Guild of Residential Landlords
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27 May 2015

Dear Christine Chapman

Reference Renting Homes (Wales) Bill: request for additional information following the evidence session on 14 May

Thank you for your request for further information which I answer below.

Before beginning if we may take this opportunity to mention something that we didn't quite get time to reply during the morning (through nobody's fault).

Retaliatory eviction

In respect of retaliatory evictions, we fully support the principle but are genuinely fearful of the real life problems that could arise.

The statistics that are being loosely thrown around are with respect nonsense. They are almost exactly the same principle in collection as those provided for by Citizens Advice Bureau / Shelter when tenancy deposit legislation was introduced.

I forget the exact figures now (but they are available as responses to consultations), it was claimed that around 26% (I think) of all deposits were disputed by tenants.

These statistics like the retaliatory eviction statistics were taken from sources such as CAB offices or shelter helplines.

The industry was adamant at the time that the tenancy deposit statistics were unfounded but we were entirely ignored and the legislation pushed

through (which is almost impossible to fully comply with due to its complexity).

With respect, the collection of those statistics is like me standing in front of a supermarket door and asking "will you buy baked beans today?" Of course a high percentage will say "yes" because that's why they are there in the first place.

The actual tenancy deposit results have shown over the last 7 years that the industry was absolutely correct and the other organisations were entirely wrong. In fact the average dispute rate is only 1.9% [1]

With respect, the guess work with retaliatory eviction statistics are being taken in the same manner and this is a real worry. The industry is fearful that governments will listen to the nonsensical statistics that are without foundation and could extend possession proceedings considerably and cost considerably more.

The only true way to establish statistics is by an independant survey on the street with a sufficient number of people to be authoritative.

The other problem with retaliatory eviction statistics is what was the question? In a large number of cases we deal with both personally or through our help-line, when rent arrears starts, the first thing that happens is that the tenant alleges some repair just to try to avoid paying the rent that month. The repair is often something that is so negligible that they haven't bothered to report it for months and certainly didn't warrant the withholding of an entire months rent. The landlord will then serve notice but it is not in retaliation for the request to repair, it is retaliation for (a) not reporting the repair several months ago which would have made the repair easier and (b) the rent arrears. Yet, when asked, it is submitted in many cases, the tenant would claim the notice was served "after a request for repairs" which isn't the whole story.

We noted in the response pack for the evidence hearing, an Assembly official commented "a single retaliatory eviction is one too many". Well I

1 Source: DPS year in review but all schemes report similar results - http://www.depositprotection.com/documents/dps-year-in-review-2014.pdf

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don't think that is a fair statement without context. We would agree that one is too much if no regular possession for genuine reasons were affected by any legislation attempting to deal with this. If however 10,000 possessions are likely to fail or be considerably delayed despite being truly genuine - then we think the affected single retaliatory eviction needs to be considered appropriately.

We believe that if we have to have this legislation, the only realistic way is to use a system like that being introduced in England. We think the balance is about right in that the repair must first be notified in writing and then the local authority contacted. The advantage of the local authority having to inspect is that there is a third party assessing the repair with a right to appeal to a tribunal for the landlord or tenant.

The main problem with the England system though is that it is very open for abuse. There is however a simple fix in our view.

With the England system, the tenant must first complain to the landlord and then if no reply is made by the landlord within 14 days, the tenant must contact the local authority about the "same or substantially same repair as reported to the landlord" (those aren't the exact words but are the effect). However, if the local authority inspect and then serve a notice, the notice may contain anything for the section 21 to be invalid for example a simple extractor fan not working could render possession invalid even if the tenant never complained to the landlord or council about the extractor fan.

The simple change needed is that (a) the notice from the local authority must include a category 1 hazard (even if it also includes other items such as extractor fan not working) and (b) must include the "same or substantially the same repair as reported by the tenant to the landlord and council" (even if it also includes other things).

This way at least there is a third party confirmation that the original repair request from the tenant was genuine and that it was serious enough to be category 1.

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This requirement of local authority intervention reduces the need for decision making by the court because otherwise surveyor reports would be needed which can cost thousands of pounds. If a tenant was proved wrong they would have the costs to pay which could be a serious debt.

This makes it perfectly fair on the existing tenant and will allow for repairs to be notified without fear of retaliation but it greatly assists with protecting genuine possession proceedings from too much abuse (no system will ever be perfect).

We also like the small number of exemptions in the England model such as genuine sale of the property (which is heavily defined to avoid abuse by landlords).

Landlord's notice (is it improvement on section 21?)

The current proposals are very similar to the existing 'section 21 notice' provisions.

It is useful that the date of expiry being the last day of a period is not contained within the proposals (this is something being removed in England by the Deregulation Act 2015).

It is noted however that the notice must expire "after" the last day of the term. We would have thought this would be better (and probably intended to say) "on or after" the last day of the term otherwise it could be confusing.

Landlord's notice (proceedings issued within 2 months)

It is of concern that proceedings must be commenced within 2 months of expiry of the notice under the proposals.

In reality, this will actually increase possessions rather than decrease them.

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Let's take an actual genuine example that we have ongoing right now.

