

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Craig and Katherine Duncan

As a relatively new private landlord with one rental property, I would like to make the following comments on the new tenancy proposals:

Eviction grounds

The suggested eviction grounds do not cover every scenario in which a landlord might reasonably want to regain possession of a property.

HMO licences

Firstly, there does not seem to be any ability for a landlord to give up an HMO licence voluntarily. Our rented flat is currently in the process of being HMO licensed, but there are a lot of additional requirements that come with this. If these are extended dramatically in future, or if the licence fee becomes prohibitively expensive, we might want or need to give up the licence. If that happens, I cannot see anything in the new law that would allow us to do this, even though the HMO system at that point might be significantly different from the one we signed up to.

This means we would be forced to sell the property in order to remove the HMO tenants. We wouldn't have the option of choosing to rent the property privately to a smaller number of individuals or a family instead. This will take rental properties out of the private rented sector altogether. Our only alternative would be to breach the HMO conditions in order to get our licence revoked. This would put us at risk of criminal penalties and could potentially jeopardise our landlord registration for future non-HMO lets. We would be left with no choice but to pay whatever new HMO fee applies regardless of how much it has increased, or sell our property, or risk a criminal record. I am surprised that this is legal as I would have expected this kind of forced use of our property to be a contravention of our ECHR rights.

Getting an HMO licence is not an easy task and I don't expect that many people would give it up lightly. I don't see why there can't be a discretionary eviction ground where the landlord wants to give up the HMO licence and undertakes not to apply for another one for at least 6/12 months. The Tribunal could still be given the power to make the ultimate decision about whether it was reasonable to end the tenancy, but at the moment they can't even do this because there isn't a relevant eviction ground. Our intention is to keep our HMO licence once it comes through, and we would be delighted to have our tenants stay as long as possible, but we don't know what might happen in future and it is worrying to think that we could be being asked to sign up to the HMO system forever.

Rent arrears

Secondly, the eviction grounds do not seem to cover tenants continually paying the rent late. I understand that this is an eviction ground at the moment (even though

there is also currently the no-fault ground, so it is less vital), so I don't understand why it is being removed. Under the proposals, if the tenants pay off all their arrears once every three months, they would never be in arrears for three consecutive months so it would be impossible to evict them. They could repeat this endlessly. Although the landlord would then receive all of the money that was due, this could cause serious cash-flow problems for small landlords (like us and many others) who own only a few properties and rely on the rental income for mortgage payments and other commitments.

I had thought that the reason that persistent rent arrears was a ground for eviction under the current rules was because past cases have shown that tenants do make sudden one-off partial payments when eviction is threatened in order to bring themselves back just below the threshold. Without a similar eviction ground to the current persistent arrears one, this could happen again. Landlords will have their credit ratings put at risk as a result of late mortgage payments, but without a suitable eviction ground there will be nothing they can do except sell the property or let it be repossessed.

If the eviction grounds are to be "comprehensive" as the Policy Memorandum says they are, they need to include persistent arrears as a ground without linking this to a particular period. We have this at the moment, and the accompanying documents do not put forward any evidence that this ground does not work. Omitting it is a backwards step, and contradicts the assurances given that the eviction grounds will cover every necessary scenario. As this would just be a discretionary ground, as it is at the moment, the Tribunal would obviously be able to weigh up the landlord's circumstances and the tenant's and come to a fair decision. If the tenant is only a few days late, the landlord is unlikely to want to evict the tenant anyway given the expense involved in finding new tenants (and we would certainly always want to speak to our tenants and try to work things out), but the Tribunal would be there to provide a safeguard against unscrupulous landlords.

Rent increases

The rent increase rules are also potentially a bit worrying, especially the restriction on increasing the rent more than once a year. As relatively new landlords, we haven't had to increase the rent yet, but we wouldn't normally expect to do that very often. If the tenants are looking after the property well then we might even want to wait until they leave anyway. However, mortgage rates are currently at an all-time low. If these suddenly start rising every quarter, the rules mean that a landlord would not be able to increase the rent to take account of this. Instead, it will be a case of trying to second-guess future rises when setting the rent. If the estimate is too low, the property will make a loss, and the landlord might decide to sell up. If it is too high, the tenant will be paying a premium in return for the fact that increases are less frequent. This does not seem sensible for either side. Predictability of rents could be achieved just by giving the tenant proper advance notice of the increase and allowing the increase to be appealed to a rent officer so that the rent is never more than the open market rent.

We agree that giving the tenant proper advance notice of the increase is fair (and this is what we would do anyway), but we are unsure about how this is supposed

to work when we set a rent increase. Are we setting the rent based on open market values at the time that we send the notice? Or are we trying to look ahead and guess what the open market rent will be in three months' time? If it's the second option, presumably this is going to result in a lot of referrals to the rent officer if the landlord's guess at the future turns out to be wrong. It might also end up with tenants paying more than they should be if they don't dispute the amount.

We would also like more information on the mechanics of how the notice will work. Will we be able to send this by email and just get a read-receipt? Otherwise, what happens if the notice takes longer to arrive than we thought it would? We won't know if we've met the minimum notice period because we won't know when it arrives. If it turns out to take a long time in the post, we might end up giving less notice than required. Would our notice then be invalid? When and how would we find this out in order to serve another one? However, if it can be sent by email, these problems shouldn't occur. (A similar point applies to tenants serving notice to leave. If they calculate the date wrong, or if they just say that they want to leave as soon as possible, they won't have served notice. It would seem more sensible for the notice just to take effect at the end of the notice period unless the tenant states a later date.)

Rent pressure zones

The rent pressure zone seems to be a very crude means of regulating rents, and is likely to lead to a lot of unintended consequences. We only have one rental property at the moment, but we might have invested in others in the future. However, if these zones drive down rents and stop us from getting the open market rent in a long-term tenancy, we might end up reconsidering our approach.

As well as the concept as a whole being problematic, there are some odd things about the detail of the rules. For example, why is it linked to CPI rather than RPI? CPI doesn't take mortgage rates into account, and that seems like a fundamental consideration when setting rents. Another point is that although the regulations are stated to be for a maximum of 5 years, there does not seem to be anything to stop an area from being designated in one set of regulations after another after another without there ever being a gap. There does not seem to be any mention of this possibility in the accompanying documents, but if a zone is more than just a temporary measure then it is even more concerning. If we end up on the border of a zone, that would seem to be especially arbitrary and unfair.

Other comments

Although I have highlighted some concerns that we have about the new tenancy proposals, we do support the idea of a modern, clear and easy to understand system. We also do not object to giving the tenants reasonable notice of things, as that is what we would always intend to do anyway as responsible landlords. We also support the idea of an initial period. This will give us the guarantee of a minimum amount of income in return for the expense of the initial letting process, while also giving the tenants reassurance that we will not be able to take the property back during that period unless they do something wrong.

Thank you for taking the time to consider our comments.

Craig and Katherine Duncan
18 November 2015