

BLAKE   
MORGAN



**Finders International**  
**Birmingham Deputyship Development Day**  
**Tenancies**

**14<sup>th</sup> June 2018**

**Thomas Djan-Krofa**  
**(Associate)**

- Private rented sector
- Registered Providers of Social Housing
- Council

- Various forms of tenancy
  - Regulated Tenancy (Rent Act 1977)
  - Secure Tenancies (Housing Act 1985)
  - Assured Tenancies (Housing Act 1988)
  - Assured Shorthold Tenancies (Housing Act 1988 as amended)
  - Licences

# Tenancy Issues

- Anti-Social Behaviour
  - Nuisance and annoyance
  - Violence
  - Drugs
  - Criminal offences
- Rent Arrears
- Breach of Tenancy
  - Hoarding
  - Overgrown garden
  - Property in state of disorder
  - Pets/Animals

# Landlord to take action

- Offer assistance to Tenant to remedy breach
- Refer tenant to services – debt advisors, council, fire services, police, support agencies depending on the nature of the breach
- If no engagement – landlord is likely to seek to terminate tenancy or seek a claim for possession in the Court

# What if breaches are due to Tenant's mental health? Capacity Issues

- Mental Capacity Act 2005
- S.1(1) (2): a person must be assumed to have capacity unless it is established that he lacks capacity;
- S.1(3): a person is not to be treated as unable to make a decision unless all practicable steps to help him to do so have been taken without success
- It may be clear from the Tenant's behaviour that they have mental health problems, but only a professional should diagnose

# Landlord to investigate

- Is there an existing Lasting or Enduring Power of Attorney or Court Appointed Deputy which confirms the nature of their authority. If so they can end the tenancy
- If there is no person with the legal authority to end the tenancy, the Landlord should check whether there is anyone (e.g. next of kin, relative) appropriate, able and willing to make the application to the Court of Protection to end the tenancy, and what support or advice they might need to do this.



# Landlord to investigate

- Section 5 of the Mental Capacity Act 2005 carers and health and social care professionals can make certain decisions on behalf of another in relation to care and treatment, without the need to obtain any formal authority to act.
- This does not cover signing legal documents, such as tenancy agreements, or any other decisions in relation to the person's property and affairs.
- This means that the court's authority must be sought in relation to signing or terminating a tenancy agreement.

- Separate Court
- Specialist Judges
- Created under the Mental Capacity Act 2005
- Makes decisions on financial or welfare matters for people who cannot make decisions at the time they need to be made

# Court of Protection Cont.

- COP1 Application form setting out the order or declaration required
- A COP3 Assessment of capacity. The assessment should deal specifically with the adult's capacity to sign or terminate the agreement
- A COP24 Witness statement setting out the circumstances behind the moves and confirming that a best interests assessment has been carried out, including consultation with close family members, or people in close contact with the person, where applicable.
- An application fee. £400 application and £500 for hearing
- The application form should request the court to make a single order or declaration that it is in all the adult service users' best interests for the tenancy arrangement to be terminated on their behalf.

# Deputyship

- Responsible for helping someone make decisions or making decisions on their behalf
- consider what they've done in the past
- apply a high standard of care - this might mean involving other people, for example getting advice from relatives and professionals like doctors
- do everything you can to help the other person understand the decision, for example explain what's going to happen with the help of pictures or sign language
- *Gov.uk*

# Case Study

- Mr C
- Licence Agreement
- Breach of Licence
- Refused to vacate
- Official Solicitor as Deputy
- Court of Protection
- Best Interests

# QUESTIONS?

Thomas Djan-Krofa

Associate

01865253292

[Thomas.djan-krofa@blakemorgan.co.uk](mailto:Thomas.djan-krofa@blakemorgan.co.uk)