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CH/2805/2007 - Interim Decision

Case law

Case law date	17/10/2007
Commission/Judge	Commissioner Turnbull

Housing-related support provided by landlord – relevance of the landlord's motives

THE BACKGROUND AND OUTCOME

The claimant had a severe learning disability. He had previously lived in a registered care home managed by Home Farm Trust Ltd ("HFT"), which also provided care, supervision and support to the claimant. In August 2004, HFT decided to close that accommodation. HFT worked with Golden Lane Housing Ltd ("GLH") to secure the appropriate new housing needed for each of the residents of the residential home. A 5 bedroomed semi-detached house ("the Property") was acquired by GLH specifically for occupation by the claimant. HFT continued to provide care, support and supervision to the claimant. The rent under the tenancy granted by GLH was £177.19 per week. The local authority, however, decided to restrict the amount of HB payable to £50 per week, based on a rent officer's determination. The claimant argued that the accommodation was "exempt accommodation" but his appeal was rejected by a tribunal. Commissioner Turnbull however, set the tribunal's decision aside as wrong in law for inadequate reasons.

PRACTICE POINT

The tribunal gave the following brief reasons for rejecting the claimant's contention that GLH itself provided some "support" to the claimant:

- "Although I accept that GLH acts as a landlord in a different way to that of an ordinary commercial landlord, for example by providing a DVD of the tenancy agreement and providing documents in accessible format, the actual care, support or supervision provided, does not in my view extend beyond a minimal amount. It seems to me that GLH would be willing to act as a backup if necessary but the main care, support and supervision is provided by HFT. In reality it seems to me that GLH has adapted its procedures in order to enable it to respond as a landlord to the usual array of tenants' requirements and complaints but from a landlord's point of view rather than providing care, support or supervision for the benefit of the tenant."

The Commissioner held that the tribunal's reasoning involved a number of errors of law.

- First, the tribunal did not make sufficiently detailed or precise findings as to the support made available and provided by GLH to explain its conclusions that the support "did not extend beyond a minimal amount".
- Secondly, it was unclear what significance the tribunal attached to its

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statement that "the main care, support and supervision is provided by HFT". If the tribunal considered that the fact that HFT were the main provider of care, support and supervision meant that GLH were not providing "support", then that conclusion was wrong for the reasons given in paragraph 21 of CH/3811/2006 (reported as R(H) 7/07).

- Thirdly, the tribunal wrongly assumed that if a landlord acted in a manner that was more supportive to its tenants than an ordinary commercial landlord, then this could not amount to "support" as the landlord would be acting in its own interest rather than in order to benefit the tenants. The Commissioner rejected this argument for the following reasons:

"First, I very much doubt whether the landlord's motives are relevant. It seems to me that the question whether the landlord provides "support" to the tenants must be answered by reference to what the landlord actually does, rather than by reference to its motives for doing it. Secondly, and in any event, it does not seem to me that the Tribunal came close to justifying its finding that GLH's procedures had been "adapted" "from a landlord's point of view" (i.e. presumably in its own interests) rather than in order (or at any rate partly in order) to support the tenant. In a case where the landlord is a charity with the objects of (or which presumably include) providing accommodation for people with learning difficulties, a conclusion that the landlord was not acting at least partly in the interests of its beneficiaries, but in its own interests, would require clear justification." (At para. 24).

Having set the tribunal's decision aside by way of an interim decision Commissioner Turnbull directed that he would hold an oral hearing to redetermine the appeal rather than remit the case back to a new tribunal. The final decision can be found in CH/779/2007 (relating to GLH property in the London Borough of Hounslow), CH/1246 and 1247/2007 (relating to a GLH property in Oxford) and CH/2805/2007 (the instant case), dated 28 July 2008, reported as R(H) 4/09.