Prevention of Social Housing Fraud Act 2013

2013 CHAPTER 3

4   Unlawful profit orders: criminal proceedings

(1) This section applies if a person ("the offender") is convicted of—
    (a)   an offence under section 1 or 2, or
    (b)   an associated offence in relation to an offence under section 1 or 2.

(2) The court by or before which the offender is convicted—
    (a)   must, on application or otherwise, decide whether to make an unlawful profit order, and
    (b)   may, if it considers it appropriate to do so, make such an order, instead of or in addition to dealing with the offender in any other way.

(3) An "unlawful profit order" is an order requiring the offender to pay the landlord an amount representing the profit made by the offender as a result of the conduct constituting the offence.

(4) If the court decides not to make an unlawful profit order, it must give reasons for that decision on passing sentence on the offender.

(5) The amount payable under an unlawful profit order must be such amount as the court considers appropriate, having regard to any evidence and to any representations that are made by or on behalf of the offender or the prosecutor, but subject to subsections (6) and (7).

(6) The maximum amount payable under an unlawful profit order is calculated as follows—
    Step 1
    Determine the total amount the offender received as a result of the conduct constituting the offence (or the best estimate of that amount).
    Step 2

Deduct from the amount determined under step 1 the total amount, if any, paid by the offender as rent to the landlord (including service charges) over the period during which the offence was committed.

(7) Where an unlawful profit order has been made against the offender under section 5, an order under this section may only provide for the landlord to recover an amount equal to the aggregate of the following—

    (a) any amount by which the amount of the offender's profit found under this section exceeds the amount payable under the order made under section 5, and

    (b) a sum equal to any portion of the amount payable under the order made under section 5 that the landlord fails to recover,

and the landlord may not enforce the order under this section, so far as it relates to a sum mentioned in paragraph (b), without the leave of the court.

(8) Subsection (9) applies where the court considers—

    (a) that, as well as being appropriate to make an unlawful profit order, it would be appropriate to impose a fine, and

    (b) that the offender has insufficient means to pay both—

        (i) an appropriate sum under an unlawful profit order, and

        (ii) an appropriate sum under a fine.

(9) The court must give preference to making an unlawful profit order (though it may impose a fine as well).

(10) If the amount required to be paid by a person under an unlawful profit order is not paid when it is required to be paid, that person must pay interest on the amount for the period for which it remains unpaid.

(11) The rate of interest is the same rate as that for the time being specified in section 17 of the Judgments Act 1838 (interest on civil judgment debts).

(12) Sections 131 to 133 of the Powers of Criminal Courts (Sentencing) Act 2000 (supplementary provisions about compensation orders) apply to unlawful profit orders as if—

    (a) references to a compensation order were to an unlawful profit order (subject to paragraph (d)),

    (b) references to the compensation to be paid under a compensation order were to the amount to be paid under an unlawful profit order,

    (c) section 133(3)(a) and (b) were omitted, and

    (d) the reference in section 133(3)(c) to a confiscation order under Part 6 of the Criminal Justice Act 1988 or Part 2 of the Proceeds of Crime Act 2002 or an unlawful profit order (or both) were to such a confiscation order or a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000 (or both).

(13) In this section "the landlord" means the landlord under the tenancy in respect of which the offence was committed.