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DW v Oxford CC [2012] UKUT 52 (AAC) (CH/1344/2011)

Case law

Case law date	15/02/2012
Commission/Judge	Judge Turnbull

Whether landlord providing support to tenant - adaptations and the equality legislation – resolving disputes between tenants

The background and outcome

In this case the housing provider was Renaissance Social Housing Limited ("Renaissance") and the bulk of the care, support and supervision was provided by Oxford County Council ("the Council") through its social services department. HB was initially paid in full, on the basis that the accommodation was "exempt accommodation". In 2004, the local authority decided to restrict HB. An appeal was dismissed by a tribunal in 2005. In March 2007 the Council and Renaissance entered into a new agreement under which Renaissance agreed to perform various support services for the tenants and a tenant support officer was employed, part-time, in order to carry out these duties. The local authority again refused to pay HB under the "exempt accommodation" provision. When a tribunal dismissed the appeal the claimant appealed to the Upper Tribunal. Judge Turnbull considered the support Renaissance said it provided to its tenants over a number of difference categories. This included, arranging adaptations to help the tenants cope with their disability. Renaissance had employed a tenant support officer who had arranged a number of works, some of which required an occupational therapist referral or an application for a Disabled Facilities Grant on the tenant's behalf. Examples of the works done included: (i) adaptations to a bathroom, including handrail, (ii) a fixed seat in a shower, (iii) additional external lighting due to fall of a tenant, (iv) rails to front door, and (v) a kitchen extension. The tribunal however, discounted this assistance on the basis that would have been provided by any social landlord as it is a requirement under the equality legislation. The Upper Tribunal set the tribunal's decision aside as wrong in law but substituted its own decision concluding that the support provided and made available to both the claimant and the other tenants by the tenant support officer was not more than a minimal extent and therefore dismissed the claimant's appeal.

Practice Points

Arranging adaptations to help the service user to cope with their disability

After reviewing the duties owned under the Equality Act 2010, Judge Turnbull concluded that a social landlord would only be under a duty to provide "auxiliary aids", which are confined to fairly minor work, such as the replacement of a tap or a

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door handle (the Equality Act 2010 (Disability) Regulations 2010, (SI 2010/2128, reg 8). The Judge doubted whether any of works carried out by Renaissance would have been required under the Equality Act 2010 and this meant the tribunal had been wrong to conclude that any social landlord would have made the arrangements Renaissance had made to undertake the works in this case (paras 37-41).

Advising & assisting service users in relationships & disputes with neighbours

As a general rule, assistance with dispute by the landlord would not count as "support" as any landlord arranging separate lettings of rooms in a house would need to have regard to allegations of challenging or anti-social type behaviour of other tenants. For if the landlord failed to do so it could give rise to breaches by the landlord of its duties to the other tenants, as well as affecting the lettability of the other rooms in the house. The Judge did accept that if a landlord is letting to tenants with disabilities which render them more likely to be guilty of, or unduly susceptible to, anti-social behaviour then the landlord's readiness to intervene would qualify as "support" in those circumstances (para 53).

Comments on the nature of the test for "support"

At the end of the decision Judge Turnbull reflects on the nature of the test for "support" and acknowledges that it is inherent in the test that the outcome of an appeal can be different for two landlords even where the type of assistance given to the tenants is essentially the same, because so much depends on the precise circumstances of each case:

78) I am very conscious, of course, that I reached the opposite conclusion in Chorley BC v IT (HB) [2009] UKUT 107 (AAC) and CH/4432/2006, in both of which I also substituted my own decision for that of the First-tier Tribunal. It could be argued that the landlords in these types of case are all offering much the same type of service. The tenants all have very substantial support from elsewhere in connection with day to day living, and there is a limit to what support, going beyond ordinary housing management, even a very supportive landlord can in practice provide. Reliance is always placed on broadly the same categories. It can be argued that differences in the outcome do not reflect any genuine difference in how supportive the landlord is prepared to be, but rather differences in (i) the efficiency with which the landlord has marshalled evidence in relation to matters such as the extent to which it has carried out repair and maintenance, and adaptations, which it was not (or would not but for the tenant's disability have been) bound to carry out and (ii) what the particular tenants have happened to need in those respects in the period for which evidence is available. It can be argued that the outcome should really be the same in all such cases.

79) I think that there is much force in those points. Apart from anything else, it would obviously be unsatisfactory if a tenant's accommodation were capable of moving in and out of the "exempt accommodation" definition in accordance with the extent to which the available support was actually required over different periods of time. But if the results are unsatisfactory, that seems to me to be a consequence of the need to decide whether "support" is "provided" to more than a minimal extent. It cannot in my judgment be enough that the landlord is prepared to provide the support – i.e that it is available to the tenant - unless there is a real

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prospect that the tenant will need it on something more than a very occasional basis. I find it difficult to answer that question without having close regard to what the landlord has actually done. It is unfortunately inherent in such a test that some landlords may just about scrape over the line (as in the two cases which I referred to above), while others will not do so."