Dealing with succession and assignment of a social housing tenancy

Aisha Akhtar

MONDAY 15 APRIL 2024

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Contents

Section **Page number**

1 Heading 1 _____ **Error! Bookmark not defined.**

Appendix header _____ **Error! Bookmark not defined.**

1 Message from Aisha

thank you for attending the session lovely to meet you all!

attached are the slides for you.

here is the case I mentioned about the council requesting extra info to show the man was in a partnership with the deceased Council possession claim rejected after it dismissed long-term homosexual partner of tenant as friend in succession case (localgovernmentlawyer.co.uk)

answers to some questions;

recognised marriages for succession purposes;

An Islamic marriage conducted in the UK under Sharia law is not recognised as a valid marriage in the UK. The couple is normally treated as cohabitees. When a couple separates the non-tenant cannot succeed as a surviving spouse even if they still live in the property

Adopted child is included for succession
Husband of granddaughter; no

capacity and ending a tenancy;

If someone lacks mental capacity, there can be difficulties when it comes to the management of a tenancy. The starting position is that if someone lacks mental capacity, they cannot enter into a tenancy agreement, and this is the same when it comes to ending a tenancy or assigning a tenancy.

The recent case of ***Dudley Metropolitan Borough Council v Mailley [2023] EWCA Civ 1246 EWHC 2328 (QB)*** concerned a situation where the tenant started to reside in a nursing home, and it came to the point where she no longer had any realistic prospect of returning to her property. She therefore ceased to occupy the Property as her only or principal home. A Notice to Quit was served on the tenant and possession proceedings were commenced to regain possession of the property from the remaining occupier, the tenant's daughter. After the issue of proceedings, the tenant sadly passed away. The Court of Appeal held that the daughter could not succeed the tenancy because the tenant had lost her security of tenure by failing to occupy the Property as her only or principal home and the tenancy had been ended by the Notice to Quit. It would have been different if the tenant was still living at the Property with her daughter when she died.

This case is important to social housing providers. One of the key points from this case is that it can be argued that a landlord is able to serve and rely on a Notice to Quit to end the tenancy, even when the tenant lacks mental capacity, as long as the tenant has ceased to occupy the Property as their only or principal home.

So, what can a social landlord do in these circumstances to regain possession of a property when someone is unable to return to the property and lacks capacity to make the decision to end the tenancy?

The starting point would be to look at whether anyone has legal authority to make the decision on behalf of the tenant to end the tenancy. For example, is there a deputy appointed by the Court of Protection or does someone have Power of Attorney?

If there is no one able to end the tenancy on behalf of the tenant, then you could make an application to the Office of the Public Guardian, which is part of the Court of Protection, for an order to end the tenancy. The application will need to be supported by the capacity assessment and a best interest's assessment. Practically, this is usually not a viable option for a social landlord as they probably don't have the evidence to support the application.

In the alternative, the social landlord could serve a Notice to Quit at the Property and provide a copy to the care home or anyone representing the tenant. Once the NTQ expires the account should be put into a use and occ account. If there was any doubt or concern that the tenant may not have lost her security of tenure, you could also serve a Notice Seeking Possession without prejudice to the Notice to Quit.

If possession proceedings then become necessary, it is likely there will be a capacity assessment and a litigation friend may need to be appointed before the court can take any further steps in the litigation. Lack of capacity would not mean that a social landlord would not get a possession order, but it will cause delay.

For surrinder; at Hillingdon

Hi Surrinder ; you asked me about husband of granddaughter succeeding; your policy says A relationship by marriage is treated as a relationship by blood,

I found some info for you but i cant find the date of tenancy policy you guys have at hillingdon; youll need to check this please; your policy start date; it says as follows;

Hillingdon Council tenancies issued after the [date of this policy] will change the succession rights that members of a tenant's family have as detailed below

7.1 Succession rights where the tenancy start date was prior to the date of this policy;

a) First succession

All secure tenants whose tenancy start date was prior to [the date of this policy] have the right of one succession to their current tenancy on their death. Under Section 89 of the Housing Act 1985, a person is qualified to succeed to a secure tenancy if he or she occupies the dwelling as their only or principal home at the time of the tenant's death and either:

•He/she is the tenant's spouse (i.e. husband, wife, common law partner or partner by way of a civil partnership).

•He/she is another member of the tenant's family and has resided with the tenant continuously throughout the previous 12 months ending with the tenant's death.

b) Discretionary second succession

From the date of this policy, the Council will no longer offer a discretionary second succession.

Where the remaining occupiers would be in priority need under homelessness legislation and the combined resources of the household are lower than that assessed as being sufficient to enable access to a home in another tenure, the Council will seek to provide sufficient assistance to enable the offer of a home that meets their needs.

Succession rights where the tenancy start date was on or after [date of this policy] *In line with the Localism Act 2011 only one succession is allowed and only to the spouse (i.e. husband, wife, common law partner or partner by way of a civil partnership). No other family member has the right to succeed to the tenancy.*

The Council has no provision for second successions. Where the remaining occupiers would be in priority need under homelessness legislation and the combined resources of the household are lower than that assessed as being sufficient to enable access to a home in another tenure, the Council will seek to provide assistance as set out in 7.1 b)

Thanks all

Aisha

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Rockingham House, St Maurice's Road, York, YO31 7JA
Tel: +44 (0)1904 557150 Email: hqn@hqnetwork.co.uk Visit: hqnetwork.co.uk

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