

Insights

PROPERTY GUARDIANS - IS THERE A RISK OF A GUARDIAN BECOMING MY TENANT?

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SUMMARY

My company owns an empty property. I wish to retain a provider of “property guardian” services to secure it against squatters, vandals and dereliction. Is there a risk that the guardians may become tenants, entitled to security of tenure, or will they occupy my premises merely as licencees?

The provider will provide reliable people to occupy my property. Each guardian will live in their own lockable space, and the provider will manage all access to the property and will be responsible for council tax.

The provider will have a written agreement with each guardian, described as a temporary licence agreement under which the guardian pays a weekly licence fee for use and occupation of the designated space in order to perform their guardian's functions. The agreement will:

- state that no tenancy is to be created;
- allow the provider to alter the extent and location of the living space;
- require the guardian to sleep at the property for at least five nights out of seven;
- require the guardian to ensure that they or at least one guardian is in the property at any time;
- require the guardian to share "amicably and peacefully" with such other persons as the provider permits to use the property;
- be terminable by the provider or the guardian on 28 days' notice.

The issue

Does each guardian have a licence or tenancy?

Discussion

The starting point is to identify the legal rights and obligations of the parties according to the agreement with each guardian.

If the rights and obligations created by the agreement confer on the occupier the right to exclusive possession for a term, at a rent, then in all likelihood a tenancy has been created. However, exclusive possession is not necessarily conclusive (and may not be relevant even where there is exclusive occupation of a self-contained dwelling for which the occupier pays a fee or rent).

As well as what is stated in the agreements, you may consider the circumstances in which the agreement was made, including the reason why the occupier has been let into occupation.

The purpose of allowing guardians (together with others) into occupation is to provide guardian services to you. That is reinforced by the terms of the agreement that require the guardians to sleep in the property for at least five nights out of seven, and to ensure that she or at least one other guardian is in the property at any given time. The provider can alter the location and extent of the living space, which is, in itself, inconsistent with the grant of exclusive possession. The agreement requires the amicable and peaceful sharing of the property with others. The description of the rights granted was "non-exclusive occupation" of the whole property, not any particular part of it.

It is also essential, in order to fulfil the purpose of the arrangement, that the provider should be able to hand back the property as and when you require it.

A person who lives in a house will not have exclusive possession of it if either (a) it is essential to the performance of his duties that he should occupy the particular house or a house within a particular perimeter; or (b) he is required by contract to occupy the house and by so doing he can better perform his duties to a material degree.

In the above scenario, it was necessary for the provision of the guardian services that the guardians should occupy the property. On the proper interpretation of the guardian's agreement considered in the light of the surrounding circumstances, and having regard to the purpose of the agreement, the guardians have licences, not tenancies.

The answer

This means that the risk about which you are concerned does not arise.

This insight was originally authored by Roger Cohen.

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