

No answer, no entry: For landlords when requests for entry to a property are refused and/or ignored

Nick Coffe (00:00):

Hello and welcome to another episode of TW Law Talk, the podcast from Taylor Walton where we explore the legal issues that affect people, businesses, and property owners every day. I'm Nick Coffe, and today we're looking at a situation that can become surprisingly difficult and surprisingly expensive. What happens when a landlord needs access to a property to carry out repairs or inspections, but the tenants simply won't let them in? It might sound like an easy problem to solve, but the law isn't quite that simple. We'll discuss when an access injunction may be necessary, the practical steps landlords should take before going anywhere near a courtroom, and why even obtaining an injunction doesn't always bring the matter to an end. Joining me today is Saljuq Haider, partner in the commercial litigation department at Taylor Walton, and his colleague Isabella Mason, who works across their commercial property and property litigation departments.

Nick Coffe (00:48):

Juq, you're an old hand at this. Isabella, I think it's your first one, isn't it? Hello to both of you. Should we start at the very beginning? Because I mentioned there in my introduction that this topic sounds surprisingly straightforward on the face of it. What can a landlord do when a tenant simply refuses to allow access to a property? I would've said this podcast will be two minutes long and you'll say, tell the tenant to leave, but the reality is much more complicated.

Saljuq Haider (01:13):

Yes, it is, Nick. You would've thought that a landlord's trying to access his own property, it's a no-brainer. He would just knock on the door, say there's an issue, and ask the tenant to go into the property. And in an ideal world, the tenant will be entirely compliant and say, "Welcome in." But that in our experience does not happen. The situation is vastly more complex.

Nick Coffe (01:40):

See, I would imagine, and I'm always the lay person in these discussions, Isabella, I would imagine that if you own a property, you have a right of access and the tenant is just there because they're paying you a rent, but it's not their property. But I guess this centres around the fact that being a tenant does afford you certain very strong rights.

Isabella Mason (01:57):

Yeah. So the starting point is to look at the lease or the tenancy agreement where commonly you'll find a clause giving a landlord rights to enter the property in respect of works that need to be carried out or for general inspections to look at the condition of the property. And the tenant has an element of control in those situations because a landlord can't just walk in at any time of their choosing, but they have to give reasonable notice to the tenant, usually in writing and usually on three days' notice, except in the case of emergencies. In leases, tenants have what's called exclusive possession. So they are able to occupy the property without interruption by any third parties. And if a landlord just walks into a property occupied by a tenant whenever they want, that's actually trespass on the part of the landlord. So a tenant has to consent to the landlord coming into the property.

Nick Coffey (03:07):

And you mentioned a reasonable timeframe. Does there have to be a reasonable reason to go in? I mean, you talked about repairs, but I'm guessing that that range, that spectrum of reasons is quite large.

Isabella Mason (03:18):

It really depends on how the relevant access clause is worded in the lease. They can be as broad or as restricted as the draftsman of the documents has chosen, but ordinarily you would expect to see an access provision allowing a landlord to enter a property for just general inspections. There doesn't have to be any disrepair. It could just be you're checking up on the property, want to make sure it's all in order, or there is a reported issue and you may need to carry out some investigative works to actually identify what the problem is before you can then carry out full remedial works.

Nick Coffey (04:04):

Juq, what about annoying landlords? Because there must be landlords who just want to exert control and can't imagine not seeing their property on a regular basis. What happens with those?

Saljuq Haider (04:13):

I think there's a delicate balancing act because you'll have some landlords that are overexuberant is probably the best phrase to use. And I understand that because you have a landlord, it is their property. They are merely letting it out to a tenant and they want to ensure that their property is kept in a good condition. So they have a vested interest in making sure that the property is kept in a good condition, good repair, whatever the case may be. And I do think there's a delicate balancing act between a landlord who is constantly badgering a tenant, which must not happen, cannot happen, and the lease protects tenants in that situation. And on the flip side, you'll have a landlord which is a totally absent landlord and a tenant will be complaining about a scenario where there's mould or whatever the case may be, and the landlord is just not engaging.

Saljuq Haider (05:19):

And that's more common in situations where you have a landlord that's overseas, maybe an investor landlord. So there is a diverse or a broad range of landlords that you'll come up against and we represent quite a lot of them.

