

Private Housing (Tenancies) (Scotland) Bill

Written submission to the Infrastructure and Capital investment Committee

Shelter Scotland

Introduction

Shelter Scotland welcomes the opportunity to submit evidence at stage 1 of the Private Housing (Tenancies) (Scotland) Bill. We have been campaigning for a fundamental change to the system of private renting in Scotland for many years.¹ We welcome this bill as the opportunity to make that change real and fully support the principles and approach contained within in it. Our evidence below sets out recommendations for improving the operation of the proposed tenancy.

The need for change

Shelter Scotland helps private tenants through our free telephone helpline, housing advisers and law service. In 2014, 46% of calls to our helpline related to private rented sector issues,² vastly disproportionate to the 14% of all households who live in the sector.³ Issues range from repairs, failure to lodge deposits in tenancy deposit schemes, unreasonable rent increases to illegal eviction.

Bargaining power is central to private tenants' ability to challenge poor practice of this kind. The current private tenancy puts renters in a weak position to negotiate with landlords. Many agreements guarantee as little as one or two months' security of tenure beyond the initial tenancy period. This means that it is often easier for a landlord to terminate the agreement and find a new tenant, rather than face the expense of paying for a repair.

Case study:

A Shelter Scotland client was living with their partner and two young children in a private rented flat. The flat had various disrepair issues including: a leaking shower; insecure windows; nails sticking up from the floor and a radiator that wasn't properly attached to the wall. The shower was removed, but never replaced. They complained about the state of the property several times but no action was taken, so they went to the Private Rented Housing Panel. Soon after their complaint was lodged with the panel they were given notice to leave the property by their landlord.

Instability and insecurity also affects tenants' ability to make a private sector let their home. Private renting was once viewed as the preserve of students, young professionals and temporary workers, but has now become a near-permanent housing option for newly-forming households and a younger generation of renters. Households that would have in the past either secured a social rented tenancy or

¹ See Shelter Scotland's 'Make Renting Right' campaign, http://scotland.shelter.org.uk/get_involved/campaigning/make_renting_right

² Shelter Scotland, An Analysis of Client Data in Scotland, July 2015 http://scotland.shelter.org.uk/professional_resources/policy_library/policy_library_folder/an_analysis_of_shelter_scotland_client_data_in_2014

³ Scottish Government, Scottish Household Survey, 2014

bought a home. Overall, the sector has doubled over the last ten years – now 14% of all households in Scotland rent privately, up from 5% in 1999.⁴ Much of this growth has come from younger households and families: 41% of households headed up by a 16 to 34 year old now rent in the private sector, up from 13% in 1999. And 26% of private rented sector households now contain children.⁵ For these households security of tenure within a modern and simplified tenancy regime is absolutely necessary.

Security of tenure for private renters

The draft bill radically improves security of tenure for private renters. This is because it does not contain a provision for “no fault” eviction, unlike the current short assured tenancy.⁶ Under the proposed tenancy private tenants would have indefinite security of tenure: a vast improvement on the current tenancy regime. A tenancy could only be ended if one of the grounds for eviction is satisfied. Families would be safe in the knowledge that they couldn’t be asked to move at short notice, and all private tenants would have the confidence that they couldn’t be asked to leave for simply complaining about a repair.

Shelter Scotland strongly supports the removal of “no fault” eviction from Scotland’s private rented tenancy through this bill.

Grounds for eviction

In Shelter Scotland’s view the grounds for possession listed are reasonable. However, the detail of how they would operate in practice needs to be strengthened in the following ways:

- 1. The rent arrears ground could lead to disproportionate outcomes for tenants by enabling landlords to secure a mandatory eviction where tenants have one month’s rent arrears, but are unable to pay this off over a three month period.⁷ For a landlord to secure a mandatory eviction Shelter Scotland believes this should be increased to at least three months’ rent arrears.⁸**
- 2. How the landlord’s “intention” is defined needs to be tightened, particularly in relation to a landlord’s intention to sell.⁹ This should be more than just an aspiration to sell, it must also be likely to happen in the circumstances.¹⁰**

⁴ Scottish Government, Scottish Household Survey, 2014

⁵ Scottish Government, Scottish Household Survey, 2014

⁶ Part 5 of the Private Housing (Tenancies) (Scotland) Bill as introduced

⁷ Schedule 3 para. 11 of the bill, as introduced

⁸ As is currently the case under the assured tenancy regime see sch. 5 ground 7 of the Housing (Scotland) Act 1988

⁹ Schedule 3 paras 1-5

¹⁰ Art. 4(1)(c) of The Applications by Creditors (Pre-Action Requirements) (Scotland) Order 2010 provides the following definition of attempting to sell a property: “actively marketing the property for sale at an appropriate price in accordance with professional advice.”

