

## Property / Landlord & tenant

# When protection matters

**Robert Eckford** explains how the Court of Protection can help with "hoarders" & unco-operative tenants

### IN BRIEF

- Hoarding tenants can cause significant problems for landlords.
- In many such cases, the hoarding tenant's problems are caused by a mental disorder and normal enforcement remedies would be ineffective.
- Court of Protection powers can be used to allow the vulnerable tenant to stay in their home.

A common problem faced by social landlords is the hoarding tenant or the tenant who refuses to engage or co-operate with their landlord, or with social services in providing support for their tenancy.

Such tenants can cause significant problems for landlords. Hoarders can accumulate volumes of rubbish and clutter leading to unsafe and unhygienic conditions in the property, including posing a fire risk or leading to infestations. This in turn can affect the tenant's neighbours and lead to complaints.

Non-engagement by a tenant can also cause problems, such as refusing to permit the landlord to enter the property for inspections or to undertake works, or refusing to pay rent. Either type of tenant is likely to be in breach of their tenancy as a result.

### Injunctions

In some cases the landlord can seek an injunction from the court. This can be an effective remedy as it forces the tenant to clear their property or allows the landlord or social services to enter the property to effect a clean-up or to undertake the necessary inspections or works.

But in many such cases, the tenant's problems are caused by a mental disorder. A pathological hoarder may be diagnosed with Diogenes' syndrome or senile squalor syndrome, a disorder characterised by

extreme self-neglect, domestic squalor, social withdrawal, apathy and compulsive hoarding of rubbish. It is often one symptom of a formal psychiatric disorder. Such tenants are often elderly and have a long attachment to their home. Those who refuse to engage may also be doing so as a result of suffering mental illness or psychoses.

In either case there is a real possibility that the person will lack the capacity to litigate and the capacity to understand or comply with an injunction, in which case an injunction can not be granted (*Wookey v Wookey* [1991] 2 FLR 319).

### Other remedies & possession proceedings

What other remedies are there for the social landlord? A helpful practice note from the Chartered Institute of Environmental Health explored the problem of hoarding and the possible enforcement options available which include powers under the Mental Health Act 1983, s 47 of the National Assistance Act 1948 and Pt 3 of the Environmental Protection Act 1990 (see *Professional Practice Note: Hoarding and how to approach it – guidance for Environmental Health Officers and Others*, May 2009). However, the practice note also points out the lack of effectiveness of these remedies particularly when faced with someone who completely refuses to engage (due to



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their mental health) and who lacks the mental capacity to understand or comply with notices, court orders or injunctions.

Landlords often resort to possession proceedings when faced with these difficulties. However, this solution is far from ideal. The tenant, who will be vulnerable, loses his home and may require additional support from the state. Proceedings can be lengthy and expensive, and the problems caused by the tenant may simply be transferred elsewhere.

### Court of Protection: a recent example

There is another way. The Court of Protection has far-reaching powers to make decisions on behalf of a person who lacks capacity to do so for themselves in respect of both their property and affairs, and their welfare. The test that the court applies is whether a proposed decision or course of action is in the person's "best interests" in all the circumstances (s 4 Mental Capacity Act 2005).

### A legal first

A recent application made by the Official Solicitor on behalf of a man (AT), who was facing eviction by his local authority landlord, exemplifies what has the potential to be an extremely effective remedy for these situations.

This is, as far as we are aware, the first case of its kind in which the Court of Protection has been asked to make orders to allow a local authority to undertake works for the sole purpose of allowing the person to maintain their tenancy. It

is suggested that this could and should be a more widely used remedy by social landlords and social services departments, so as to avoid the need for possession proceedings against vulnerable individuals.

#### Paranoia

AT (80) had lived in his property as a secure tenant for some 40 years. He managed his affairs in most respects without any problems and did not require support in his day-to-day life. However, he suffered from a paranoid delusional disorder whereby he believed the local authority was in a conspiracy to harm him. He therefore refused to engage with them at any level. He refused to allow the local authority landlord to enter his home to undertake annual gas inspections and so placed himself, his neighbours and the property at risk.