We have a tenant who we have served a section 21 notice on because he had set fire to the flat. He has also flooded the flat below on 3 separate occasions. Finally, it is alleged by neighbours that he is anti social and dealing drugs from the premises.

All that being said, the tenant actually pays the rent reasonably on time.

The tenant is struggling to find another place and so keeps contacting us for another month extension before we commence proceedings which, because of the moderate payment frequency, we have allowed on occasion.

If however, there was a rule requiring us to seek possession within a certain time-scale there is absolutely no question whatsoever that we would have had no option but to commence proceedings within the given time-frame because we simply cannot allow this tenant to remain in our property for much longer.

We entirely accept the position that a notice should have some time-limit though and we believe the current system of a section 8 notice (breach of term or non payment of rent) is about right with a 12 months time limit.

It is our view that 6 months is also too short for the above reasons in that landlord's will be absolutely forced to take possession proceedings when otherwise they might have just held off to see what develops. (The tenant example above has been allowed longer than 6 months from expiry before commencing proceedings but no way would we leave it 12 months).

If your interested (and I mention this because it was mentioned at the hearing), this is my reasoning as to why I think a short term tenancy that then turns into a long term tenancy would be disastrous and would actually result in more possessions.

Taking the above true case which is relatively normal (except the fire) for many landlords, if that tenant had a short tenancy which was about to

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extend into a longer fixed term, there would be no way a landlord would take the risk and would be forced to commence possession proceedings far quicker than otherwise. At least with the current system, there is no rush for a landlord who is willing to tolerate what many wouldn't think of tolerating for any period.

Abandonment

Abandonment is a genuine problem. Not just because of frequency but also not knowing what advice to give when asked. Currently a court order is required which takes a long time in particular because some form of notice must first be given. This is only contributing to an already clogged court system.

We support proposals to change the way abandonment is dealt with.

It is our view that the proposals strike a reasonable balance and vulnerable tenants are protected by the need of not just one but two notices in writing.

The requirement for both notices is that the landlord gives it to the contact-holder. We think that this should be required to be by way of recorded delivery (now called "signed for" we believe). This assists both parties because if it's never signed for nor collected, that goes towards the reasonable enquiries about occupation and also the document is safely held by the post office for anytime collection by a tenant. This also gives legislators the confidence that a notice will be properly served and the receipt will be required during any proceedings that may follow. This would avoid potential problems of landlords claiming to have hand delivered the notice but also helps genuine landlords because where statute requires service by recorded delivery, that is sufficient service even if not collected. The current wording seems to imply that the notice must be delivered to wherever the former tenant is now residing which of course by nature of abandonment is unlikely to be known.

Statutory guidance would be useful in respect of what would be

regarded as “reasonable enquiries”.

We are concerned about the provisions which would allow a court to order alternative accommodation. Most landlords only have one or two properties which on average are occupied for 18 months (according to tenancy deposit schemes data). Therefore the providing of alternative accommodation would be impossible.

Even those with larger portfolios would always try to ensure they remain full at all times and so unlikely to have any suitable accommodation available.

As licensing will be in force by this time, will it not be sufficient to deal with any breach of abandonment in some way within the licence? Potentially that could be a far greater penalty than alternative accommodation?

Alternative body for settling disputes

I would agree with other responses that the court is not best placed to deal with possession proceedings and housing related disputes. It’s a very specialist area and unfortunately we see a large percentage of cases failing not because of some defence by a tenant but because of intervention by the court not understanding the rules. An appeal or application to restore is then necessary which is almost always successful and just took up yet more time in the court system wholly unnecessarily. The irony is that when this happens, all the additional costs are added to the tenants debt - all because the court didn’t understand the rules!

We fully support the idea that the Residential Property Tribunal Wales would be more suited to ordering possession and dealing with disputes. Because it would become their primary work, they would have a much better understanding of landlord & tenant law and would likely produce fairer decisions all round.

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We also believe that the time-scale when a hearing must take place in relation to possession and in particular rent arrears, should be reduced. Currently it is between 4 and 8 weeks which is simply unfair especially when the landlord had to wait for two months arrears before even serving notice let alone commencing proceedings.

I find it hard to find any other industry which is expected under law to carry on working for a person despite not being paid for easily up to six months or more! I'm quite certain any person would not like two months wages to be withheld before they could even start a procedure that could take several months before stopping the non-payment - and throughout having to carry on working exactly as before? That is the real world reality of what a landlord is expected to do.

Finally, the current system of having to use a county court bailiff is simply unfair and submitted commonly why a landlord feels forced to take their own action.

There is currently no statutory time limit when a bailiff must attend after a request (and fee) paid. This can lead to weeks or months before attendance purely because of cuts in the system and a reduction in numbers of bailiffs. This is all despite the tenant being in breach of a court order and more often than not, not paying any rent for their occupation of the premises.

It is currently possible to employ a High Court Sheriff but a transfer must be made from the County Court to the High Court which is just more time and unnecessary costs. These costs are normally added to the tenants debt by the court.

This is a good opportunity to look at this element after-all we are discussing dealing with a tenant who is now in breach of an order from the court so there cannot be much objection to that being enforced properly?

I hope the above is of assistance to you.

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A. Thompson.

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