Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

The Association of Residential Letting Agents (ARLA)

Background:

1. The Association of Residential Lettings Agents (ARLA) was formed in 1981 as the professional and regulatory body for letting agents in the UK. Today ARLA is recognised by government, local authorities, consumer interest groups and the media as the leading professional body in the private rented sector.

2. In May 2009 ARLA became the first body in the letting and property management industry to introduce a licensing scheme for all members to promote the highest standards of practice in this important and growing sector of the property market.

3. ARLA members are governed by a Code of Practice providing a framework of ethical and professional standards, at a level far higher than the law demands. The Association has its own complaints and disciplinary procedures so that any dispute is dealt with efficiently and fairly. Members are also required to have Client Money Protection and belong to an independent redress scheme which can award financial redress for consumers where a member has failed to provide a service to the level required.

Part 4, Chapter 2 – Rent variation instigated by landlord's notice:

4. We would argue that requiring landlords to give tenants a minimum three months' notice of a rent increase under clause 19 (4) (b) is too long for landlords to accurately calculate what the rental value of a property will be at the time the proposed rent increase comes into effect. Rental values change on a regular basis and therefore, having to give tenants three months' notice will mean that landlords will have to estimate the rental value of the property. With the powers under clause 20 allowing tenants to refer unfair increases to rent officers, three months' notice is too long for proper rent calculation based on market changes and could cause many cases to be unjustly referred to the rent officers; increasing administrative burdens and causing unnecessary deterioration of landlord-tenant relationships. We would therefore ask that this provision be reduced to two months to allow landlords to be able to better reflect the current rental value of a property. It will also bring the rent increase provisions in line with a tenant's notice provisions under clause 39 (4).

Part 4, Chapter 3 – Rent Pressure Zones:

5. ARLA would argue that the evidence on rent data outlined in the Second Consultation document demonstrates, as is stated in the consultation document at page 32, that in most areas of Scotland "private rents on average fell in real terms" and that in the areas where rents rose above inflation, this was the result of "considerable average income growth". Therefore, the data currently available to the Scottish Government clearly demonstrates there is no evidence to support the need for Rent Pressure Zones.

6. Further, as the second consultation document highlighted on a number of occasions, rent levels are set by market forces. Imposing Rent Pressure Zones will distort the market and directly lead to the negative consequences the Scottish Government has stated in the consultation document that it seeks to avoid; such as "jeopardis[ing] efforts to improve affordability through increasing supply by discouraging much-needed investment … increasing demand on other parts of the PRS putting upward pressure on rents in [other areas] … [and] creating a regime that is less attractive than regimes elsewhere". We would therefore strongly advocate the provisions relating to Rent Pressure Zones be removed from the Bill.

7. However, should they go ahead, we would recommend that local authorities must provide evidence that, over a protracted period of time, private rents have risen disproportionately faster than the Retail Price Index (RPI), local house prices, social rents and average incomes. We would also advocate that the calculation for rent increases outlined in clause 31 (1) should be RPI rather than the Consumer Price Index (CPI) as RPI factors in housing costs, whereas CPI does not.

8. Further, local authorities should be required to demonstrate that the disproportionate rent increases mentioned in the paragraph above are not the result of a lack of supply of suitable rented accommodation. Imposing rent controls on an area will mean that future investment from landlords will cease as they choose to invest in areas not covered by rent control and therefore, if the rent increases have been the result of a lack of supply, imposing rent controls will only increase the problem and therefore compound the supply and demand issues; creating a cycle of diminishing supply, meeting increasing demand, causing rental price inflation.

Part 5, Chapter 3 – Termination at landlord's instigation:

9. Clause 44 (2) provides for the relevant notice periods which must be given to tenants when landlords are seeking to regain possession of their properties. We agree that the period of notice should reflect the time the tenant has spent in a property. Therefore, when considering the average duration of tenancies (currently 20 months according to our September Member Survey), we would argue there should be a notice period for short tenancies (six months or less), average tenancies (between six months and two years) and long tenancies (over two years). We would argue this more equitably balances the clause's policy intention with practical application for landlords and letting agents.

10. Therefore ARLA proposes the number of notice periods should be increased to three:
    - Six months or less in the property = 28 days' notice (four weeks).
    - More than six months, but less than two year in the property = 56 days' notice (eight weeks).
    - Two years or more in the property = 84 days' notice (12 weeks).

