

## Private Housing (Tenancies) (Scotland) Bill

### Written submission to the Infrastructure and Capital investment Committee

#### Homeless Action Scotland

Homeless Action Scotland generally supports the provisions in the Bill which, if enacted will create a private rented sector tenancy which restores a fairer balance between the rights of landlords and tenants than that afforded by the current Short Assured Tenancy.

The private rented sector plays an important role in Scotland and most landlords (or letting agents) and tenants have a good professional relationship. A private rented sector with greater security for tenants and which is affordable is likely not only to prove a more realistic housing option for families, but also lead to tenants remaining longer which will benefit landlords. The role of the legislation is to protect both parties from unreasonable behaviour. Our comments therefore relate to minimising the chances for unscrupulous landlords to misuse the legislation.

#### Grounds for Eviction

In our consultation response Homeless Action called for **all grounds for eviction to be subject to a test of 'reasonableness' – discretionary rather than mandatory grounds for eviction**. We still believe this would be the most appropriate and fair solution. The new Tribunal system is intended to be less formally legalistic and to seek the most reasonable outcome in a dispute. A tick box approach to mandatory repossession does not fit well with the Tribunal approach and is likely to result in anomalies and undermine the security of tenure which the bill seeks to promote.

There are circumstances where, despite the criteria being met, it would be unreasonable to grant repossession. The criteria, as currently drafted also in our view in many cases are too loose to afford reasonable protection to tenants. In many cases terms such as 'the landlord intends' are used. In our view before a person can be evicted from their home there should be clear hard evidence that the action will happen.

**Ground 1** is loosely worded and as currently drafted gives rogue landlords an easy path to eviction. Any landlord could say that he 'intends' to put the accommodation up for sale within 3 months of the tenant vacating it, and then change his mind. Alternatively it could be put on the market but with a half-hearted effort at sale, offering it at a price way above market value; or he could choose not to sell it. All of these would result in a legal mandatory eviction.

Although any affected tenant could seek to pursue the landlord for a wrongful termination order it is unlikely they would succeed, or would have the time and wherewithal to do so. In any case the tenant would already have lost their home, and the maximum penalty for a landlord is only 3 month's rent which does not represent a realistic deterrent. In our view false representation by a landlord should be a criminal offence with a possibility of a jail sentence and substantial fines.

In our initial submission we recommended that no tenant should have to leave the property until the contract of sale was concluded. There are technical means by which this can be achieved and we would recommend that this is explored further.

**Ground 2 is also too vague.** In our view it should be subject to a test of reasonableness. Many properties are let on the basis of 'buy to let' mortgages i.e. on the basis that the property is a business with a sitting tenant. The terms of the mortgage are based on that premise. It is therefore unreasonable for a lender in those circumstances to insist on vacant possession. They do not do so with other businesses. However there may be circumstances in which it is important for them to have vacant possession. In our view it should be a matter for the Tribunal to determine these and to determine in each case whether vacant possession is required.

**Ground 3 Landlord intends to refurbish** The wording contained in Ground 6 of the Housing (Scotland) Act 1988 is less ambiguous and has been used successfully for almost 30 years. It would be clearer and better to replicate that wording. For example the current wording would give a mandatory eviction even if the tenant was prepared to put up with disruption or stay with family or friends for a few weeks rather than have to seek another home. Ground 6 of the 1988 Act sets the bar much higher before a tenant is forced out of their home.

**Ground 4 concerning the landlord's family wishing to live in the** property is equally vague, but also a mandatory ground for eviction, using the term 'the landlord intends..' Homeless Action accepts there are circumstances where a landlord should be able to repossess the property for use by themselves or a family member. However, it is not clear what evidence would be required to prove the 'intention' and, as a result, how a tenant could challenge it if they felt that there was no clear intention on the landlord's/ family member's behalf to live in the accommodation. The proposed penalty of a maximum 3 month's rent for false use of this ground by a landlord is too low. In our view eviction using false information is an illegal eviction which should be a criminal offence subject to a term of imprisonment and substantial fines.

**Ground 5 again uses the vague term 'intends' (to use the property for a non residential purpose)** without specifying how that intention is to be evidenced, and again is a mandatory ground for eviction. **In all these cases in our view the Tribunal should have the duty to test how real the intention is and whether it is reasonable to evict in the circumstances.** Once again any challenge is likely only to take place after a tenant has lost their home and the maximum penalty is not a realistic deterrent.

**Ground 7 Tied Accommodation.** Homeless Action would suggest the addition of a phrase such as '*and the property is required by another person employed by the landlord, or who is expected to be employed by the landlord.*' If the accommodation is 'tied' accommodation it is only reasonable to evict if another employee is to make use of the property.