- 3. The First-Tier Tribunal should be given discretion to adjourn proceedings.¹¹ For example to monitor repayments to rent arrears or to allow time to monitor a tenant's behaviour in antisocial behaviour cases.**

The initial tenancy period

Shelter Scotland agrees that the standard initial period should be six months. It is also positive that a landlord and tenant can agree a shorter period of as little as three months at the tenant's request. We welcome the limitation on the grounds for eviction they can use during the initial period. Where landlords and tenants arrange for a longer initial period – for example 12 months – tenants should be made aware that this would tie them into the full term, restricting when they can serve notice.

Model tenancy agreement

The Scottish Government have proposed that a model tenancy agreement be drawn up. This would contain mandatory, i.e. statutory, and discretionary clauses. There would be scope for landlords and tenants to vary the model agreement, allowing landlords to draw up their own version.

Recommendation: to ensure tenants are protected from landlords drawing up leases with provisions which are contrary to the statutory terms, the Bill should state that any term which contradicts the statutory requirements would have no effect.¹²

Notice to leave

Shelter Scotland welcomes combining the 'notice to quit' and section 33 notice used to end tenancy agreements under the assured and short assured tenancy regime in one 'notice to leave'. This is an important simplification and should be a key aspect of training and promotion that will accompany the tenancy's introduction.

Notice periods

The notice periods that landlords must give tenants and tenants must give landlords are both reasonable. However, the process that landlords must follow to regain possession of a property should be set down clearly. In the draft Bill the process for serving notices is as follows: a landlord serves a tenant with a notice to leave; the tenant can either accept the notice or remain in the property; if the tenant hasn't vacated the property at the time of the expiry of the notice then the landlord can apply to the First Tier Tribunal for an eviction order.

Recommendation: the bill should reference the need to take into account the provisions of the Rent (Scotland) Act 1984 which prohibit illegal eviction as part of this process.¹³

Rents

Shelter Scotland welcomes the approach to rents as set out in the draft Bill. The limitation on rent increases to one per year and a 12 week notice period are both important. So too is the power for a private tenant to refer a rent to a Rent Officer

¹¹ As is currently the case under the assured tenancy regime, see section 20 of the Housing (Scotland) Act 1988

¹² This should be inserted into section 5 of the bill, as introduced

¹³ This should be inserted into s.40 of the bill, as introduced

should a rent increase put their rent well above the market rate in their area. Crucially, this must lead to better and more widely available market information on rents in the private rented sector, to better-inform policymakers, civil servants and Scottish Ministers.

Rent pressure zones

The power for local authorities to apply to Scottish Ministers to designate an area as a rent pressure zone is a positive move. We recognise the pressure that private rented sector rents have on household budgets and a rent pressure zone could offer an important protection from steep rent rises where it is proven that private rents are increasing rapidly in a particular area. Importantly, regard must be had to the need for genuinely affordable housing in areas where private tenants' incomes are stretched by their rental payments. Shelter Scotland estimates that at least 12,000 affordable homes need to be built in Scotland each year to meet current and future demand for affordable housing.¹⁴

Recommendation: where it is found that private rents are rising rapidly and causing hardship this should be taken into account in both local housing strategies and national policy for the purposes of providing affordable housing.¹⁵

Succession

Shelter Scotland strongly supports the inclusion of a partner's right to succeed to a private rented tenancy.

Applications to First Tier Tribunal

To ensure that private tenants have access to justice the Scottish Government should ensure that advice and assistance as well as legal representation is available to low income and vulnerable tenants at the tribunal

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¹⁴ 'Affordable Housing Need in Scotland', report commissioned for Shelter Scotland, September 2015

¹⁵ s.33 Private Housing (Tenancies) (Scotland) Bill, as introduced