

housing update

August 2008

Authority ordered to pay damages to couple with learning difficulties

The High Court has ruled that a local authority failed in its duty of care to two adults with learning difficulties who were subjected to a serious attack by local youths.

The authority was ordered to pay £97,000 in damages to the couple who were said to be like children in many ways.

The couple were married and rented a flat from Hounslow Borough Council. The court heard that before they married, the wife lived in the flat with her two children and had applied to be rehoused because of concerns over safety. The application was supported by her psychiatric nurse.

Social workers from different departments continued to express concerns over safety even after the husband had moved into the premises.

One social worker became aware of the threat posed by teenagers who gathered at the flat. Some allegedly had keys to gain entry and there were concerns that stolen goods were stored there. The husband was assaulted and there were



threats to burn down the flat. The social worker and a colleague wrote to the housing department requesting that the couple should be rehoused.

No such transfer took place, however, and the couple were later attacked by a group of youths who imprisoned them in the flat and repeatedly assaulted them over a weekend.

The couple then sought damages, submitting that the authority should have seen that they were in imminent danger and rehoused them to prevent an attack taking place.

The authority submitted that the acts and omissions of the housing and social services departments should be considered separately. However, the court held that the authority was a single entity and its different departments were duty bound to communicate and share the information that the couple were in danger.

There were a series of warnings which meant it was foreseeable that the couple and their children could be at risk of being harmed. Furthermore, the couple and the local authority were in a relationship that warranted a duty of care.

The authority should have invoked an emergency transfer to move them to safer accommodation. By failing to do so it had failed in its duty of care to the couple and was therefore liable to pay damages.

Tolerated trespasser wins appeal over mesne profits

The Court of Appeal has ruled that a tolerated trespasser's liability to pay mesne profits ends when he gives up possession and removes his belongings from the property.

This applies even if he retains the keys and does not tell the landlord he has left the premises.

The case involved Merton Borough Council and one of its tenants. The authority obtained a suspended possession order against the tenant for rent arrears and he became a tolerated trespasser on 11th February 2005.

He remained in the flat and then on 23rd June he was attacked by intruders and shot in the leg. He then left the flat but his possessions remained there. In October, he told the authority that he would not return to the flat and asked for a transfer to a different part of London.



He was told he would not be eligible for a transfer until he paid the arrears. The authority also told him that he was still liable to pay rent for the flat even though he was no longer in occupation. The tenant's father then cleared the arrears but the tenant did not make any further rent payments.

The authority continued to regard him as a secure tenant and in May 2006 it issued proceedings for possession and for payment of rent arrears. In June 2006 the tenant informed Merton that he had been rehoused by another London borough.

At the hearing at Croydon County Court, the judge ordered him to pay mesne profits – which are effectively payments to compensate for the loss of rent – of £3,200 to cover the period from 3rd October 2005 to 25th September 2006.

However, this has now been overturned by the Court of Appeal which has ruled that a tenant's liability to pay mesne profits ends on the date that he gives up possession, regardless of what notification he gives to the landlord. There was no reason why a tolerated trespasser should be treated any differently in these circumstances.

The other issue the court had to decide was the date when the tenant actually gave up possession. The judges ruled that this should be the date when his belongings were removed from the premises. The fact that he had retained the keys was not significant.

Landlord did not 'discriminate against disabled tenant'

The House of Lords has ruled that a housing authority did not discriminate against a disabled tenant when it sought to evict him because he had sublet his flat.

The case involved Lewisham Borough Council and one of its tenants, Courtney Malcolm. Mr Malcolm suffered from

schizophrenia which could be stabilised by medication.

In 2002, he was granted the tenancy of a flat and two months later he applied to exercise the right to buy. The following year, his medication changed and it altered his behaviour. His doctors then

discovered that he had stopped taking his medication altogether. Mr Malcolm then sublet the flat in June 2004 before having completed his application to exercise his right to buy.

Lewisham responded by serving notice on him to quit in August and then began possession proceedings in December.

Review officers must follow procedures

The need for officers to follow the correct legal procedures when reviewing authority decisions on housing matters has been highlighted in a case before the Court of Appeal.

The case involved Lambeth Borough Council and a man who challenged the decision of a review officer that he didn't have priority need for assistance as a homeless person.

Wandsworth County Court found that the review officer was in breach of the Allocation of Housing and Homelessness (Review Procedures) Regulations. That decision has now been upheld by the Court of Appeal. Lord Justice Rimer said that the regulations imposed mandatory obligations on the review officer. First, he was obliged to consider whether there was any deficiency in the original



decision or in the manner in which it was carried out; and secondly, if there was a deficiency and yet the officer still intended to make decision adverse to the applicant, he was obliged to serve a "minded to find" notice on the applicant explaining why he was taking such a view.

He said a review officer had no discretion in the matter and could not give himself dispensation from complying.

Mr Malcolm submitted that this amounted to discrimination under the Disability Discrimination Act 1995 because it was his schizophrenia that had caused him to sublet the property. He lost the case in the county court which made the possession order. However, that ruling was overturned by the Court of Appeal and so the case was taken to the House of Lords.

The Lords have now found in favour of Lewisham. They said the issue under the Act was whether Mr Malcolm had been treated any differently to the way a tenant who was not disabled would be treated if he had sublet. The answer was that he had been treated in exactly the same way and consequently there had been no discrimination because the possession proceedings did not relate to Mr Malcolm's disability.

Lord Bingham said: "Lewisham's reason for seeking possession - that Mr Malcolm had sublet the flat and gone to live elsewhere - was a pure housing management decision which had nothing whatever to do with his mental disability."

Possession order granted on appeal

A housing authority has won its appeal against a court decision that it could not proceed with a possession order on a house because it would deprive the secure tenant of the right to buy.

The case involved a six-bedroom property which had been let by Manchester City Council to a couple with four children. When the couple died and after three of the children had moved out, the tenancy was transferred to the remaining daughter. She lived there with just her baby son.

The authority then served notice that it was seeking a possession order because the house was much larger than the woman and her son needed. She responded by applying to exercise her right to buy.

The woman was offered an alternative property to rent but the judge ruled that the procedure was unacceptable because the possession order would remove her right to buy the original house.

The authority appealed on the basis that although the possession order would prevent the woman buying the large property, she could still become a secure tenant elsewhere and then exercise her right to buy that property.

The Court of Appeal ruled in favour of the authority because the tenant's right to buy would not be lost completely. It could be exercised later when she became a secure tenant at a different property. It was therefore reasonable to make a possession order.

Where next



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