

The Equality Act 2010 – What does it mean for landlords and tenants?

The Equality Bill received Royal Assent on 8 April 2010 and formally became the Equality Act 2010. The main provisions of the Act will come into force on 1 October 2010.

The purpose of the Act is to simplify, consolidate and improve all the various and numerous discrimination Acts and Regulations which form the basis of anti-discrimination law in the United Kingdom (relating to disability, sex, race, sexual orientation, religion, belief or age) into one piece of legislation. The Act does not simply tidy up anti-discrimination laws but strengthens the law in a number of areas and introduces new rights to protect individuals from discrimination. The Act is not primarily concerned with property but there are aspects that are relevant to landlords.

This article looks at two specific issues; whether disability discrimination can be used as a defence to possession proceedings, and the obligations upon people managing property to make reasonable adjustments for disabled people.

The Malcolm Case – evicting a disabled person

The aspect of the Act perhaps most relevant for landlords relates to a new type of disability discrimination claim introduced to counter the consequences of the decision made by the House of Lords in *Mayor and Burgesses of the London Borough of Lewisham v Malcolm* [2008] (“Malcolm”). The Malcolm decision severely restricted the right to claim for less favourable treatment and made it more difficult for a disabled person to establish a case of disability-related discrimination.

Mr Malcolm was a secure tenant of the Council. He had schizophrenia and was a disabled person for the purposes of the Disability Discrimination Act 1995 (“DDA”) although the Council was not aware of this. When Mr Malcolm unlawfully sublet his flat (in breach of his tenancy agreement), the Council sought to evict him on the basis that his secure tenancy had come to an end. Mr Malcolm claimed that the court could not make a possession order against him because this would be disability-related discrimination. He maintained that, because of his disability, he did not understand that he could not sublet his flat.

The County Court made a possession order but, on appeal, the Court of Appeal held that the Council had discriminated against Mr Malcolm because they had treated him worse than a tenant who had not sublet and it was irrelevant that the Council did not know of the schizophrenia. The House of Lords overturned the Court of Appeal decision and ruled that discrimination under the DDA did require the landlord to have a subjective knowledge of the disability and the correct approach was to compare the treatment of Mr Malcolm to that of a tenant who had sublet their flat but who did not have a disability (“the comparator”). The

House of Lords' approach meant that Mr Malcolm would have had to show that a non-disabled tenant who had unlawfully sublet was treated better and had not been or would not be evicted. However, since the Council would have sought possession against anyone who had sublet their flat, the Law Lords found that the Council had not treated Mr Malcolm less favourably for a disability-related reason and he was not therefore discriminated against.

The effect of the decision restricted the wider purpose of the DDA to provide protection from disability related discrimination and overruled a longstanding Court of Appeal decision in the employment case of *Clark v TDG Limited t/a Novacold* [1999] which made it relatively easy for a disabled person to demonstrate that he had been treated less favourably for a reason related to his disability.

The Government considered that the provisions of the DDA no longer provided the degree of protection from disability related discrimination intended for disabled people and intervention was necessary in order to "re-establish an appropriate balance" between the rights of disabled people and the interests of those with related duties. The Government has sought to redress this balance by dispensing with the concept of disability-related discrimination and introducing a new form of disability discrimination, known as "*discrimination arising from disability*". The Act provides that it will be discrimination to treat a disabled person unfavourably because of something arising from, or in consequence of, his or her disability (such as the need to take a period of disability-related absence).

Section 15 (1) of the Act provides that a person (A) discriminates against a disabled person (B) if:

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

A step taken to widen protection for disabled people is that there is no comparator.

The Law Lords' conclusion in Malcolm that knowledge of the disability was required is retained in the Act. For the new type of discrimination to occur, the person must know, or reasonably be expected to know, that the disabled person has a disability. A landlord will therefore have a defence if he can show that he did not know, and could not reasonably have been expected to know, that the tenant had the disability.

It remains to be seen how the courts will interpret the knowledge requirement and whether it will have the effect intended to remedy the House of Lords decision in Malcolm.

Disability related adjustments to common parts – extension of duties

Another property related aspect of the Act is a new requirement for landlords to make adjustments to common parts, where it is reasonable to do so.

There are a range of existing provisions to make it easier for disabled people to rent and make use of residential, commercial and other premises. These include requiring a landlord or manager of premises not to unreasonably refuse permission for disability-related alterations to the disabled person's home to be carried out. It was recognised by the Government that there was no similar requirement for disability-related alterations to the physical features of the common parts (e.g. hallways, stairs and communal areas) of residential premises and it was not clear what landlords and managers of premises have to do

(or not do), to accommodate the access needs of disabled persons. Provisions in the DDA relating to let premises are replaced but the provisions relating to common parts are new.

The Act provides that where a disabled person is at a substantial disadvantage, compared to a non-disabled person, in the use of common parts of their residential premises, the landlord will be under a duty to make a disability-related alteration to the common parts, where reasonable, at the disabled person's cost. The duty is imposed on those who let premises, commonhold associations, and those responsible for the common parts of let or commonhold premises.

For more information please contact:

Edward Cracknell

Solicitor

+44 (0)20 7440 4818

Ed.Cracknell@russell-cooke.co.uk

This material does not give a full statement of the law. It is intended for guidance only and is not a substitute for professional advice.
No responsibility for loss occasioned as a result of any person acting or refraining from acting can be accepted by Russell-Cooke LLP.
© Russell-Cooke LLP
September 2010