

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

The Council of Letting Agents

The Council of Letting Agents (CLA), the letting agent division of the Scottish Association of Landlords (SAL), represents Scotland's leading letting agents and is at the head of the lettings industry in Scotland. It is the largest body of subscribing letting agents committed to adhering to core principles via a code of practice. CLA members offer a service that can be trusted by all consumers.

The CLA welcomes the opportunity to comment on the Private Housing (Tenancies) (Scotland) Bill 2015. Our organisation has campaigned for and welcomes many of the reforms proposed in the bill. We agree that it is time for the private rented sector (PRS) tenancy regime to be modernised as part of a drive to increase standards and protect tenants.

Our concern is ensuring these measures do not harm investment in a sector which, as the recent report by the Commission on Housing & Wellbeing made clear, has a key role to play in solving Scotland's long-term housing crisis. We are also concerned that the measures will have unintended impacts on tenants and the operation of the sector.

We are particularly concerned that the proposal to remove the right of a landlord to bring a tenancy to an end, subject to a reasonable notice period, will harm confidence amongst those looking to invest in the PRS, as well as making it harder for some groups to find rented accommodation. If this proposal is introduced we believe the outcome will not be the desired improvements in security of tenure or affordability for tenants. We believe that the main consequences of these proposals will be to drive knowledgeable and skilled landlords out of the Scottish PRS, encourage landlords to be more selective in the tenants they choose, discourage future investment and ultimately lead to a shortage of properties in the sector. These consequences will jeopardise all three aims put forward in the Scottish Government's vision for the PRS, in particular that of enabling growth and investment.

We have concerns that the "one size fits all" regime will have a detrimental impact on landlords, letting agents and tenants in the student accommodation sector. Many landlords split their properties between students and holiday lets, particularly in places like Edinburgh. Instead of providing housing to these two groups during the year, landlords may decide not to rent to students as they wouldn't be able to guarantee that they would leave the property at the end of the academic year in time for visitors to the city. Instead they will take more traditional, longer-term tenants, reducing the supply available for students and visitors.

Student tenants will no longer be able to secure accommodation well in advance as they like to do so at present as landlords will not be able to market properties until their current tenants serve notice. This will leave many students having to return to their university towns during the summer holidays to find accommodation for the next academic year. We also believe that many landlords will require student tenants to

enter into longer term tenancies as they will no longer be able to guarantee the use of the property for other purposes during the student summer holidays.

For these reasons we have been calling for a ground for possession to enable student lets to be ended to tie in with the academic year.

We are also concerned about measures to control rent increases in rent pressure zones. Whilst we understand the political pressure to tackle rent rises in hotspots such as Aberdeen and Edinburgh, we are concerned these measures could harm investor confidence and drive landlords out of the market, leaving a vacuum that could be filled with less than scrupulous individuals. The Scottish Government recognised these consequences in their second new tenancy consultation paper, stating that “*heavy-handed regulation of rents...could jeopardise efforts to improve affordability through increasing supply by discouraging much needed investment*”. We argue that official statistics on rent levels demonstrate that any form of rent control is unnecessary; according to figures published last week by the Office for National Statistics, private rental prices in Scotland rose by just 1.6% over the 12 months to September 2015, compared to a figure of 2.7% for Great Britain. We believe the only stable long term solution to rent inflation is to introduce measures to incentivise and facilitate an increase in the supply of properties in the market place, not punishing landlords that are investing tens of thousands of pounds in their properties.

We have the following comments to make about the content of the bill: -

Clause 35 – this clause states that a tenancy cannot be ended by agreement between the parties. We feel that it is important for landlords and tenants to be allowed to end a tenancy by mutual agreement. Under the current regime this method of ending a tenancy is used frequently to the benefit of both parties. It allows tenancies to be ended quickly and easily where both parties are in agreement that the lease should end.

Clause 38(3) – we welcome the proposal to give landlords the right to refuse to allow tenants to withdraw a notice to leave that they have already served, as in many cases the landlord will already have entered into commitments in relation to the use of the property after the date the tenant advised they would be leave. However, it is not clear in the bill what the position is if the landlord refuses the request and the tenant fails to vacate. How can the landlord regain possession of the property? We are of the opinion that a ground for possession should be introduced to cover this scenario.

Clause 39(a) - it would be helpful to have within the bill a definitive list of what “in writing” means for tenant notice – would a text or email be sufficient?

Clause 39 – to ensure clarity for all parties, we believe the bill should state clearly what the position is where just one tenant on a joint tenancy serves notice to leave, but the other tenant(s) wish to remain in the property.

Clause 40 - “a tenancy comes to an end on the later of the day specified in the notice to leave or the day on which the tenant ceases to occupy” – this could mean a

property sitting empty for up to 12 weeks if the tenant ceases to occupy as soon as the notice is received. We suggest it be clarified to state that the landlord can repossess the property provided they have confirmation from the tenant that they have ceased to occupy.