Isabella Mason (05:34):

I think it's also important to add that landlords have an interest even where the tenant owns the properties. You commonly see this in a long lease situation where a tenant or a leaseholder owns their flat within a building. The landlord, also known as a freeholder, owns that building and has a vested interest in the value of the building. And whilst they don't own the leasehold interest of the flats, they are responsible for the overall structure of the building. So any issues in the individual flats will have a knock-on effect for the landlord's overall investment.

Nick Coffey (06:13):

So you're starting from a position of everyone having goodwill and good faith. The landlords mean well, the tenants mean well. If you've got a situation where a tenant is refusing or perhaps even ignoring requests for access, I know you're both lawyers. I'm not going to say you like litigation, but it's what you do. You are there at the sharp end when it goes wrong, but you also both are proponents of trying to ensure it doesn't go wrong in the first place. So what can a landlord do before they even think about court, before they hit the, is it a red button or a green button to litigate?

Saljuq Haider (06:44):

The nuclear button.

Nick Coffey (06:46):

That's the one. Well, what are their options, their non-court dispute resolution options before they hit that nuclear button to use the phrase?

Saljuq Haider (06:52):

The starting point must be for a letter to be written. I always say this, that documenting evidence is so vital. You should be trying to contact the tenant by reasonable means. And by that I mean sending them a letter if you are on WhatsApp to them, send them a WhatsApp text. But try and put it in writing to say, hi, in the friendliest way possible, I need to access the property. We need to access it for the following reasons. We're going to give you what is deemed reasonable notice.

Nick Coffey (07:34):

This afternoon.

Saljuq Haider (07:35):

Yeah, this afternoon. Now that will be deemed as unreasonable. And what Isabella was referring to is sometimes within the lease itself, there'll be provisions as to how much notice is given. But often these clauses will simply say reasonable notice. And there's vast swathes of case law as to what is reasonable and it's very fact specific, Nick. It depends on the circumstances. If there is water pouring from the ceiling above and you need emergency access so that the property is not damaged and in fact it's not going to another tenant downstairs, it's slightly more urgent. And what's reasonable in that situation is slightly different to we need to inspect the windows because we're thinking of replacing them. So it's very fact specific. It depends on circumstances as to how much notice you should give.

Nick Coffey (08:31):

And Isabella, can neighbours be useful?

Isabella Mason (08:34):

Neighbours can be very useful in these situations. So whilst the starting point for landlords is to always make sure you've followed the entry provisions in the lease, you've written to the tenant, you've tried all avenues to get hold of them, knocking on the door, letters, texts, phone calls, as Juq has mentioned. It doesn't hurt to also try and knock on the neighbour's door. So if there's a neighbour next door, downstairs, upstairs, see if anyone knows where this tenant is. Do they live there? We've had some situations in the past with cases where the tenant doesn't actually live in the property. So it appears that someone's living in there, but actually they're living abroad somewhere and there's just a big buildup of post at the property.

Nick Coffey (09:21):

Or they've sublet it.

Isabella Mason (09:22):

Or they've sublet it illegally. So you never truly know what's going on in that property as a landlord. And it's really important that you get as much knowledge as you can from the neighbours who are there on the ground every day.

Nick Coffey (09:34):

But that would make me nervous turning up and I would guess that I'd be better going with a third party, someone who can actually witness the fact that I'm not being threatening or aggressive or abusive or all the things that I would now be accused of if I was a landlord turning up unannounced.

Saljuq Haider (09:48):

Yeah. So I always think that there is, and in fact, a number of landlords will instruct us to get a third party service agent of some sort to knock on the door. It maintains a degree of distance between the landlord and the tenant if you're not particularly friendly, I would say. It's also very

good in terms of having a third party independently record their attempts to access the property or to contact the tenant.

Nick Coffey (10:22):

I love a movie. At this point, do we knock down the door?

