COMPLEX HOUSING MATTERS – A CASE STUDY

Pathfinder Legal Services Ltd

BACKGROUND

Part VII of the Housing Act 1996 sets out the criteria for housing and advising people when they find themselves to be homeless, intentionally, or unintentionally.

Often, licences of temporary accommodation are granted to those individuals while their application is considered, and if required, more permanent accommodation is sourced for them. Licences afford more flexibility to the landlord as they do not provide as much security as a tenancy does. For example, in some licences there are no rights of exclusive possession granted to the licensee, meaning support or housing staff can enter the licenced accommodation as and when required, and they have a key to the property for that purpose. This is obviously very useful if the licensee is vulnerable or unwell, for example.

However, granting licences does not always mean it will be plain sailing for local authorities when they must act strategically to manage their housing stock. In the case of vulnerable licensees who do not comply with their licence agreement, nor do they comply with any notice to quit that may be served on them, cause nuisance, anti-social behaviour, or damage to property, it will still be necessary to attend court and seek a possession order in the usual manner.

A recent case I was instructed in was exactly such a case. An excluded licence of a small self-contained bedsit was granted to an individual (A), who had a history of substance abuse and criminal behaviour. The licence agreement contained clauses which allowed the landlord a right to move the licensee at any time, that they would keep a key to the property, and that any notice, including a notice to quit, will be deemed served by posting through the door.

When nuisance and anti-social behaviour escalated and police were regularly in attendance at the property, and after many attempts were made to engage and support A to no avail, a notice to quit was served in accordance with the licence agreement. A did not comply with the notice and did not vacate. The local authority sought legal advice in the first instance before proceeding further. It was known that A had a variety of mental and other health issues. In view of this, the local authority landlord was aware that the standard procedure for bringing a licence to an end would not be appropriate here.

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THE LAW

The Equality Act 2010 section 6 states:

(1) A person (P) has a disability if –
  a. P has a physical or mental impairment, and
  b. The impairment has a substantial and long-term adverse effect on P's ability to carry out normal day to day activities.

Disability is a 'protected characteristic' as specified in s.4 of the Equality Act 2010 along with eight other characteristics. This means that anyone with any of these 'protected characteristics' has a right not be discriminated against on the basis of their characteristic. The nine characteristics are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.

In addition to this, local authority landlords must comply with the Public Sector Equality Duty, also known as the PSED, which is stated at s.1 of the Equality Act 2010:

"1 (1). An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage."

Where it is known or believed that an individual has a protected characteristic as defined by s.4 above, the local authority will need to carry out a PSED assessment. A standard proforma document can be used for this assessment, and our firm can assist with such a template if required. This is an important evidential item should the matter go to trial as it shows due regard has been given to the individual, their characteristic(s) and their circumstances prior to legal action being taken. The PSED assessment can however be done at any time and should be done more than once throughout the course of legal proceedings if situations change.

In my current case, we did not have a formal PSED assessment document, but helpfully my client could show detailed and thorough note taking and documentation evidencing multiple meetings between all departments involved where A's disabilities were discussed and considered against the backdrop of the legal claim for possession against them. We were able to attach this evidence to witness statements showing the consideration given.

To add to this, s.15 of the Equality Act 2010 states:

"15(1) A person (A) discriminates against a disabled person (B) if –
  (a) A treats B unfavourably because of something arising in consequence of B's disability, and
  (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim."

There should be a clear causal link between the behaviour and the protected characteristic, and the action being taken must be deemed to be disproportionate for there to be a finding of discrimination.

In my case, due to a lack of engagement from A with the myriad support agencies involved, it was difficult to establish a causal link between the characteristic and the behaviour. However, the court must also consider if the order sought by the local authority is 'a proportionate means of achieving a legitimate aim'. Here, the evidence of severe nuisance and anti-social behaviour was sufficient to establish that the possession order sought was proportionate in all the circumstances. All the other families occupying the other rooms in the building, some of whom were also vulnerable, had to be moved to other temporary accommodation due to the risk A's behaviour, and that of their associates, presented to them. This included a fire in the property, leading to an evacuation of everyone and attendance of emergency services. The police also obtained a closure order for three months from the Magistrates Court due to severe drug use in the property and the fact that the property was being used widely and by many people in the local area for that purpose.

Further, there is an overlap between the Equality Act 2010 as discussed above, and Article 8 ECHR which cannot be ignored:

Article 8 – Right to privacy

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protections of the rights and freedom of others.

The individual, A, in my case was represented by solicitors for several months at the start of proceedings who filed a defence on A's behalf. This defence pleaded both breaches of the PSED duty and Article 8 above. My client was able to show, through disclosure, witness evidence, and oral testimony at court, that due regard had been given to the individual and her circumstances and that overall, the action to seek possession of the property was a proportionate means of achieving a legitimate aim. As stated in point 2 above, the local authority was acting to prevent disorder and crime and to protect members of the public through this action.

OUTCOME

This case served as a reminder to me of the need for thorough and diligent file keeping and note taking in housing cases. Were it not for the diligence of my client, we may not have obtained a possession order in this case and other families may have been exposed to further risk of harm. In the end, the judge found that, taking all the information into account, the behaviour was so severe that possession of the property was the only option available to the local authority.

About Pathfinder Legal Services Ltd's Litigation Team

Our Litigation team cover all aspects of contentious work including Civil Litigation, Criminal Litigation, Education and Employment. From a small scale debt recovery matter up to a complex judicial review or a corporate manslaughter claim, we will be able to advise on all aspects of the court process and provide you with legal support from start to finish.

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About Pathfinder Legal Services Ltd

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If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at operations@pathfinderlegal.co.uk

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