

CASE SUMMARY

Complaint against the Housing Department for unreasonable deletion from a tenancy without provision of proper rehousing

The Complaint

The complainant shared a flat in a public housing estate with his nephew who was the registered tenant. Subsequently, both of them got married. Their wives and children also lived in the flat. In December 1995, the Housing Department (HD) announced the redevelopment of the estate. When the complainant and his nephew registered for transfer upon redevelopment, both of them applied for addition of their wives and children to the tenancy, splitting of tenancy and allocation of separate public housing flats. Nevertheless, the HD proceeded to delete him from the tenancy without providing proper rehousing. Feeling aggrieved, he lodged a complaint with this Office.

Observations and Findings

2. The HD revealed that under the prevailing policy, it had to delete the complainant who was not the registered tenant from the tenancy after he got married. For addition, as he was not the tenant, his application for addition and splitting could not be accepted. Accordingly, the complainant and his family failed to meet the requirements for rehousing upon redevelopment and as such, could not be allocated public housing. In order not to delay the allocation arrangements for the tenant and his family who were eligible for rehousing, the HD deleted the complainant from the tenancy.

3. Regarding rehousing arrangements upon redevelopment, the HD made special arrangements for some of the affected families to move into

local interim housing units in consideration of their exceptional circumstances. The complainant has also moved into an interim housing unit in the same district.

4. In the course of investigation, this Office found that the HD had approved a similar application for splitting made by another tenant (Tenant A) from the same estate. The only difference between the case of the complainant and that of Tenant A is the complainant and his family lived together in the flat while the family of Tenant A lived elsewhere. This Office is of the opinion that since the HD was aware that Tenant A was married, it should not accept his application for splitting as a singleton just because his family did not live in the public housing flat. As a matter of fact, Tenant A had his family added to the tenancy subsequent to the approval of splitting and he and his family were allocated a public housing flat. This outcome is predictable although the approval of Tenant A' s application for splitting has deviated from the prevailing policy. Under the circumstances, this Office considers the HD' s approval of Tenant A' s application improper and unfair to other applicants. Take Tenant A as an example, if the complainant and other tenants of similar circumstances follow suit and arrange their families to live elsewhere, they can also apply for splitting and be allocated with a public housing flat upon redevelopment. The HD can hardly refuse such applications.

5. This Office understands that generally, the HD would not accept applications for splitting. Only under exceptional circumstances will the HD consider the merits of individual cases on compassionate grounds. In fact, the splitting of a household involves additional housing resources. Approval of splitting is tantamount to granting the household with more housing benefits and assistance and indirectly affecting the waiting time of other applicants for public housing. Therefore, this Office is of the view that the HD should be more prudent and adopt objective criteria to ascertain that applications for splitting are justified and in line with the prevailing policy before it approves such applications.

6. To uphold the general principle of fairness, this Office considers that as far as the complainant' s case is concerned, the HD was only processing his application for addition and splitting according to its established policy and there was no maladministration. However, a comparison between the

two similar cases from the same estate covered by the same redevelopment project revealed a disparity in treatment and the lack of a consistent approach. That the complainant thought that he had been unfairly treated and felt aggrieved is entirely understandable.

7. All points considered, The Ombudsman concludes that the complaint is partially substantiated.

Recommendations

8. The Ombudsman is very concerned about whether the prevailing splitting policy, which is applicable to the redevelopment of public housing estates and clearance of Temporary Housing Areas, is being implemented consistently. In the course of investigation, this Office noted that the HD lacks a set of detailed and specific guidelines on processing applications for splitting made by tenants of Temporary Housing Areas, and tenants affected by redevelopment of public housing estates. Consequently, the front-line staff of HD might have different interpretations of the criteria for splitting of household and adopt different approaches when they exercise their discretion to process such applications, producing different outcomes and resulting in unfairness. Accordingly, The Ombudsman has made the following recommendations for the Director of Housing to consider —

- (a) conducting an overall review of the prevailing splitting policy and make public the criteria for splitting of tenancy;
- (b) formulating a set of detailed and specific criteria and procedures on splitting, stating clearly the scope of application, so that his front-line staff can adopt a consistent approach to process different types of applications according to objective criteria; and
- (c) setting up a monitoring mechanism to ensure that applications for splitting are processed according to established policy and criteria to avoid errors and the adoption of inconsistent approaches.

Response from the Director of Housing

9. The Director of Housing has accepted the conclusion of this Investigation Report. With regard to the recommendations made by this Office, he opines that as the background, family composition, merits and compassionate grounds vary from case to case and may even have vast differences, the policy cannot cover each and every situation and it is also impossible to categorize the cases and process them without any flexibility. At present, Housing Managers of the HD consider each application flexibly on its own merits according to the prevailing policy. This practice is feasible and in line with public interests. Under the circumstances, the HD considers the guidelines on splitting given to estate offices adequate and the Department already has a set of established policy and criteria to process applications for splitting. On the operational level, the Senior Housing Manager of every district, through regular meetings and day-to-day contact, ensures estate staff implement the policy consistently, monitors and guides the work of front-line staff. Strengthening communication will be conducive to ensuring that front-line staff implement the splitting policy uniformly and fairly.

Final Remarks

10. This Office disagrees the processing of applications for splitting should be flexible and discretionary because splitting of household involves the fair allocation of public housing resources. This Office is also concerned about the inconsistent and inappropriate approaches adopted by the HD in processing the applications, resulting in unfair and self-contradictory situations. The two cases mentioned in this Report reflects the inadequacy of its established criteria, procedures and monitoring mechanism in implementing the splitting policy. The HD considers that individual cases processed on their own merits should not be taken as precedent. This is not a reasonable explanation and it is also improper to process such applications on a discretionary basis.

11. In view of the above considerations, The Ombudsman is of the opinion that the recommendations of this Report should stand. The Ombudsman is also very concerned that the established splitting policy must be implemented fairly and impartially. Inappropriate approval of

splitting is not in the public interests. It will not only create bad precedents, but also contravenes the policy and principle vigorously enforced by the HD itself having regard to fair allocation of public housing resources to existing tenants and applicants on the General Waiting List.

Office of The Ombudsman

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