## “Those who refuse to engage may also be doing so as a result of suffering mental illness or psychoses”

The local authority issued possession proceedings on this and other grounds, and obtained an order. AT was medically assessed as lacking capacity to litigate and the Official Solicitor was appointed as his litigation friend. He was also assessed as lacking *Wookey* capacity so the authority could not obtain an injunction to address the problem. As an alternative to eviction, the local authority proposed to remove the gas supply and convert the property to electric heating so that the annual inspections were not required. AT refused to allow this.

The Official Solicitor suggested that the local authority make an application to the Court of Protection to obtain the necessary authority. It refused and so the Official Solicitor made the application on behalf of AT instead. The local authority agreed to co-operate but maintained its application for a warrant of eviction as a fallback position.

#### Client's best interests

The application was carefully formulated by the Official Solicitor working together with the local authority social services. It was envisaged that the works would require five to six days to undertake and that it would not be safe for AT to remain at the property during that period. The court was asked to make orders that

allowed for a carefully structured process to ensure that the works were done, with AT's best interests protected throughout.

The order authorised the contractors to enter the property, including using forced entry, to change the locks and to undertake the works. It required AT to reside at a specified care home for seven days and permitted the local authority to use reasonable and proportionate force, if necessary, to effect his removal to the care home. It provided for AT to have daily supervised visits to his property and for the use of reasonable and proportionate force should he refuse to leave. No other restrictions were placed on his movements, he was not compelled to remain at the care home and there was no deprivation of his liberty.

Before the first hearing, the parties had gathered the necessary expert evidence to satisfy the Court of Protection that AT

lacked capacity in relation to the relevant decisions about gas safety inspections and the proposed conversion works. The Official Solicitor's representatives and the local authority agreed a detailed plan that set out exactly what was proposed and how this would be effected, what steps would be taken to minimise distress to AT, who would be assisted with his move (including liaison with the police) and what amounted to reasonable and proportionate force.

All this was viewed as being in AT's best interests because, even if the removal and temporary re-housing had required AT to be restrained and had caused him distress, this would have been better than the effects on him of eviction by bailiffs, which would have been the likely result of the possession proceedings. In the end, once faced with the court order, AT moved to the care home for the seven days. No restraint was required and although he objected, AT was not unduly distressed and the works were undertaken successfully.

#### A fast & effective remedy

Because the parties undertook all the planning before hand, the court was able to agree the plan and make the requested order in full at the first hearing and no further hearing was required. The proceedings were therefore short and costs were kept to a minimum. The

Court of Protection therefore provided a fast and effective remedy, which avoided the eviction of a vulnerable man from his home of 40 years. This is in contrast to possession proceedings which can be protracted and expensive and ultimately provide an unduly harsh and distressing result.

#### Scope

Similar use of the Court of Protection could be made in respect of tenants who are hoarding or neglecting their properties, to allow the local authority to enter and undertake work to clean, clear or repair the property or any other such works. Where a person lacks capacity to make the relevant decisions, the Court of Protection has the power to authorise restraint or restrictions on the person, even giving authority for them to be moved out of the property temporarily as in AT's case above.

The court could potentially authorise regular works to be undertaken (cleaning and clearing the property every three months for example) without the need to return to court on each occasion, provided the person did not regain capacity to make decisions for themselves.

Court of Protection proceedings needn't be long or protracted in these circumstances. The more planning that occurs beforehand and the more detailed the application, the faster and more effective the process will be. Taking such action is likely to be cost effective for a local authority because where a vulnerable person is evicted, the authority may have duties to re-house and the person's care needs are likely to increase, at least in the short term.

Whether the landlord is the local authority, a housing association or a private landlord, careful liaison with the social services department will be required to formulate a plan that can be authorised by the court. While the Official Solicitor made the application on behalf of AT in the case referred to, the social landlord or relevant social services department should seriously consider making the application to the Court of Protection in appropriate cases to avoid the need for possession proceedings at all. NLJ

**Robert Eckford**, Office of the Official Solicitor to the Senior Courts. Robert would like to thank **Anne McMurdie**, Public Law Solicitors, & **Kate Markus**, Doughty Street Chambers, for their assistance in writing this article.