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LANDLORD AND TENANT DISPUTES

Paper

"Mediating Rent Disputes"

By

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"MEDIATING RENT DISPUTES"
Some Issues

Talk by Phillip Howell-Richardson[1]

Rent disputes can be the perfect examples of litigation undertaken which costs all parties involved too much, destroys relationships and achieves no effective satisfaction for any of the parties involved. In recent years, housing disrepair cases proceeding under conditional fee agreements, the increasing awareness of "rights" and "obligations" and the increasing strain created by raised expectations and issues surrounding anti-social behaviour orders or injunctions, have all been brought together in the field of housing law. At the same time the reforms that have been undertaken in the procedures and approach adopted by the Court, such that dispute resolution is at the forefront, has brought an opportunity to deal in more creative ways with the particular requirements of the private sector and the public sector when dealing with property issues.

The Court has made it quite clear that ADR, and mediation in particular, is to be used and, for example, Lord Woolf in the case of **Cowl v. Plymouth City Council**, with the public sector particularly in mind, did not mince his words when he said:-

> "*The parties should have been able to come to a sensible conclusion as to how to dispose of the issues which divided them. If they could not do this without help then an independent mediator should have been recruited to assist. That would have been a far cheaper course to adopt. Today sufficient should be known about ADR to make the failure to adopt it, in particular when public money is involved, indefensible*".

The application of mediation, within the particular requirements of the property sector and public sector housing obligations, is what this talk is about, where a rent dispute is the presenting problem.

1. <u>Is it really a rent dispute?</u>

It is well known that before any rent action is taken before the Court, Housing Officers and personnel within Local Authorities or Housing Associations, Managing Agents or indeed the landlord, will make every effort to speak to the tenant concerned and try to ascertain the issues involved, so that they can be resolved without the need for proceedings. Quite frequently such persons now have mediation training so that they can use the skills that are often seen and used in mediation itself, at this preliminary stage. It is preferable, if possible, to agree and to reach a resolution such that the rent is paid.

If, however, the rent is not paid and there is insufficient responsibility demonstrated or insufficient reason for the proceedings not to be commenced, then proceedings will be commenced. Very often, depending on the policy involved, proceedings are issued for at least one week's arrears and more or, alternatively, 8 weeks if greater certainty is required, both accompanied by an application for a possession order.

Within the range of orders available to a landlord there now exists anti-social behaviour orders, anti-social behaviour injunctions, exclusion orders and demotion orders to use against tenants. These orders exist beside or instead of applications for judgment for rent in arrears and possession orders.

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On the face of it this range of aggressive action is not a conducive environment in which mediation can be used to achieve settlement. But there are occasions when such powers are necessary and both the Courts, landlords and tenants recognise that these powers may indeed have to be used. However, as is widely known, the rent problem and rent proceedings may be just the beginning.

2. Common issues that are hidden.

If, for whatever reason, the underlying cause for a failure to pay rent does not emerge or become evident before the commencement of proceedings, it very often becomes evident after the commencement of proceedings. A relatively innocuous claim for rent can often be faced by a significant counterclaim founded on disrepair of the property or failure of promises or expectations, or a large variety of issues. Such actions, if proceeded with and contentious to any significant degree, can lead to large expense, a great deal of the landlord's attention and time in assessment of the counterclaim, and a breakdown in relationships. Not least, schedules of dilapidations are not agreed, the actual works to be undertaken are not agreed, and a landlord is often faced by a rising litigation bill and uncertainties as to the true extent of the repairs to be carried out.

There are many ways in which this situation can be resolved, not least through the Institute's own scheme here today, but mediation is a powerful tool to be used to reach a resolution where the parties literally face each other and decide upon the extent of the repairs to be undertaken, when they are to be undertaken and by whom, and can conclude the litigation, the counterclaim and the rent claim in one session.

The decision in **Bowen & Ors v. Bridgend County Council** has reined in the housing disrepair cases claim bubble, to a degree, in that claimants' solicitors must advise their clients to consider pursuing their claims through legal aid and, if that cannot occur then, even if a conditional fee agreement is concluded successfully, there should be no more than a 25% uplift. The incentive to keep the litigation running, notwithstanding what the Court tries to do to control it, has been reduced and the incentive to reach agreement increased. Mediation not only gives the tenant a greater degree of certainty of outcome, but also gives the landlord a greater degree of control over a situation where returns on the property are being eroded by potentially uncontrolled litigation.

3. Anti-Social Behaviour.

Another commonly met problem is that of anti-social behaviour either by the tenant concerned or by others within the same building. Clearly an anti-social behaviour injunction may have to be used to resolve the most serious cases, but quite often the tenants concerned are not in the category of people intended to be covered by that order, but are in the category of "low grade complaint" and disillusionment with the housing in which the tenant lives. Here, a mediation early in the process will present the opportunity for the tenant to vent, and to reveal exactly what the problems are.

Relatively small changes in operational procedures, or personalities, or undertakings for future action, can result in very significant improvements in relationships and a feeling that the tenant's views are being accepted and acted upon. These individual concerns may be quite outside any Tenants Associations or any previous correspondence that had occurred prior to the mediation. Here again, the controlling of the situation and the re-establishment of a working relationship through the mediation process can be achieved.

4. Shared ownership.

Quite often, also, the commencement of proceedings hits upon a particular issue that then becomes inflamed and is taken up by a group of tenants, or indeed the Tenants' Association, acting as a campaigning force. In the case of shared ownership, landlords may find that groups of people have a variety of concerns regarding, for example, a service charge. Here the group of tenants concerned may elect one or more of their number and may decide to mediate and may reach agreement upon a particular range of claims. In essence, a series of guidelines can be reached and those guidelines can then be applied to the whole group once the initial group has, as a result of its investigation and analysis reached settlement.

The situation can get more involved, however, if a tenants' action group spends some time over maybe months or years, pursuing issues. These issues may be diffuse or specific and may involve money, personalities, housing issues or policy. In these circumstances the commencement of rent proceedings are either part of a series of problems or the spark for such a group to come into existence. Whatever the reason for the existence of the action group, the fact is that mediation may be the only available means by which communication can take place. Mediation acts as a forum, or a "day in court" to enable the group to get over exactly what it wants to say, feel that it has achieved something and reach a common solution. Even if the mediation does not arrive at an agreed settlement, the fact that it has occurred will have created, or can create, the atmosphere for settlement, and it is not unknown for an action group to recognise that its concerns have been met by the mediation meeting alone.

5. Commercial and Private Property.

In this sector, it is already well accepted that mediation will deal with, as part of a system of dispute resolution or, in its own right as part of proceedings or contractual arrangements, the whole range of problems that can arise out of landlord and tenant disagreements. Disagreements over dilapidations, breaches of covenant, breaches of user clauses, service charge disputes and disputes over contractual terms, are and do continue to be dealt with by mediation. Landlords and tenants recognise the need to obtain resolution quickly and to obtain certainty and control whilst minimising expense.

6. Summary.

The above are just some of the examples where mediation can be used as a powerful tool to achieve an investigation of, and a resolution of, the underlying problem that may exist in the landlord and tenant relationship.

It can be seen, therefore, that mediation has its place in mediating rent disputes. Not only can mediation get at some of the prime issues, it can also form the basis for a longer term, more constructive relationship between tenant and landlord.