We also suggest it be clarified that a Notice to Quit is not required to end a tenancy under this legislation.

Clause 43 – we believe that landlords should also be able to use grounds 9, 14, 15 and 16 to end the tenancy during the fixed term. Abandonment (ground 9) is a common problem and often happens early on in a tenancy. We feel that it is important for landlords to be able to use grounds 14-16 during the fixed term of the lease as otherwise the landlord could be unable to comply with other legislation. We feel that these amendments are particularly important as under the proposed legislation there is no maximum duration for a fixed term tenancy. Landlords could therefore enter into very long fixed term tenancies during which, as the legislation is currently worded, these grounds could not be used.

Clause 44(2)(a) - clarity would be helpful in relation to acceptable delivery methods for the notice to leave – what methods would a tribunal accept in the event that the tenant claimed not to have received the notice? Is proof of postage or the signature of the tenant (if hand delivered) acceptable?

Clause 56 – where succession is not happening, the tenant's executor must end the tenancy as soon as possible. But what does the landlord do if they don't end the tenancy or if an executor has not been appointed or can't be identified/traced/contacted? We suggest that there should be a ground for possession allowing the landlord to end the tenancy in this circumstance. The alternative of waiting for a court to appoint an executor would be extremely time consuming and it is highly unlikely that the landlord would receive any rent during this process. We consider this to be completely unnecessary and in any case the PRS should be treated no differently from the social housing in this regard.

Schedule 2(1) – a cash receipt should not be required to state there are no arrears, but we agree it should state what remains outstanding if there are arrears.

We have the following comments to make about the grounds for possession: -

Ground 2 – there is an error in subsection (3)(b) where the reference to (c) should read (d).

Ground 11 (rent arrears)

- the wording of this ground does not allow a landlord to evict a tenant who is persistently late in paying the rent. In an extreme case a tenant could pay the rent each month on the day before the next rent falls due, but provided it is paid up in full each month the landlord would have no recourse. We suggest that this ground be amended to allow it to be used if the tenant pays the rent more than 7 days late for three or more consecutive months;

- it is unclear from the wording of the bill exactly when the landlord can issue a notice to leave for rent arrears in the case of advance rent payments. Is it as soon as the third rent falls due?
- we are concerned about the length of time it will take to evict a tenant who is not paying rent. Currently repossession can often be achieved in 2-3 months. Under the proposals we estimate that it will take a landlord at least 5 months to recover possession from a non-paying tenant. Clearly this will have big financial implications for landlords in terms of lost revenue. Failure to address this point would also have a financial impact on tenants as landlords are likely require tenants to pay more than one month's rent in advance and a higher deposit in order to reduce their risk of financial loss. To reduce the timeframe from non-payment to repossession we suggest that landlords should be allowed to serve a notice to leave as soon as the second consecutive month of rent arrears falls due. If the case reaches a tribunal hearing then the proposed mandatory/discretionary criteria could still be used i.e. if at that point the tenant has owed the equivalent of one month's rent or more for three months then it is a mandatory ground. If they have owed less than a month's rent for three months then it is discretionary.

Ground 13 (anti-social behaviour) – this ground is the only one not to have a discretionary element. The mandatory criminal behaviour ground (ground 12) only relates to use of the property, not behaviour, so we are unclear as to whether it could be used where anti-social behaviour results in a criminal conviction. We believe it is essential for the safety and wellbeing of communities for landlords to have a mandatory ground for possession in serious cases of anti-social behaviour. We suggest that ground 13 should be mandatory where confirmation is given by the police or a local authority of at least three instances of anti-social behaviour by tenants or their visitors at the property.

We believe that additional grounds are required to cover the following scenarios: -

1. Where the tenant has died (see comments about clause 56 above).
2. Where the tenant has served a notice to leave but has failed to vacate the property (see comments about clause 38(3) above).
3. Where the landlord requires the property for occupation by an employee of the landlord e.g. farm workers, school caretakers. Many landlords will not make their vacant properties available for occupation unless they are certain they can repossess for this purpose. The criteria for this ground should be the same as for ground 6 (property required for religious purpose). We consider it unfair that religious organisations can regain possession for use by their members/employees, but other employers cannot.
4. Where the fixed term has expired (no fault ground) – failure to include this ground will drive knowledgeable and skilled landlords out of the Scottish PRS, encourage landlords to be more selective in the tenants they choose, discourage future investment and ultimately lead to a shortage of properties in the sector. These consequences will jeopardise all three aims put forward in

the Scottish Government's vision for the PRS, in particular that of enabling growth and investment.

**The Council of Letting Agents
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