

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Stephen D. A. Miller

I have already participated in your online survey and whilst some of my opinions may echo those of certain industry bodies I feel it is important that you receive written evidence from private individuals as well.

As a private landlord I believe it is only right and proper that there should be laws that protect those living in private rental accommodation from unscrupulous individuals or illegitimate and unregistered landlords that may abuse their position or seek to take unfair advantage of their tenants. Likewise I feel it is equally necessary to ensure a balance is struck that ensures any revision to current legislation affords an appropriate degree of protection to landlords.

I do not feel that the proposed Private Housing (Tenancies) (Scotland) Bill strikes that balance. I am particularly concerned about the proposal to remove the right of a landlord to bring a tenancy to an end subject to a reasonable notice period. Should this proposal be introduced I believe that the desired improvements in security of tenure or affordability for tenants will not occur, that experienced and skilled landlords will be driven out of the Private Rental Sector, encourage landlords to be more selective in the tenants they choose and discourage future investment which will ultimately lead to a shortage of properties in the sector.

I wish to make the following comments regarding various clauses and the grounds for re-possession that are of particular concern to me:

Clause 35 – In this clause it is stated that a tenancy cannot be ended by agreement between the parties. I cannot see what benefits there would be to either tenants or landlords to not allowing them to reach a mutual agreement regarding the end of a tenancy. Given that the circumstances of people can and do change surely it is more beneficial to both parties to be allowed to reach an agreement should they so desire.

Clause 38(3) – I agree with the proposal to give landlords the right to refuse to allow tenants to withdraw a notice to leave that they have already served. The bill does not make it clear what the position is if the landlord refuses the request and the tenant fails to vacate the property and by what manner the landlord regain possession of the property. A separate ground for repossession in this circumstance would seem appropriate.

Clause 39 – 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.

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. I 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.

I am concerned about the length of time it will take to evict a tenant who is not paying rent. To reduce the timeframe from non-payment to repossession I 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.

If these amendments are not made then I may have no alternative but to require tenants to pay more than one month's rent in advance and a higher deposit in order to protect my financial position.

Ground 13 (anti-social behaviour) – This ground is the only one not to have a discretionary element. I 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. I suggest that this ground 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.

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

1. Where the tenant has died.
2. Where the tenant has served a notice to leave but has failed to vacate the property.
3. Where the landlord requires the property for occupation by an employee of the landlord.
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 Private Rental Sector, 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.

I believe that the terms and conditions of many Buy to Let mortgages and Residential Mortgages where consent to let is granted prevent landlords from entering into a tenancy agreement of more than 12 months. This condition would be completely incompatible with the omission of the no fault ground resulting in landlords being unable to enter into tenancy agreements under the new legislation.

I am concerned that the abandonment ground (ground 9) cannot be used during the fixed term of the tenancy. Abandonment is a common problem and often happens early into a fixed term lease. Landlords need the reassurance that they can recover possession in such cases.

I am also concerned that potential rent controls may lead to landlords being unable to afford to properly maintain their properties or meet mortgage payments due to the effects of inflation, increasing prices and rises in interest rates.

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