

## Private Housing (Tenancies) (Scotland) Bill

### Written submission to the Infrastructure and Capital investment Committee

#### Turcan Connell

Turcan Connell are a firm of solicitors acting for individuals, family businesses and charities. These include many owners of private residential properties in both urban and rural settings. We routinely advise clients in relation to the letting of their private residential properties. We also give advice to letting agents and land agents in connection with Private Rented Sector matters.

We wish to submit evidence in connection with the Bill as follows:-

#### First Tier Tribunal's Power to make an Order against a Landlord

The First Tier Tribunal ("FTT") can make an order against a landlord who fails to provide a written tenancy or relevant information to a tenant (Section 14) or in respect of wrongful termination of their tenancy (Section 49(1)). A penalty of not more than three months' rent can be ordered to be paid. However, we note that the penalty is payable to the tenant. While we understand there requires to be a penalty upon landlords who do not comply with the relevant legislation and agree with this, any penalty or fine should not be payable to the tenant. Compensation payable to a tenant for losses should be a separate matter and not be linked to any penalty imposed on a landlord for breach of the provisions of the Bill.

#### Protection for Sub-tenants - Section 36

Section 36(3) sets out details of when a sub-tenancy is not lawfully granted. Sub-letting, in terms of Section 36(3) has to be precluded by a term of the mid-landlord's tenancy or, where the mid-landlord's tenancy is held from another tenant, that tenant's tenancy. In agricultural holdings leases agricultural tenants often sub-let surplus properties. Sub-letting may not be specifically prohibited in the agricultural tenant's lease. Often there is no written lease. Sub-section 3 should be amended to provide that sub-letting is also not lawful where (a) sub-letting is not permitted by statute, or (b) where the common law principle of *delectus personae* applies (i.e. there is a personal element to the contract between the parties and neither expect to be in a contractual relationship with a different third party).

#### Termination

##### (a) Termination by Agreement

Section 35 of the Bill states that a Private Residential Tenancy ("PRT") cannot be brought to an end by the landlord, tenant **nor by any agreement between them**, except in accordance with the relevant part of the Bill. We consider that the landlord and the tenant should be able to bring the tenancy to an end by agreement. There are various situations in which a landlord and a tenant may wish to agree to bring a tenancy to an end other than by the notice provisions set out in the Bill. This should be permitted.

(b) **Termination by Executors**

The Bill provides that executors are required to serve notice to end a PRT on the death of the tenant. We consider that this is an unnecessary burden on tenants. Many tenants may not have Wills and the estates may be of such a value as not to require Confirmation. There may be no executors, therefore, to serve notice. Tenants and their executors may well be unaware of this requirement. We consider this requirement would also lead to unexpected rent bills for the tenant's estate. It would be preferable that the Bill remains silent on this point or stipulates that a PRT comes to an end on the death of the sole tenant or where there is no party entitled to inherit the PRT in terms of the Bill. Any party entitled to succeed to the PRT in terms of the Bill will be residing with the tenant and, accordingly, the landlord should be aware of their identity (per the requirements of the Bill to advise landlords of parties 16 and over who reside with the tenant).

(c) **Abandonment**

We note that paragraph 9 of Schedule 3 to the Bill provides it is an eviction ground that the tenant is not occupying the let property as the tenant's home. However, there is likely to be a significant lapse of time between a landlord becoming aware that a property has been abandoned and obtaining an eviction order from the FTT. The Bill should clarify that a landlord has a right, upon reasonably considering a property to be abandoned, to enter the same and secure it. Furthermore, on an eviction order being granted the landlord should be absolutely entitled to dispose of the tenant's abandoned possessions in their discretion. Otherwise, the landlord may incur costs in storing belongings, etc. A landlord should be entitled to make an application to the FTT for an eviction order during the initial period where the tenant has abandoned the property. Accordingly, the list in Section 43(2) of the Bill should be extended to include: "that the tenant is not occupying a let property as the tenant's home".

(d) **Termination for Rent Arrears - paragraph 11 of Schedule 3 to the Bill**

As currently drafted, a landlord will have to have three consecutive months of arrears of rent and those arrears must total at least one month's rent before the landlord is entitled to give notice to leave and, thereafter, apply to the FTT for an order for eviction. If a tenant is not paying **any** rent the landlord will have four months' rent arrears before they can apply to the FTT for an eviction order. They will then have to wait for a date for their application to be heard and for a further period before eviction actually occurs. This is a very long time for a landlord to have to wait if a tenant is not paying any rent. A landlord will accumulate a considerable amount of arrears and is unlikely to be able to recover this in many, if not most, instances from the tenant. We consider, therefore, that the notice period for arrears of rent cases should be reduced to fourteen days. Even if the Bill is amended to this effect landlords are still likely to have accumulated a considerable level of arrears from their tenants before obtaining an eviction order from the FTT.

Further, tenants may be persistent non or late payers. It would assist landlords in managing such tenants if the word “consecutive” was removed where it occurs in paragraph 11(1) and 11(3) of Schedule 3 to the Bill. If this word is not removed, a tenant could persistently under or late pay the rent for a considerable period of time before the relevant ground is met.

We also refer to our comments below in connection with additional grounds or late/under payers of rent.

(e) **Use/Need of Property for a family member - Paragraph 4 of Schedule 3 to the Bill**

For various reasons some properties are held in the name of companies or trusts. We consider this ground should be extended, therefore, to allow a property to be occupied by a beneficiary or a member of a beneficiary’s family where the landlord is a Trust. In the case of a company, a person who has a controlling interest in the owning company or a member of their family should also be included within this ground.

