

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

The Living Rent Campaign

The Living Rent Campaign was established to give tenants a stronger voice in the creation of housing policy. Over the last year we have engaged with thousands of tenants across the country; on the street, in their homes, and at local meetings. Dozens of trade union and community organisations affiliated to the campaign, representing over a million people in Scotland¹. In our consultation with tenants, we have established that there is a great need for reform, and as such this bill is very welcome. It will greatly improve the situation of tenants renting privately in Scotland. Renting privately is the least secure and the least affordable tenancy type, and as a result it is by far the the least popular tenancy², with the overwhelming majority of respondents in Scottish Government research stating a preference for social housing or owning their home.

Security

Case study: *A couple living in private rented accommodation who joined the Living Rent campaign told us about their unjust eviction, which was only possible because of the ‘no fault ground’ for repossession. They had had been charged over £300 of illegal admin fees by their letting agency, which they were able to recover by threatening a small claims action. A week after being refunded those fees, they received a notice to quit and had to move out.*

Given the growing size of the private rented sector, and its changing demographics, security of tenure is becoming an increasingly vital issue. For example, the PRS is now home to an increasing number of families, with 32% of households having children³. In addition to demographic changes, insecurity is increasing the risk of homelessness. Almost one fifth of homeless applications made in 2013-14 came from the private rented sector, a rise of 38 per cent in five years⁴.

Removal of the ‘no fault ground’

The bill contains provisions to greatly increase the security of private tenants, with the removal of the ‘no fault ground’. This will put tenants in a far more secure position, and give them the confidence to contest issues such as illegal fees, poor repairs and other bad practice in the sector, without affecting the right of landlords to recover possession of a property where they have a genuine need to do so. **We strongly support the removal of the ‘no fault ground’.**

¹ <http://www.livingrent.org/about-us/>

² <http://www.gov.scot/Resource/Doc/201059/0053730.pdf>; <http://www.gov.scot/Publications/2010/07/23125736/4>; <http://www.gov.scot/Resource/0048/00485802.pdf>

³ Scottish Household Survey 2014

⁴ Shelter Scotland -

http://scotland.shelter.org.uk/_data/assets/pdf_file/0017/1050272/Homelessness_in_Scotland_2014_Getting_behind_the_statistics_FINAL_V2.pdf

Initial tenancy periods

We do not support the re-introduction of a minimum contractual period where the tenant is unable to leave. This limits the flexibility of tenants to move to seek work, or leave due to a poor repairing standard. This provision could also give unscrupulous landlords the power to pressure tenants into accepting even longer terms which could be unduly restrictive and could create hardship. **We recommend that there is no initial period, and that tenancies are indefinite.**

Grounds for eviction

We believe that the list of grounds is comprehensive, although we have some significant concerns, and identify five ways in which they could be improved.

1. Rent Arrears

Given the crisis of affordability in the PRS, we are particularly concerned about the rent arrears ground. Currently, it is proposed that if at any point in a three month period of rent arrears, the tenant has accrued rent arrears totaling more than one month's rent, eviction is mandatory. This appears to be unnecessarily punitive, rather than corrective. **We believe that an eviction should only be granted if rent arrears exceed three months, and that the ground be made discretionary.**

Furthermore, we believe that the landlord and Tribunal must ensure that the tenant has had access to financial and benefits advice, and that all other options are exhausted before granting an eviction, such as negotiating a repayment schedule.

2. Intention

A landlord's 'intention' to, for example, sell, refurbish, or move into the property, needs to be clarified, otherwise this could be used as a loophole by unscrupulous landlords. **We believe that an 'intention' should require evidence of a very firm commitment.**

3. Hardship Clause

We recommend that an additional clause to be added, a hardship defence, similar to the provisions in the current assured tenancy system⁵, where the court can postpone, delay or suspend an repossession proceeding. We believe that this provision should apply in all cases, not just those grounds with discretion, so that a tribunal could adjourn repossession proceedings to, for example, allow a tenant an extra two months to find a new flat to move into, or to arrange a repayment schedule for rent arrears. This added flexibility could alleviate a great deal of hardship for tenants facing repossession proceedings

