

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Scottish Borders Council

Introduction

As a Local Authority that relies on a strong and diverse private rented housing sector, Scottish Borders Council welcomes this opportunity to give comment on the general principles of the Private Housing (Tenancies) (Scotland) Bill.

In our response to the previous consultations regarding the new tenancy, SBC made comment on certain issues that gave some cause for concern. Having now had the opportunity to review the published Bill, we are in the main, satisfied with the general principles of the Bill, however there are still some areas that we are not in agreement with.

Model Tenancy Agreement

As stated in our response to the first consultation, we agree with the introduction of a model tenancy agreement and the simplification of the related documents. This will enable landlords to improve the standard of their tenancy agreements and the consistency of the tenancy set up process. We are also satisfied that landlords can add clauses to the agreement to reflect individual needs of themselves and their tenants whilst insuring that the main mandatory requirements are covered and adhered to. The minimum six months period remaining the same is also welcomed.

Security of tenure has always been one of the main points of focus when discussing private rented sector tenancies and the lack of security provided by the Short Assured Tenancy in particular. The removal of the “no fault” ground immediately increases the security of tenure for the tenant. We are also satisfied with the specified circumstances in which a landlord can give notice during the initial period of the tenancy, and are also of the view that tenants should not have the ability to serve notice to leave at any time during the initial period, and welcome the fact that the Scottish Government supports this view.

Tenancy Termination

With regard to notice periods however, we do not agree with there being differing notice periods between landlord and tenant. As stated in our consultation response on this matter, to provide clarity for both landlords and tenants, notice period should be 8 weeks regardless of how long the tenant has been in the property, where the tenancy period has been for a minimum of 6 months. On many occasions, once notice has been given by a landlord, tenants fail to pay their last 2 months rent, take care of the garden and general condition of the property. If notice period is increased to 12 weeks for the landlord then there is potential for landlords to lose 3 months’ rent. If the notice period is 8 weeks for tenants, we feel it should also be 8 weeks for landlords. We do however agree with the introduction of the “notice to leave” single notice and believe this will help streamline what is a complex process under the assured tenancy model.

Grounds for repossession

The twelve mandatory repossession grounds proposed reflect what was given in our response to the second consultation. We were also of the opinion that the anti-social behaviour ground should be discretionary therefore welcome the decision to make this a discretionary ground. With regard to the three grounds that have both a mandatory strand and a discretionary strand, it is felt that the breach of tenancy and rent arrears grounds should be discretionary only and that the ground of where the property is to be sold by the mortgage lender should be a mandatory ground.

The shorter notice period proposed for anti-social behaviour, relevant conviction, abandonment and breach of tenancy are however welcomed.

Rent Levels

As stated in our response to the second consultation, It would be unfair for tenants to be subject to rent increases happening any more than once a year. Tenants need to be able to plan their finances and budget for the future accordingly. The twelve week notice period in advance of a change of rent is a reasonable length of notice and gives a good time period for tenants to review and assess their financial situation and make any necessary adjustments prior to the revised rent change coming into effect. The information required on the rent-increase notice and the option for the tenant to be able to refer the increase for adjudication to a rent officer is also welcomed, however we feel that consideration should be given to there being no fee for the tenant making such an application as charging may deter many tenants from applying.

One thing that did stand out under this section was that landlords would be able to increase the rent reasonably to cover their legitimate property improvement costs. We are comfortable with the principle that a landlord may seek to increase the rent for an improved property. We feel that the example provided regarding replacing a defective boiler was not a helpful example and may confuse matters more, rather than help differentiate between repairs/replacements and improvements, eg installation of a new gas boiler and central heating system. For example, if the landlord had replaced the boiler in the property due to the original boiler being defective, under the Repairing Standard the landlord would be required to replace the boiler if it could not be repaired. In such a case the replacement of the boiler should not be seen as an improvement. We feel that the landlord should not be able to pass on this cost to the tenant therefore we would disagree with the inclusion of this statement. We feel that such property repairs/replacement costs should be reflected in the landlords annual income tax return to HMRC.

With regard to the capping of rents and the designation of "rent pressure zones" our views remain the same. Our response to this in the consultation was that in general, we felt that private rented sector rents should largely remain market led. We also however agreed that in areas where there are particularly high rents then there may well be a need for some form of regulation of area-based rent limits. The advantages of this are that it will protect tenants from excessive rent increases that they just simply can't afford. The disadvantage however is that such regulation has the potential to discourage landlords from entering or remaining in the sector and

prevent future growth and investment in the sector. Any such application from a Local Authority to designate an area as a “rent pressure zone” should therefore require substantial evidence in support of the application. We look forward to clarification being provided regarding process and information required for a Local Authority to consider and potentially make a bid for such zones. We feel that this discretionary power to address high private sector rents within areas where rents are increasing excessively could be a useful tool where such situations arise.

Wrongful Termination

The ability for a tenant to apply to the Tribunal for wrongful termination seems a very useful inclusion. Without this, it would be very easy for landlords to use one of the specified repossession grounds in order to have the tenant evicted from the property, only to re-let to another tenant thereafter without recourse. We consider that the prospect of having to pay compensation to the applicant tenant of up to three months’ rent would act as a suitable deterrent to landlords who consider making a misleading application for repossession of a property.

Conclusion

We would conclude this evidence by acknowledging that there is no doubt that the contents of the Bill will make significant improvements to the tenancy regime in the private rented sector by simplifying the processes of starting and ending tenancies. More importantly we consider that it will provide new streamlined processes, provide greater security of tenure to tenants, with measures also in place to prevent unfair rent increases. The Bill also simplifies the issues around grounds for repossession which can be confusing for tenants and landlords under the current Short Assured Tenancy arrangements.

There is however some areas within the Bill that we are not in full agreement with, which have been commented on. We would hope that these issues are given further consideration so that the end result is an Act that remains fit for purpose and which will help provide the conditions for stability to assist growth and improved conditions in the private rented sector for many years to come.

**Scottish Borders Council
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