Isabella Mason (10:25):

Not quite. So once you've exhausted all your different avenues to try and get hold of the tenant, the next step is to consider what's the issue that you're trying to get into the property for? Are you simply trying to inspect or as Juq said, is there water pouring out the ceiling, spreading into other parts of the building where it's starting to affect other neighbours' common areas? That then informs your next steps. So let's say for example, there's a really substantial leak, it's spreading into the rest of the building, the water needs to be stopped imminently. We would recommend to landlords in that situation that you need to get access there and then a court order is not going to be possible because a court's not going to give you an order within 24 hours. 24 hours might even be too much in that situation. So we recommend that if it's a genuine emergency, action needs to be taken right there.

Isabella Mason (11:25):

And then call the police, get them to assist with taking down the lock, taking down the door, whatever needs to be done. And they're there as your witness to make sure it's all done properly and safely so that if there is any issues with the tenant being inside or the tenant subsequently wants to raise a dispute, the police are there as your witness.

Nick Coffey (11:46):

Because of course in terms of how bad it can get, if you go days and dare I say weeks and months without having access, and if there is that water leak, then the consequences not only for that property, but also for the neighbours and other properties around it can be really serious.

Isabella Mason (12:01):

Yeah, it can make the situation for a landlord far worse because I think a leak is the most common situation that a landlord might face. So if you've got a leak that's constant, maybe a slow leak over the course of a few weeks or months even, it's soon going to emanate from outside of the flat in question that you're trying to get into. And I'm talking about this in the situation of a flat in a building with other flats where other individuals are going to be affected. So it then starts to become more problematic for the landlord because the landlord might start getting complaints from other tenants or leaseholders in that building complaining of damage to their property or damage to the common areas. And that then puts an onus on the landlord to do something about it. And that can arise in a few different ways.

Isabella Mason (12:55):

Either it puts an onus on the landlord to actually carry out the repairs themselves and it obviously then becomes quite costly for the landlord or the landlord may face pressure from the tenants, the other tenants who are affected to bring a claim against the disobedient tenant because a lot of leases do contain a clause saying that a tenant can ask a landlord to bring a claim on their behalf against another tenant who's not complying with their obligations.

Nick Coffey (13:27):

And not doing so is negligent at that point.

Isabella Mason (13:29):

Exactly. And it can put the landlord in a difficult position because they've got a contractual obligation to take action on behalf of the other tenants provided the costs are paid.

Nick Coffey (13:41):

So Juq, if you are really stuck, is this where the legal term access injunction starts to come into play?

Saljuq Haider (13:48):

Yes, absolutely. So you've exhausted all means to gain access through amicable routes with the tenant. Those have failed. We now need to go to the nuclear option as we refer to it as, and go for an injunction in court. That can be a costly exercise, which is why we try to avoid it for clients.

Nick Coffey (14:11):

Emotionally as well as financially.

Saljuq Haider (14:13):

Absolutely. And we want to bring a conclusion to these matters as swiftly as possible to avoid incurring costs for clients. But sometimes there is no other option but to issue an injunction at court and the process needs to be considered very carefully. You need to apply to court. There will be a hearing before a judge. The judge will want to probe as to whether it is appropriate to grant the injunction. In order to do so, you have to have copious amounts of evidence in order to persuade a judge that there is no other option here. And this is where the evidence that I referred to earlier, where you need to build up a pool of evidence to show all of the attempts and steps you've taken to gain access or to ask the tenant for access, they've all failed. Where else do we go? We need to access the property to undertake investigative works, for example.

Saljuq Haider (15:18):

You then have a hearing listed. The judge will either decide in your favour and say -

Nick Coffey (15:23):

What kind of timeline?

Saljuq Haider (15:24):

So an injunction by its very nature, injunctions are meant to be emergency applications, but in circumstances where it is not a screaming urgency, for example, Isabella referred to an ongoing leak that requires investigation. In that situation, you could probably expect a hearing date within a couple of weeks. But even at that first hearing, and we've gone through this fairly recently for a client, at that first hearing, the judge refused to provide the injunction because she wanted us to take further attempts. So the hearing was adjourned. We had to make further attempts to contact the tenant before then coming back to court and finally being granted with an injunction. So the order, the injunction itself says you have the right to access the property. What that means in practice is slightly different.

Nick Coffey (16:31):

So it's not quite a fait accompli at that point. You've got the injunction, but that doesn't mean that you then walk through the front door.