⁵ Housing (Scotland) Act 1988 s20

4. Rogue landlords

We believe that the grounds that are aimed at rogue practice in the sector, involving landlord registration, HMO licensing, and overcrowding, unnecessarily penalise the tenant for the criminal behaviour of the landlord. **We believe that these grounds should be removed, and local authorities use measures other than evicting tenants to tackle rogue landlords.**

5. Discretionary grounds

There are significant concerns surrounding the grounds for eviction, as noted above, and the potential for hardship. **We recommend that there are no mandatory grounds, so that the tribunal can always use its discretion to take into consideration the wide and varied circumstances of the case before them.**

Affordability

Case study: *A family living in private rented accommodation in Leith, were recently told that their rent would go up by £100 per month. The family are on a relatively low income, and this amount is too high for them to manage. The landlord will not negotiate, and so they have had to look for alternative accommodation at short notice.*

We generally welcome the increased provisions in this bill to tackle excessive rent increases. Given that the scarcity of housing will be a problem for the foreseeable future, even with the significant amount of affordable housing that has been committed to by the Scottish Government, affordability in the PRS is going to be a long term problem, and requires action.

The numbers of households struggling to afford the rent is increasing. For example, the number of private rented households in Scotland needing housing benefit to help with their rent rose by 62 per cent, from 60,000 in 2008 to 97,000 in 2013⁶. Tenant arrears are currently at a record high, having more than doubled in the past year, from 6.4% of all rent due in September 2014 to 13.2% in September 2015⁷.

Predictability and Quality

The steps taken to regulate rents in the Bill are an important step forward. We appreciate measures to limit rent increases to only once per year, with a the three month notice period, and the provision for tenants to be able to take excessive rent increases to a rent officer for adjudication. This will help tenants plan their finances, and increase their security against excessive rent rises. However we have several concerns about this system, and suggest some improvements.

1. We are concerned about the way in which a rent officer may calculate an open market rent. The private rented sector is 'overheated', in many places rents do not reflect the quality or state of repair of a property, or the true

⁶ <https://www.jrf.org.uk/report/referendum-briefing-housing-and-low-income-scotland>

⁷ http://www.lslps.co.uk/documents/buy_to_let_index_scottish_sep15.pdf

demand for the sector in a housing market where tenants are forced to “choose” private rented housing because they lack access to other tenure types. Most tenants are paying a very high proportion of their income on rent⁸, and the majority of private rented properties fail the Scottish Housing Quality Standard⁹. **We propose that a rent officer's calculation take quality into consideration when assessing rents.**

2. Given that the majority of rent rises happen when new leases are drawn up, this not help tenants challenge excessive rent increases for a property in between tenancies. **These rent regulations need to be extended to initial rent setting at the start of a tenancy, as well as the rent rises during a tenancy.**

Rent Pressure Zones

We welcome the provision for local rent controls, and the power for a Local Authority to identify a rent pressure area where, for example, rents are causing hardship, are increasing too quickly or are creating a burden on their resources. We recommend some improvements to this system, so that it can better tackle affordability in the PRS.

1. As noted above, given that most rent increases occur in between tenancies, rather than during them, the provisions for rent controls need cover new tenants not just sitting tenants. If this measure is not included then these provisions will not have the intended effect of easing rent pressure for tenants in a geographical area, hardship, or the burden on local authorities. **We propose initial rents be regulated, not just increases during a tenancy.**

2. The rent cap formula is currently $CPI + 1\% + N$, where N cannot be a negative figure. While CPI is currently at or near zero, we cannot always rely on a measure of inflation to be low. CPI for example has been as high as 8.5% percent¹⁰. This could mean that rents would be able to increase by at least 9.5% per year, even in a rent pressure zone. **We therefore recommend that the formula be $CPI + N$, where the N can in extreme circumstances be a negative number, to counter high inflation.**

The Living Rent Campaign October 2015

⁸ <https://www.jrf.org.uk/report/referendum-briefing-housing-and-low-income-scotland>

⁹ <http://www.gov.scot/Topics/Statistics/Browse/Housing-Regeneration/TrendDampness>

¹⁰ <http://www.ons.gov.uk/ons/datasets-and-tables/data-selector.html?cid=D7G7&dataset=mm23&table-id=1.2>