

Croydon London Borough Council v Kalonga [2021] EWCA Civ77

On 27th January 2021 the Court of Appeal handed down their decision in the case of *Croydon London Borough Council v Kalonga [2021] EWCA Civ77*. Ms Kalonga was a flexible tenant of Croydon under a five year fixed term tenancy agreement. Croydon sought possession within the fixed term on Grounds 1 and 2 of Schedule 2 of the Housing Act 1985, relying on allegations of non-payment of rent and anti-social behaviour. The tenant defended the claim and argued that in order to terminate a flexible tenancy within the term rather than at the end of the term, the landlord had to do so under section 82 (3) of the Housing Act 1985 using forfeiture.

This issue was referred to the high court where it was held that in order for a flexible tenancy to be terminated within the fixed term, there had to be a forfeiture clause in the tenancy agreement, in the absence of such a clause the tenancy was not a fixed term tenancy "subject to termination by the landlord". If there was a forfeiture clause, the tenancy could be terminated. It was held that Croydon's tenancy did not have such a forfeiture clause and therefore would have to wait until the end of the fixed term to terminate the tenancy.

Croydon appealed to the Court of Appeal and it was held that the flexible fixed term tenancy must contain a forfeiture clause. In addition to have such a clause, the landlord needed to terminate the fixed term element of the tenancy using forfeiture rather than the usual possession that Councils are familiar with.

The Kalonga case is still under appeal; so to knowingly proceed with possession claims conscious of this decision as it stands, will open up landlords to criticism and further could result in cases being dismissed and costs being awarded against it.

This page is intentionally left blank