The voluntary transfer of council housing is a controversial issue. The Housing Act 1996 and the subsequent Housing Act 1999 set out the legal framework for voluntary transfers. The voluntary transfer of council housing is a process that allows tenants of council housing to transfer their tenancy to a registered social landlord. This process is regulated by the Department of Communities and Local Government and is subject to various conditions and requirements.

Introduction

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Jan Luke M.C.
Tenant choice

Building and Wales

Renters who are interested in moving into a privately owned rental unit in the city of Baltimore must be able to afford the rent and have a good credit history. The city of Baltimore has a fair housing ordinance that protects tenants from discrimination based on race, color, religion, national origin, sex, marital status, and family status. The ordinance also prohibits landlords from charging different rent rates for units that are similar in size, location, and amenities.

Introduction

Implications of the process for landlords and tenants.

Voluntary Transfer of Local Authority Housing

In our last issue, Jan Doolittle and James Dischel introduced readers to the background of the current program for transfer of local authority housing to new tenants, which was the result of a process that began with the Baltimore City Housing Authority (BCHA) in 1998. The program was designed to provide a mechanism for transferring ownership of properties from the BCHA to new tenants, who would then become responsible for the properties.

Two Garden Court Chambers

Jan Luba, Q.C.

Large scale voluntary transfers: not all money and the end of the line.
charge only a “reasonable” rent has no application to a purchaser.

True it is, that the purchaser may be able to offer improvements to the stock that the council could not otherwise immediately finance. But most local authorities have had rolling programmes of improvements for decades and still maintain them today (as many a frustrated right-to-buy purchaser has found when excluded from a programme upgrading the neighbouring homes still occupied by council tenants).

These considerations suggest that it is only after a most careful exposition of the options that tenants should be invited to decide whether to change their landlord.

Recognising the inevitable conflict of interest which arises if the necessary information is being provided to tenants by the council and the purchaser, who are promoting the sale, many authorities have taken to appointing “Tenant’s Friends” who can provide the necessary “impartial” information and evaluation of the options. But there is no statutory duty to make such appointments and no minimum level of provision required. Indeed, there is some difference of opinion as to whether the “Friends” should confine themselves to advising about the merits or benefits of a particular transfer proposal or whether they may properly set out all the respective benefits of all alternative options for tenants (including transfer to a wholly different purchaser or no sale at all). Perhaps most importantly of all, there is very rarely any parity between what the landlord council and the purchaser are prepared to spend (on officer-time or legal advice and other direct expenditure in promoting the transfer) and the amount made available to those independently advising tenants.

The gremlins

One aspect of the transfer programme which certainly requires more attention in the future is the legal impact of change on the sitting occupiers of the stock being sold.

For example, it is often suggested that on transfer the tenants will be “cushioned” or “protected” from the loss of secure status and their Tenant’s Charter of associated statutory rights. The purchaser will sometimes even go so far as to “guarantee” a minimum package of rights for the sitting tenants.

Such guarantees are, of course, normally unenforceable. In any event they are usually offered to the council which is selling rather than to the tenants who are having their homes sold—as such they are enforceable, if at all, only by the vendor. In future transfers careful attention will need to be given to the question of inclusion of these guarantees in the formal contract of sale so that they might later be directly relied upon by the tenants. Even then the tenants would need to have recourse to the Contracts (Rights of Third Parties) Act 1999.

Of course, a council proposing to ensure that its tenants really are fully protected in the hands of the new purchaser could easily achieve that end for itself. The statutory mechanism for uniform variation of the tenancy agreements of secure tenants (Housing Act 1985, s.103) could be utilised (in the lead-up to any transfer) to produce a “beefed-up” tenancy agreement setting out as a matter of contract the very “rights” the purchaser was suggesting would be honoured. The writer is not aware of this having been done thus far by any of the transferring councils.

This leads on to another aspect of the transfer programme which needs closer scrutiny—the relationship between “old” and “new” tenancy agreements. The legal mythology which surrounds large scale transfer would lead us to believe that at the point of sale there occurs a

Article

The legal position of the landlord and tenant is often complex and difficult to understand. This article aims to provide a clear explanation of the key legal principles and their implications for landlords and tenants.

Key Points

- The tenancy agreement is the legal contract between the landlord and tenant.
- Tenants have the right to peaceful occupation and enjoyment of the property.
- Landlords have the right to receive rent on time and in full.
- Breaches of the tenancy agreement can lead to legal action, such as eviction.
- Tenants are responsible for maintaining the property in good condition.
- Landlords are responsible for providing a habitable and safe environment.

Conclusion

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True it is, that the purchaser may be able to offer improvements to the stock that the council could not otherwise immediately finance. But most local authorities have had rolling programmes of improvements for decades and still maintain them today (as many a frustrated right-to-buy purchaser has found when excluded from a programme upgrading the neighbouring homes still occupied by council tenants).

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to those of former council landlords. Of course, as indicated above, there is no going-back.

Scepticism about the long-term benefits of transfer and growing concern about the way that the process of tenant “consultation” is being handled in prospective transfer areas has given new impetus to pressure groups such as Defend Council Housing (see On the Defensive, Inside Housing, February 11, 2000). It may accordingly be expected that future transfer proposals may be ever more closely scrutinised.

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The 1989 Housing Act redefined the Post Office as a 'voluntary transferor' of houses, and the requirements for the Tenants' Choice programme were revised. Despite the introduction of the 1999 Tenant's Choice Act (often referred to as the 'Tenants' Choice 2'), the scheme has not been as successful as hoped, and the Post Office has struggled to implement the necessary improvements. In recent years, the Government has introduced new policies to improve the housing situation, but there is still much work to be done.

Introduction

Large-scale voluntary transfers: not all honey and roses

Two Garden Court Chambers

Jan Lumb, QC.