Isabella Mason (16:36):

So the injunction itself puts the onus on the tenant to facilitate the access. So it's not a positive action of the landlord going through the door. It's the tenant's got to open the door from the inside of the property. So it's all well and good having the injunction telling the tenant to do that, but you've actually then got to get the tenant to do it. And if they're being very evasive, they're ignoring any requests for access, they may choose not to comply with the access injunction. And that in itself does carry repercussions for the tenant because the very nature of an injunction carries with it contempt of court if it's not complied with. So the tenant faces risks of imprisonment or fines. But often for a landlord, they're still stuck because they've gone all this way to get the access injunction. It says the tenant's got to facilitate access.

Isabella Mason (17:35):

They try and contact the tenant to arrange a date and time to let them in the property, and the tenant is still disobeying the order. And then that's when landlord needs to have a think about, okay, what's the next step to actually try and get into that property?

Nick Coffey (17:50):

And the next step is?

Isabella Mason (17:52):

So the next step is you're looking at enforcement of the access injunction. And this is a grey area really because there's a lot of conflicting case law. I should mention that they're all county court cases, so there's no prevailing authority on this particular point, but it's not quite clear whether a landlord can enforce the access injunction by breaking down the door if the tenant doesn't let them in.

Nick Coffey (18:23):

Even after all these decades and centuries of case law, it's still not clear.

Isabella Mason (18:27):

It's still not clear.

Nick Coffey (18:29):

Good news for you lawyers.

Isabella Mason (18:31):

Very good news for us lawyers. And until a higher court such as the High Court actually gives a decision on this very issue, landlords are going to be in the same position and essentially going to have to take a gamble to take the next step. So the next step involves applying to court under a provision in the Civil Procedure Rules. The provision is called Rule 70.2A, which -

Nick Coffey (19:01):

Nice and clear as these always are.

Isabella Mason (19:03):

Very clear. So in very simple terms, it's an enforcement provision that allows a party to ask the court to make an order that the action the disobedient party was meant to carry out pursuant to the access injunction is in fact carried out by either the landlord, so the party that made the application in the first place or another party. But the issue is on the interpretation of this particular provision and actually whether in fact it does give licence to a court to allow a landlord to break down the door when the action the access injunction stipulates is facilitating access by opening the door from the inside.

Nick Coffey (19:51):

I'm going to invoke an old rule of presenting and it's the explain to me like I'm five bit here because I think it's fair to say that what you're describing there is contradictory, slightly confusing, and if I was a landlord, slightly worrying because you've gone through this process, you've asked nicely, you've spoken to the neighbours, you've knocked on the door with your friend as a third party, you've sent letters, you've spoken to the lawyers, you've made an application to court, you've jumped through those hoops, you've got an injunction, but the court then can't quite work out if it even has the power to enforce that injunction and whether you have the power to enforce it yourself. Explain to me like I am five because I'm genuinely confused at that point.

Isabella Mason (20:35):

So that's exactly it. It's the issue of whether the court actually has jurisdiction to say to a landlord, yes, you can break down the door. And the reason this issue comes about is because the provision I mentioned, 70.2A, in very strict terms, says the disobedient party, so that would be the tenant in this case, they had to carry out an act which was opening the door from the

inside of the property. 70.2A is there for another party to carry out that exact same act. So if we are looking at a strict interpretation of what that act is, is it's opening the door from the inside of the property. So a lot of judges are sort of in two minds as to whether breaking down the door is a completely different act altogether where they don't have jurisdiction to order that. And there is actually no statute on that point as well, or whether 70.2A

Isabella Mason (21:32):

can be expanded to allow a landlord to use force to get through the door because the overriding purpose is to facilitate access.

Nick Coffey (21:44):

And actually Juq, in a way, this now makes sense because if there was a blanket rule that said you can go and bust a front door down, then it would be the Wild West at that point. So does this nuance, this grey area, mean that judges then have the scope and the ability to take everything on a case by case basis?

Saljuq Haider (22:01):

Yeah, so it's very fact specific. A court will judge the case on the facts before it. The issue that Isabella was talking about is that you never know what decision a county court is going to come to. So one judge will view it one way, a judge will view it another on another case, and that's why you have these conflicting judgments. And until we have a High Court decision, which is a High Court and therefore binding, there does need to be some clarity. But in terms of a practical solution here, which is really what we want to get towards, what does a landlord do? They've gone through all of these steps. They just want to get into the property. So we will have some clients who will say, "Well, we've taken your advice. We've gone as far as we can with the injunction." They clearly have no respect for authority in a court order.

