

Getting to 'yes' – together

Mediators are increasingly called into disputes to listen dispassionately – and get the contending parties to do so too, says Rebecca Johnston

We have all been in an adversarial situation at some point, whether as a landlord/letting agent or in other circumstances, and it can be difficult to take a step back in order to view matters from an opponent's perspective. Naturally, the person on the other side of a dispute can feel equally adamant that their point of view is correct.

Disputes arising from letting out property can arise from many seemingly unrelated issues such as rent arrears, anti-social behaviour, deposit returns, repairs, notices to quit, to mention but a few.

Yet it is important to recognise that the various issues are not necessarily mutually exclusive. A tenant may not be paying their rent *because* of necessary repairs; a landlord may not return a deposit *because* insufficient notice was received from a tenant; notice to quit may be given to a tenant *because* of anti-social behaviour.

The reasons behind each party's point of view are often overlooked and the result is a stalemate of opposing opinions which can ultimately escalate to court action. Yet there are ways to avoid what can be a lengthy and costly process.

Alternative dispute resolution (ADR) has grown in popularity for its avoidance of judicial action and resulting lower costs. One form of ADR is mediation, where someone impartial is asked by people involved in a conflict to help them make a confidential and informal agreement and/or improve understanding.

Empowered

Edinburgh-based Cyrenians Homelessness Prevention Service have partnered with the community mediation service of SACRO, the prisoners' rights and community justice organisation, to facilitate positive communication between landlords and tenants. Their free service is increasingly used to resolve disputes.

Liz Law of Cyrenians has worked on more than fifty tenancies in the first year. "The key outcome is often that completely stuck situations start moving again," she says. "Landlords and tenants, at a stage where communication has broken down, know by the end of the mediation what they need to do



A mediator will listen – without bias – to both parties to a dispute

next. Each has had their say. Directly or indirectly, concerns and needs have been voiced. Each is empowered to move forward constructively. It might not be the way they wanted to go but it is the way they need to go."

The process with the Cyrenians involves an independent mediator, neutral in their view of the situation, acting as an intermediary between the parties. Personal advisors will meet each party individually to gain a full picture of their viewpoint and grievances, and can provide support at a subsequent face-to-face meeting of both parties together. Each has an uninterrupted opportunity to present their position, and the process aims for the participants themselves to tease out an acceptable solution, or improve understanding.

The mediator is there to facilitate communication, rather than to suggest answers, decide on an outcome, or judge which party's view of the situation is correct.

Eileen Schott, a mediation practice specialist with SACRO, offers some advice for those thinking of using mediation: "Keep an open mind – don't decide it won't work because of what has happened already. Be the one willing to share information, acknowledge what has gone wrong or what has not helped. Help the other understand your position and suggest ways in which you can help. Offers are usually reciprocated; demands produce a stalemate."

Mediation differs from other forms of dispute resolution in that agreements are not legally binding. Rather than make a ruling on culpability, mediation aims to achieve mutual understanding and encourages parties to voluntarily reach an outcome that is acceptable to

all involved. Often disputes arise out of a simple misunderstanding, or lack of communication, and can easily be resolved. Other issues may be more conflicting, but at the very least each participant ought to leave the process feeling that their voice was heard.

Awareness

Landlords, tenants and letting agents now have access to mediation services through various organisations across Scotland. Gary McCallum who manages the West Dunbartonshire Neighbourhood Service points out that awareness of mediation services is an issue: "Our experience is that tenants and landlords are aware of the ASISTs (anti-social investigation service teams) and out-of-hours noise teams but have not had mediation explained to them."

Even if a landlord or letting agent is not party to a particular dispute, it is advantageous to be aware of the option of mediation. Tenants can be referred to mediation services when in dispute with neighbours, or with co-tenants, when it would be difficult for a landlord or letting agent to maintain an impartial stance, or inappropriate to get involved. ■

➤ There are 27 community mediation services across Scotland that deal with low-level anti-social behaviour and neighbour problems (see www.scmc.sacro.org.uk). Landlords at odds with objectors over HMO licences can be referred to mediation by licencing authorities. The Private Rented Housing Panel (PHRP) offers mediation to landlords, letting agents and tenants in dispute over statutory repairs. Further information on Cyrenians is at www.cyrenians.org.uk.



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