

Courtney Malcolm v London Borough of Lewisham

Background

In this case, the Landlord brought Possession proceedings against a Tenant who had unlawfully sub-let his home. The Tenant however, suffered from schizophrenia which under the Disability Discrimination Act 1995, is considered a disability. The definition of a person with a Disability in this Act is:

“A physical or mental impairment which has a substantial and long term adverse affect on his ability to carry out normal day to day activities”.

The Case

The act of sub-letting his Premises meant that the Tenant breached his Tenancy and lost his Security of Tenure and the Landlord therefore gained a mandatory right to Possession. This was the finding of the Judge at Bromley County Court.

Despite the provisions of the Housing Act 1985, regarding the above a Defence was submitted that suggested that under the 1995 Disability Discrimination Act, the Landlord was unable to discriminate a person with a disability, as defined in that Act, “by evicting him or subjecting him to any other detriment”.

One of the key questions in the case was whether the Tenants schizophrenia had a substantial affect on his ability to understand and it was further argued by the Landlord that they had no prior knowledge of the Tenant’s disability. However, the Court of Appeal held that regardless of whether the Tenant’s condition had a causal link to his sub-letting of the Premises, there was evidence that the condition would affect an individual’s capacity to carry out normal day to day activities.

The Court therefore decided that the Landlord’s actions in pursuing Possession proceedings were unlawful and that the Notice to Quit that was served on the Tenant would cease to be valid.

Findings

Although each case is unique, the Law Lords summarised the following:

1. It must be shown that the landlord had awareness (or should have had awareness) of the tenant’s disability
2. It must be shown that the reason for the decision by a landlord to evict a disabled person was linked (albeit remotely) to their disability

3. Despite the Court of Appeal's strict interpretation of previous case law, the House of Lords found that when considering whether treatment is "less favourable", a comparison should only be made with the sort of treatment that a non-disabled person would have received if they had done the same thing. If these are the same, there is no discrimination

What next?

Although this case was good news for Landlords, it is still wise to tread carefully and assess whether there is any existence of a disability and also whether there can be any link between the disability and the decision to evict the tenant.

If you have any queries about this case or concerns about any matters that you think have a Mental Health aspect, please call us on 01257 266008 or email us on info@whiteheadsols.co.uk