11. Further, we are pleased that Notices do not need to end at the end of a rental period (otherwise, in reality, these notice periods are likely to be extended by up to one month). This approach has also been adopted by the UK Government

under Section 36 of the Deregulation Act 2015[1]. However, the Deregulation Act also provides a calculation for return of any rent overpaid by the tenant (Section 40) in the event the tenancy ends mid-way through a rental period. We would argue that a similar clause needs to be inserted into this Bill.

Part 6 – Death of the tenant:

12. ARLA would strongly argue against succession rights in a private rented tenancy. Succession rights exist in the social sector but are regularly challenged by housing associations through the courts. Private landlords are much smaller businesses and will not have the financial resources to contest such succession claims.

13. Further, if the bereaved partner (as defined by clause 55 (4)) does not have the means to pay the rent, then landlords are potentially put at significant financial hardship, as, having had to wait for the tenancy to pass via the executor, the landlord would then need to wait for three months before the bereaved partner (the new tenant) was in sufficient rent arrears for the landlord to begin possession proceedings. As most landlords have mortgage payments to make, the time this process would take from the death of the tenant to successfully regaining possession of their property, is likely to result in landlords getting into mortgage arrears with their lenders and potentially being repossessed through no fault of their own. It will also be very difficult for a landlord to prove that two people were not co-habiting and therefore this provision could be open to widespread abuse. Where a tenant wishes to use this right, it must be incumbent upon the bereaved partner to demonstrate with reference to sharing the costs of the tenancy that they were co-habiting. We would also argue that should this clause be retained in the Bill, the right of succession should not be exercisable if the occupiers are in rent arrears at the time of the tenant's death.

14. We would also like to raise concerns over the duty on executors to terminate tenancies under clause 56. Many people die intestate and therefore without an executor. In such a situation, it would be impossible to end the tenancy and therefore generate significant rent arrears and thus claims against the deceased estate; combined with financial hardship for landlords during the process as no rent would be being received. We would argue that tenancies must automatically come to an end on a tenant's death.

Schedule 2 – Statutory terms required by section 6:

15. It is not always practically possible for a landlord or agent to give a tenant at least 48 hours' notice that the landlord or agent requires access to a property for the purpose of carrying out work. We would ask this clause either be reduced to 24 hours or a caveat is inserted of "where practically possible".

Schedule 3, Part 3 – Tenant's conduct:

16. It is not clear under the criminal behaviour ground at clause 12 (2) (b) (ii) whether it is necessary for a tenant who has been convicted of a relevant offence to have to be imprisoned for the offence or whether the ground will be met if a tenant has been convicted of an offence which holds the possibility of a custodial sentence.

[1] http://www.legislation.gov.uk/ukpga/2015/20/contents/enacted

This clause needs clarification and we would argue that if an offence holds the potential for a custodial sentence, that will be sufficient to pass the evidential test for this ground; irrespective of the actual sentence imposed by the Court.

17. ARLA believes making the anti-social behaviour ground (clause 13) discretionary will render it totally unenforceable and therefore entirely useless in practice. It is exceptionally difficult for landlords to demonstrate anti-social behaviour. This is why, in cases of anti-social behaviour today, landlords generally use the no-fault possession Ground. In most cases, neighbours and/or other tenants living in the property do not wish to testify for fear of the anti-social tenant and therefore, landlords have little or no evidence to support a claim for anti-social behaviour. If the Ground was mandatory, landlords would find it easier to persuade neighbours / other tenants to testify. If there is the possibility that the anti-social tenant may return, even if the tribunal decides that the Ground exists, then neighbours or other tenants are highly unlikely to offer to testify for the landlord. If the Scottish Government wish landlords to use this ground to tackle tenants who are causing anti-social behaviour, it must be made a mandatory ground for possession.

Additional Comments – Loss of Section 33 'No-fault' possession:

18. ARLA does not agree the no-fault ground should be excluded from the tenancy system and the prosed withdrawal is creating significant concern and anxiety in the sector. Removing the no fault possession route will mean landlords becoming more selective with tenants. They will focus on attracting low risk, high income tenants. This will be detrimental to higher-risk tenants; such as families with children, low-income workers, those in receipt of state benefits and people with poor credit history or previous instances of rent arrears; who will find it more difficult and possibly more expensive to find suitable, good-quality, rented accommodation and is likely to push them into the hands of criminal operators.

19. We would emphasise our member's fears that the additional risks associated with the loss of this route to possession would turn both potential new investors and existing landlords away from the sector and as a consequence the current size of the private rented sector in Scotland may reduce; which would be detrimental to the Scottish Government's stated policy intentions.

The Association of Residential Letting Agents (ARLA)
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