

DOMESTIC VIOLENCE AND ABUSE

interplay between housing and domestic abuse



On 3 November 2016 Communities Secretary Sajid Javid announced that local authorities could bid for a share of a £20 million fund to support victims of domestic abuse by increasing refuge spaces and other accommodation.

It has been reported recently that many victims of domestic abuse are failed by local authorities and are street homeless and subject to violent attacks as a result.

In this article we will examine how social landlords can advise people who are suffering domestic abuse regarding the ways they can be protected and in relation to their housing needs. We will also consider what is the appropriate tenancy action to take, on what evidence and how to avoid challenges.

The victim may be the tenant of the property (sole or joint) or the partner of the sole tenant and that person may confide in their housing officer while still living at the property or when they have left.



Homelessness

First, we will look at the situation where the victim has fled the property and seeks advice as to their housing options. The local authority may have a duty to help under Part VII of the Housing Act 1996 and the Homelessness Act 2002 to provide accommodation or only to provide advice, depending on whether they fulfill certain criteria which includes: are they homeless or threatened with homelessness and is that situation unintentional; are they in priority need; are they eligible for assistance and have a local connection.

The first criteria should be easily met and includes physical, psychological, financial, sexual or emotional abuse. It is a matter of judgment for the local authority

whether the person is in priority need because they are vulnerable. Additional matters that meet the priority need threshold are pregnancy, has dependent children with them, old age, mental illness, learning disability, physical disability, having been in care, being ex-forces, been in prison, is 16 or 17 or under 21 and used to be in care or fostered. Local authorities are usually able to refer an applicant to another local authority if they do not have a local connection. I am sure we have all seen the reports and documentaries that expose local authorities for failing in this duty which has sadly resulted in street homelessness of vulnerable people fleeing domestic abuse and reviews of decisions can be requested.



Preventing further abuse

Secondly, we will look at what urgent steps can be taken to protect the victim from further abuse whether they remain in the property or have fled. The landlord does have power to seek an injunction pursuant to s1 Anti-Social Behaviour Crime and Policing Act 2014 for housing related nuisance and annoyance. This arguably extends to domestic abuse cases but a note of caution should be carefully considered and advice taken as to whether it should do so. An injunction under this legislation could contain a clause to prevent further use or threats of violence towards the person who has left the property but to obtain this, evidence will be needed from that departing person.

It is often the case in domestic abuse cases that the victim does not feel able to sign a witness statement or attend court or is later intimidated into retracting their statement. This can lead to adverse cost orders against the landlord for intervening when the evidence is lacking by the time of trial. The victim does have alternative remedies in family law and can seek a non-molestation order which is another type of



injunction and they may be eligible for legal aid to pursue this. That may be a preferable route, if available. Accordingly, the victim should be signposted to legal advice centres for advice on their options.

If the matter has been reported to the police, there may be bail conditions that are appropriate in the short term to provide protection to the victim and now police have powers to issue domestic violence protection notices and seek domestic violence protection orders. Taking positive action may be inappropriate if the victim is still living in the property and such action would inflame the situation. If that is the case, it is advisable to provide support and signpost to specialist agencies and make any referrals available.



Ending the tenancy

Once there is protection in place and the emergency housing need is resolved, the housing provider will consider what needs to be done about the tenancy. If the victim is either the sole tenant or joint tenant and the alleged perpetrator remains in the home there are several options available to the victim and to the landlord.

If the victim does not want to return to the property then he or she can serve a notice to quit to bring that tenancy to an end and, if the remaining occupant does not vacate, a possession order can be sought. This is complicated by a layer of family law that sits alongside housing law. If the remaining occupier is a spouse or civil partner he or she enjoys legal rights of occupation by virtue of the Family Law Act 1996.

If the remaining occupier is a cohabitee they do not have such rights but could apply for an occupation order which, if granted, confers rights as to a spouse.

“It is often the case in domestic abuse cases that the victim does not feel able to sign a witness statement or attend court or is later intimidated into retracting their statement.”

Therefore a spouse, civil partner or cohabitee could apply for an emergency injunction to prevent the sole tenant from serving the notice. If this is not done, the notice to quit will end the tenancy so the victim should be urged to take legal advice and act quickly if appropriate.

Both the Housing Act 1985 and 1988 contain a ground for possession based on domestic abuse. It is most often used where the landlord has re-housed the departed victim, leaving the perpetrator under-occupying the former family home. This may be useful where the victim does not want to take action themselves to serve the notice and there is sufficient evidence to make out the ground, for example a conviction for violence or an incident witnessed by others who are prepared to give evidence. Again, a note of caution here as set out above regarding the victim not feeling able to go through with the proceedings. Even if the ground is made out, it is a discretionary ground so the court must be satisfied it is reasonable to order possession.

In conclusion, there are a raft of powers available to social landlords themselves and more available to their partner agencies working in partnership to tackle domestic abuse. The approach must be right for that victim at that time, based on their ability to take action themselves and the evidence available. There cannot be a more sensitive yet urgent issue facing social landlords at a time when resources are strained, partnership working is key.

www.stiveschambers.co.uk

For further information contact:
Jane Talbot (was Plant), Barrister, St Ives
Chambers
jane.talbot@stiveschambers.co.uk