Saljuq Haider (23:02):

I'm just going to break down the door now because I have to. It's my property. And what we then have to advise the landlord about is what are the repercussions if you do that?

Nick Coffey (23:14):

Can you be arrested for criminal damage on your actual own property?

Saljuq Haider (23:18):

Yes. So if you are going to kick down a door, there are issues with a crossover between criminal law and civil law. We're dealing with the civil aspects, not the criminal aspects, but potentially the police could be called sort of outside the scope of this podcast on the criminal side. But certainly what we would be advising landlords about is that they are trespassing onto bizarrely their own property because the tenant is protected by the covenant of quiet enjoyment and various other provisions under the lease.

Isabella Mason (23:57):

And the overriding principle is that a tenant has exclusive possession, so they have the right to exclude third parties, which includes the landlord from that property. So a landlord barging into the property is a trespass, which is an actionable claim that the tenant might have against the landlord. And there are some situations that consider whether the front door is the landlord's property or not. And some cases have determined that the front door itself is the property of the landlord, but as soon as you step over that threshold, you are within the demise of the tenant and the landlord is at risk there and in any event would be required to repair that door and potentially could be liable for damages claimed by the tenant. Obviously, the tenant would need to demonstrate what losses it's suffered as a result of the landlord trespassing into the property.

Isabella Mason (24:56):

Essentially, the landlord just barging into a property attracts a whole host of problems for itself. So our advice is always stop and think before you go and do that. We always advise against it, but some landlords, even with our advice, may take more practical, quick approach of just getting into the property, taking down the lock.

Saljuq Haider (25:17):

It's a commercial decision ultimately for the landlord because they've been advised on what the risks are, a damages claim for trespass, but really what are the damages that the tenant is going to suffer? So from a commercial point of view, as a commercial landlord trying to access their own property, so to speak, they may just come to a decision and say, "Thanks. We've gone as far as we can. I'm going to kick down the door. I might have police backup there because we don't know what we're going to find inside. Kick down the door and I'll deal with the repercussions afterwards."

Nick Coffey (25:51):

Because at least I've sorted my property out.

Saljuq Haider (25:53):

Yeah, because otherwise, where is the end? And as I said right from the start, our objective is to end cases as swiftly as possible for clients not to have this protracted legal debate and court process.

Nick Coffey (26:08):

Talking of clients, you're both active lawyers, so this next question is laced with pitfalls because you're going to talk about cases that you know well, but I think it would be useful obviously without identifying and disclosing names. Just to understand a little bit what the cases you work on teach you about the practical challenges of obtaining an access injunction.

Isabella Mason (26:31):

So just based on our experience, there can be a lot of hurdles for a landlord just to get to the point of getting the access injunction. In some cases that we've dealt with, even just trying to serve. So when you make the claim for the access injunction, you've got to serve those papers on the tenant. But if the reason you're bringing the claim is because you can't get hold of the tenant, it makes serving those proceedings very difficult. And in this particular case, on numerous occasions we had to instruct process servers to attend the building in which the flat was situated. And even then the agent was having a lot of trouble and had to attend the property about two or three times because it was sort of a coded door. So they couldn't actually get in because they didn't have the code. And then when they got inside, there was no secure postal boxes for the flats.

Isabella Mason (27:37):

They were just pigeonholes. So then there's a risk that you can't actually show to a court that you've personally served the documents.

Saljuq Haider (27:45):

And this was the issue.

Isabella Mason (27:46):

This was one of the issues.

Saljuq Haider (27:47):

Yeah. Because when we went to the first hearing on this particular matter, the judge said, "I don't think you've made enough attempts." And of course it's frustrating for us as lawyers and indeed for the client that what more could we possibly do to show that we've attempted so many times to get in touch with the tenant? That wasn't enough. The judge said, "I want you to go away. I'm going to adjourn this hearing. I want you to make further attempts before I even consider it."

Nick Coffey (28:18):

Is the power with the tenants?