**Additional Grounds**

The aim of the Bill is to provide security for tenants and to provide robust grounds upon which a landlord can be sure of regaining possession of their property when it is needed. We do not consider the Bill has achieved this latter aim. We consider the following are situations where it would be reasonable for a landlord to obtain possession of a property but these are not covered in the Bill as introduced. Accordingly, we consider the following additional mandatory grounds should be included:-

- Where it is not economically viable for the landlord to repair the property to bring it to the Repairing Standard (where it does not reach that Standard for reasons beyond a landlord’s control).
- Where the property in question is required by the landlord to house an employee.
- Where the tenant has given a notice to leave and then fails to vacate the property on the relevant date. (Please see also our comments below on Section 38).
- Where the landlord and the tenant have agreed a lease for a specific period of less than six months and notice is given at the commencement that possession will be required at the end of the agreed lease period;
- Where a lease is agreed for a period not exceeding eight months and notice is given at the commencement that possession will be required at the end of the agreed lease period as the property is used for holiday letting. This would facilitate landlords being able to let properties for a longer period between holiday lets.

We also consider that additional discretionary grounds should be added as follows:-

- Where a tenant is a persistent late or under payer of rent a landlord should be entitled to apply to the FTT for an eviction order. Unless there are good grounds to allow the tenant to remain in the property, a landlord should be awarded possession. Persistent, under and late payers of rent make it difficult for landlords to manage a let property and can have an adverse financial impact particularly upon those who let one property only and, perhaps, have a mortgage to pay in respect of it. The vast majority of landlords only own one property.
- Other reasonable grounds. The Bill proposes that the PRT can be ended **only** in the circumstances set out in the Bill. It is not possible to foresee all circumstances which the FTT would consider to be reasonable grounds for a landlord to obtain possession of their property. For this reason, it is essential that the FTT has some discretion to be able to award a landlord possession of their property if they consider it is reasonable to do so. Clearly such a ground would not be available during the initial period of the lease but a landlord should be able to obtain possession after the initial period if, in all the circumstances, it was considered reasonable that they do so. Circumstances change over time and in its current form the Bill is unduly restrictive.

### **Lettings to Students**

We consider that lettings to students should be excluded from being PRT or, alternatively, termination of a student let should be a mandatory ground for an eviction order to be issued by the FTT. Schedule 1 paragraph 5 could be amended so that paragraph 5(1)(a) ends after the words “course of study” and sub-paragraph (b) is deleted. Tenants would have adequate protection as students will enter into leases with landlords for the academic year and a landlord would not be entitled to evict the tenant (except for breach of the lease) during the contractual lease period. However, if the Bill cannot be amended to this effect, a letting to a student who is pursuing a course of study with any of the relevant persons set out in paragraph 5(2) of Schedule 1 but where the landlord is not a relevant person should be a mandatory ground for possession. Notice that the lease is a “student let” where the landlord is entitled to possession at the end of the lease period could be given at the commencement of the lease.

### **Termination by a Tenant**

Section 38(2) provides that a tenancy comes to an end on the day specified in the notice to leave given by the tenant. However, we consider Section 38(2) should be amended by the addition of the words “or, if later, the date on which the tenant ceases to occupy the property”. This accords with the addition of a mandatory ground allowing the landlord to seek possession where a tenant has given a notice to quit but fails to leave. Otherwise, a landlord has no remedy where a tenant gives a notice to leave, the landlord has acted upon that notice and the tenant then fails to leave. Furthermore, it is essential that the PRT in that instance does not come to an end until the tenant leaves as, otherwise, the landlord cannot accept any rent. If they do they will run the risk of creating a new PRT which will not be affected by the

tenant's notice to leave and, so, the landlord will have become committed to the tenant remaining in the property.

### **Service of Notices**

In Section 52(2) there is provision that where two or more people comprise the landlord any one of them can give notice. We consider that landlords should, in the main, act jointly and recommend, therefore, that a majority of landlords should act together to give notice. Sub-section 2 of Section 52 should, therefore, be amended to provide that notice must be from both landlords where there are two and from a majority where there are more than two.

### **Wrongful Termination / Eviction**

We note the concerns from some representatives with regard to grounds where possession can be awarded to a landlord if they **intend** to carry out certain actions – e.g. sell their property. We would have no objection to a landlord having to produce some evidence of their intention (e.g. to sell). Furthermore power could be granted to the Local Authority/PRHP, where it comes to their attention that a property has not, for instance, come to the market after eviction/termination on the ground that the landlord intends to sell, to refer such cases back to the FTT – i.e. enforcement would not rely solely on the tenant to do so.

We have mentioned above that the penalty for wrongful eviction should not be payable to the tenant. If this was the case the fine/penalty could be larger.

We understand that there are landlords who are blatant in their disregard for the legislation and regulation which governs the PRS and hope that where cases brought before the FTT (and which come to the attention of Local Authorities and/or the PRHP) bring to light such landlords who are clearly making no attempt to let properties within the regulations and are not registered that **all** available legislation will be used to pursue them and, if appropriate remove them from the Sector. However, most landlords in the PRS own only one property which they let out and they should not be penalised when there is already legislation which can assist in rooting out bad practice. In our experience landlords only end a tenancy where there is a good reason to do so. They do not want to lose good tenants or have a void in respect of their property nor incur the costs which accompany having to find a new tenant.

### **Rent**

We would welcome an addition to the Bill to clarify that payment of bills for services and for Council Tax and the like cannot be deemed to be rent.

**Turcan Connell**  
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