupied buildings are secured and alarmed. Act quickly, for instance, following the expiry, surrender or forfeiture of a lease and the exit of a tenant.
- Check on the property regularly to see if there are any signs of attempted entry.
- Remove any articles of value internally and externally.
- Check insurance details to see if cover is provided for intrusions and any other costs such as damage to the property. Consult with the insurer on the measures that should be taken - a risk assessment may detail requirements for a particular site, for example the removal of certain items or machinery.
- Provide regular security patrols if necessary.
- Turn off and disconnect utilities.
- Consider letting the property on a temporary trading basis or on short-term agreements, for example, for a period of six months.

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