Isabella Mason (28:20):

There does appear to be a trend in the justice system of courts being quite tenant friendly. And I think that's more common in a residential context where the tenants you are dealing with live in those properties and they may have sensitive issues which explains why they're not responding to the landlord.

Saljuq Haider (28:43):

And they deserve protection.

Isabella Mason (28:44):

And they deserve protection because some of them may have mental health issues that puts them in quite a vulnerable position. So judges need to be really, really careful and consider everything first before just allowing a landlord to go into a property where you don't know what the true situation is within that property. So it's understandable why the courts are so cautious, and quite often in these situations, the courts will want to make sure that enough attempts have been made to contact these tenants.

Saljuq Haider (29:21):

Yes. And I think there is a distinction between the situation you are describing and a commercial landlord or a tenant who it may be is abroad, is illegally subletting. And I think it's very important that those facts are put across to the court because there's a clear distinction between that scenario and the situation that you were talking about with the need to protect vulnerable tenants.

Nick Coffey (29:53):

It's been quite an eye-opener, this, because when you first talked to me about the subject matter, I thought, this is quite obvious, surely this is where it's going to go, but it's going very much a different direction. And for me to summarise what I've learned today, and I'm sure our listeners have as well, is that a lease does not give a landlord free rein to do what they want. They can't just bang the door down. They can't kick people out. If you don't follow due process correctly, the consequences can be really quite serious and quite costly as well. And in many ways, the big surprise is that even if you do get an injunction granted, that doesn't mean that the tenant's going to just roll over and comply. And the whole process is not, to use a very non-legal term, not a slam dunk win for the landlord.

Nick Coffey (30:42):

It's complex.

Saljuq Haider (30:43):

It is extremely complex. And that's why advice is needed right from the start. And the earlier you get the advice, the better because our aim is to make contact with tenants as swiftly as possible by whatever reasonable means we are entitled to without having to get embroiled in lengthy, costly legal process. I should also add, and we did touch upon it slightly, that once you get the injunction, there is a penal notice that is attached to that court order. And what it does is it puts the tenant in a position where if they do not comply, they will be held in contempt of court. And so having that order, and that can lead to an arrest. So it converts into a criminal sanction, if you like, that a tenant is more likely to play ball with.

Isabella Mason (31:43):

But even then, from our experience, the penal notice doesn't necessarily carry the weight it should do. And the overriding concern for the landlord is not about the tenant being held in

contempt of court, but it's just get me in my property. How quickly can I get in to inspect or carry out the works I need to do? And that is the primary concern for landlords.

Saljuq Haider (32:08):

I think there's a distinction also between a true emergency where you have water pouring through the roof and it's going to affect the superstructure of the building. You need to get in there quick. And in those circumstances, we're not suggesting for a moment that, can you wait a couple of weeks for us to get an injunction? You need to call the police and force entry in those very severe emergencies. In others, you have to follow due process.

Nick Coffey (32:37):

And I think Juq, you were the first, in all of these many episodes we've done in this series, you were the first to say the key with lawyers is engage them before the problems either started or has really taken hold. And I've seen this in all these episodes that yeah, you've got the extreme end, the litigation and the emergency part, but actually fundamentally you are happiest if people are engaging you early, making sure their contracts are correct, making sure their processes are correct so that you can just be the sort of quiet, gentle advisor rather than the nuclear option.

Saljuq Haider (33:07):

Exactly right.

Nick Coffey (33:08):

Very, very interesting today. Thanks to Juq, thanks to Isabella as well. And thanks for explaining what can be, well, a surprisingly complex area of law in general and property law in particular. As we've heard today, while landlords may have legitimate reasons for needing access, there are legal processes that have to be followed and taking matters into your own hands could end up being far more costly physically, emotionally, legally, and practically than doing things properly. If you'd like to find out more about the work of the property litigation team at Taylor Walton or any of the legal services that they provide, you can of course find details on the Taylor Walton website, which is taylorwalton.co.uk. And if you've enjoyed this episode, there's a whole raft of other episodes in this series which really touch upon the legal matters, the legal questions that touch you, whether you're members of the public or part of the legal community as well.

Nick Coffey (33:57):

Thanks for listening. We'll see you next time on TW Law Talk.