

Duties of Property Managers Increase From December 2006 Under Disability Discrimination Act 2005

People with disabilities were given protection under the Disability Discrimination Act 1995 (DDA 1995) whereby “controllers of let premises” were prohibited from discriminating against potential tenants by refusing to dispose of premises to a disabled person or on the basis of the terms on which they offer to dispose of premises.

“Controllers of let premises” covers property managers or individuals. However, individuals are relieved of these duties if they also occupy the premises and do not use the services of an estate agent or advertise the property. There are also further exemptions covering small dwellings which would cover e.g. a family renting a room to a lodger; a student landlord sharing with not more than five others; a family renting out a granny flat annexed to their property. Property managers were made subject to the further duty not to discriminate against a disabled tenant in the way they permit them to make use of benefits or facilities; by refusing or deliberately omitting to permit them to make use of benefits or facilities or by evicting them.

With effect from December 2006, under the Disability Discrimination Act 2005 (DDA 2005) the duties of controllers of premises are being extended. A duty will not only be owed to the tenant but also to any lawful occupier in terms of the lease, which also covers sub-leases and licences to occupy.

The extended duties under the DDA 2005 are broadly subject to the same exceptions as DDA 1995 as outlined above. They are (a) to provide auxiliary aids or services and (b) to change practices or the terms of letting.

Duty to Provide Auxiliary Aids or Services

If a controller of let premises receives a request by or on behalf of a person to whom premises are let and it is reasonable to regard that request as a request for the controller to take steps to provide an auxiliary aid or service, the controller must take reasonable steps to provide the auxiliary aid or service – this will not extend to removing or altering a physical feature, but could perhaps include the installation of a visual entry phone system for a deaf person or altering the colour scheme for a visually impaired person.

This is subject to two conditions:-

- a) The auxiliary aid or service would enable the disabled person to enjoy or facilitate their enjoyment of the premises, but would be of little or no practical use to that disabled person if he were not a tenant or occupier of the premises AND without the auxiliary aid or service it would be impossible or unreasonably difficult for that disabled person to enjoy the premises; and
- b) The auxiliary aid or service would enable the disabled person to make use of or facilitate the use of any benefit or facility which the person is entitled to under the lease, but would be of little or no practical use to that disabled person if he were not a tenant or occupier of the premises AND without the auxiliary aid or service it would be impossible or unreasonably difficult for that disabled person to make use of the benefit or facility to which he is entitled.

Duty to Change Practices or Terms of Letting

Where a controller of let premises has a practice, policy or procedure or a term of the letting means that it is impossible or unreasonably difficult for the disabled occupier to enjoy the premises or make use of a benefit or facility AND

- (a) the practice, policy, procedure or letting term would not have that effect if the disabled person did not have a disability;
- (b) the controller receives a request by or on behalf of the person to whom the premises are let; and
- (c) it is reasonable to regard that request as a request to the controller to take steps to change the practice, policy, procedure or letting term, so as to stop it having that effect,

it is the duty of the controller to take reasonable steps to change the practice, policy, procedure or letting term, to stop it having that effect – this will not extend to removing or altering a physical feature but could include allowing a disabled person to leave refuse at a different point from the bin store if access is difficult or allowing a guide dog in the premises.

Premises to Let

DDA 2005 also provides further protection for potential tenants and occupiers in terms of premises to let. The same duties as outlined above apply in relation to a request made by or on behalf of a disabled person for the provision of an auxiliary aid or service or for the change of a practice, policy or procedure. However, with regard to premises to let, there is no duty on the controller to change a letting term.

Justification

In respect of both premises to let and premises already let, failure to comply with a duty may be justified if:-

- (a) it is necessary not to comply with duty so as not to endanger the health and safety of any person, including the disabled person; or
- (b) the disabled person is incapable of entering into an enforceable agreement;

AND it is reasonable for the controller to hold that opinion.

It should be noted that whilst a controller cannot be forced to remove or alter a physical feature, it may be reasonable for the tenant to be allowed to make improvements at its own expense. This may involve the controller changing a letting term if there is a prohibition on the tenant carrying out any alterations.

DDA 2005 sets out a statutory procedure for improvements to let dwellinghouses where the lease allows the tenant to make improvements with consent. The landlord must not withhold consent unreasonably, but may grant it subject to reasonable conditions.

Interaction with Housing (Scotland) Act 2006

As referred to above, a controller of let premises cannot be forced to remove or alter a physical feature. However, certain provisions of the Housing (Scotland) Act 2006 are also due to come into force on 4 December 2006 which give rights to adapt rented houses, excluding properties let under Scottish secure tenancies or short secure tenancies.

A tenant may carry out work to make accommodation suitable for any disabled person who occupies the property. The landlord's consent is required but this must not be unreasonably withheld. He may make the consent subject to reasonable conditions. In considering the application the landlord can consider such matters as safety issues, whether the work will reduce the value of the property, or make it less suitable for letting or sale and if the property could be reinstated at the end of the lease. Failure by the landlord to respond to an application for consent, within 1 month, will be treated as a refusal to grant consent.

Conclusion

Property managers will therefore have to be more cautious and forward thinking in dealing with both prospective and existing tenants. They should also ensure that their clients are kept fully apprised of developments in this expanding area of the law so that they are aware of the duties imposed on themselves as landlords and their agents as managers.

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