**Ground 10** Making any ‘material’ breach of the terms a mandatory eviction ground could lead to unreasonable actions, for example eviction due to non-notification of a sub tenant.

**Ground 11 rent arrears.** This ground is vague and confusing. There are two grounds in the Housing (Scotland) Act 1988 which are clearer and cover both persistent non- (or delayed) payment of rent and a tenant being three months in arrears of rent (grounds 8 and 11 one of which is mandatory and the other discretionary). We recommend that the formulations which are clear and have been successfully employed for almost 30 years are simply replicated in this Bill.

**Ground 12 Criminal Behaviour.** The fact that this is proposed as a mandatory ground may have unintended consequences. For example if the perpetrator of domestic abuse is jailed both perpetrator and the victim would be liable to mandatory eviction. We therefore recommend that this ground is discretionary to avoid such anomalies.

### **Penalties for wrongful termination**

Homeless Action believes the penalties for wrongful termination are far too weak. A penalty of only 3 month’s rent is not a real deterrent for those who deliberately seek to misuse the system. In our view deliberately using false information to achieve an eviction should be regarded as an illegal eviction and subject to the criminal law, with the possibility of both a jail sentence and substantial fines. Given that the wording of the legislation is very loose in relation to several of the grounds for eviction it is even more important that there is a clear strong deterrent for those rogue landlords who seek to misuse the grounds.

### **Statutory terms of tenancy**

Homeless Action is supportive of the principle of statutory terms of tenancy though much depends on the detail and any action being a discretionary rather than mandatory ground for eviction. We believe these should be drawn up with input from a broad range of stakeholders, and we would be happy to be involved in their development. If the tenancy terms are robust they should reduce the levels of homelessness arising from the private rented sector.

### **Rent control/ Rent pressure zones**

Homeless Action welcomes the proposal to introduce some form of rent regulation and regards the proposal for rent pressure zones to be acceptable as an interim measure. In the longer term we believe there needs to be a fundamental investigation into rent control including learning lessons from abroad and modelling the potential consequences over, say a 20 year period including various potential economic scenarios before a long term system is introduced. Rent regulation is extremely complex. It is important to balance the needs of landlords to be able to generate sufficient profit to remain in the sector whilst at the same time ensuring that private renting is both high quality and affordable for a broad range of income groups. Homeless Action is concerned that virtually all recent suggestions could result in unintended negative consequences. In our view it is better to get this right over a period of time than to adopt a policy quickly.

We are therefore relaxed about the rent pressure zones as long as they are considered to be an interim measure to be used until a permanent long term and sustainable system of rent control can be developed.

### **Notification about other residents**

This provision is a new provision which appears to intrude unnecessarily into the lives of tenants. If it is to be included in the final legislation Homeless Action would recommend that it be restricted only to those living in the premises as their only or principal home. It really isn't any of the landlord's business if someone has a friend or relative to stay for a couple of weeks.

### **Onus on tenant/ 3rd party action**

Very few tenants ever bring a case against a landlord. Most are too busy searching for and securing alternative accommodation at the time when they could be seeking redress for unfair or illegal actions by the landlord. It is unlikely to be much different with the new legislation. In our view it is important that those landlords who are breaking the rules or the law are brought to account. One means of doing so would be to permit third parties such as local authorities, law centres or advice agencies to bring cases against landlords – especially those who are thought to be repeat offenders.

### **Summary**

The Bill is an enormous step forward, especially in removing the 'no fault' ending of a tenancy simply by giving notice, which is in the current Short Assured Tenancy regime.

Statutory terms and/or a model tenancy agreement will bring a consistency and professionalism to the sector, and should outlaw some of the more ludicrous tenancy terms

Rent regulation is a complex field which requires substantial investigation before any permanent system is introduced. As an interim measure Rent Pressure Zones are a reasonable option to pursue.

The headline grounds for eviction cover the right broad reasons. All of them should be discretionary i.e. subject to a test of reasonableness. Many of them require tighter formulation. Some could be replaced by the wording of existing grounds in the Housing (Scotland) Act 1988, which have worked effectively for almost 30 years and whose interpretation has been clarified through case law.

The penalties for wrongful termination orders are too lenient. Illegal eviction is extremely serious. An eviction secured by false pretences should be considered an illegal eviction, considered as a criminal offence and subject to penalties which could include imprisonment and substantial fines.

The onus should not always be on the tenant to instigate action against a rogue landlord. 3rd parties such as local authorities and law centres should be empowered to instigate action.

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