RH 21

Y Pwyllgor Cymunedau, Cydraddoldeb a Llywodraeth Leol/

Communities, Equality and Local Government Committee

Bil Rhentu Cartrefi (Cymru)/Renting Homes (Wales) Bill

Ymateb gan: Wyn Morgan Lloyd

Response from: Wyn Morgan Lloyd

These comments have been compiled by Wyn Morgan Lloyd, a private Landlord with a portfolio of some 15 rented properties in Rhayader, Powys. With 30 years' experience as a private landlord.

For the last 15 years 90% of rental income has been re-invested into improving the housing stock, much of which was inherited in poor condition.

There are no new build or buy to let properties in this portfolio and tenants are mixed in type. Ranging from elderly singles to large family units, including, more latterly migrant workers from India.

A number of tenants are in receipt of Housing Allowance, and many more in past years. However, following the restriction on the payment of Housing Benefit directly to Landlords, these tenants frequently fall into arrears. Each time the tenant has been approached to establish affordable payment plans to reduce the arrears and 1 tenant has managed to repay almost £1,750.00 of arrears, once the rental payments were paid directly to the landlord. When the offer of payment plans have been beyond the tenant, or no effort made to repay, Notices to Quit have been issued with two month notice periods, but only when arrears have reached unmanageable levels, in some cases £2,000.00 or more.

In more recent years, properties have been wilfully damaged and left in appalling conditions due to neglect and unsanitary living by a growing number of outgoing tenants. This has led to unnecessary and expensive repair bills mounting into thousands of pounds. This has unfortunately meant that in some years the refurbishment programme of the other properties in need of updating, has had to be abandoned in order to cover these unexpected costs.

Tenancies are issued on a monthly periodic basis and are all Assured Shorthold Tenancies, with the exception of one Assured Tenancy. Tenants have always been very happy to have the flexibility this offers and the no-fault possession option available on periodic tenancies has never been used. Usually if the tenant pays rent and doesn't breach the tenancy agreement in any way they stay, a third of tenants have been in situ for 8 years or more.

Tenancy Agreements are always issued at the outset and part-time administration staff is employed to ensure that all statutory Landlord obligations are met and that tenant complaints and issues are responded to effectively. The team are all members of the National Landlords' Association and the lead administrator is currently undertaking the accreditation offered. The lead administrator is also a member of the Landlord Zone forum and the Residential Landlords Association Cymru.

My comments are mostly limited to the provisions of the Bill that will affect the administration of my rental properties and therefore are concentrated around the provisions that will affect the Standard Period Occupation Contract.

As a committed and experienced Landlord, I welcome reform in the sector with the caveats I have highlighted on the following pages.

Wyn Morgan Lloyd A.C.I.O.B.

The comments below have been collated in the order used in your terms of reference.

1. General Principles.

The terminology used throughout the Bill has clearly been chosen to distinguish the new regime from the existing and with reform of this type this is a necessity. However, the term "Occupation Contract" (OC) may be confused by some as having something to do with their employment, perhaps "Housing Contract" would be a preferable term. Similarly, the term "Contract Holder" (CH) implies that there is one main holder of the said contract and that the Landlord is in some way supplemental to the Agreement. Surely, both parties are holding the contract in unison and the use of an alternative term for the tenant may stop any unintended inferences.

i Part 2 – Occupation contracts and landlords.

In general the concept of a written OC is welcomed and the inclusion of the fixed Fundamental Provisions (FP's) is sensible in all the circumstances, as are the Supplemental Provisions (SP's) which are more likely to be subject to regulatory amendment.

The insistence of the inclusion of Key Matters will also provide clarity between the parties.

The fact that Additional Provisions/Terms (AT's) can be included, allows for the tailoring of the OC to suit the property and the requirements of the Landlord (e.g. no smoking, or no pets, or stairwell not to be obstructed) whilst ensuring that the tenant can easily spot the AT's within the body of the OC and decide if the property is the one for them.

ii. Part 3 – Provisions applying to all occupation contracts.

Written Statements

The obligation on Landlords to provide a written OC is welcomed, the respondent has always done so and strives to stay abreast of all statutory amendments for inclusion where necessary.

However, the interest attached to compensation appears to be excessive and as many landlords are not body corporates and neither are many residential tenants, then the use of the Late Payments of Commercial Debt rate seems excessive. Surely, interest under s.69 County Courts Act 1984 is far more suited

to this type of contract breach. Or even a standard fine for breach of this F.P. in the region of £500.00.

Also, there is an inconsistency between s.31 and s35(6) , surely the relevant date should be 14 days for both?

Deposits and Deposit Schemes

This is currently a Landlord's obligation and is welcomed in the Bill. However, it is not clear if the requirement will mean registering all existing deposits with a new Welsh body/ies. If so, the cost to those Landlords, such as the respondent, who use the insured protection option – Mydeposits, will run into hundreds of pounds, (c. £30 per property) unless, that is, each deposit insurance policy can be assigned from Mydeposits to any new Welsh scheme.

Joint CH's

This is generally welcomed because currently, when a tenant's personal circumstances change, others may come to live at the property who are not a party to the tenancy agreement. From a Landlords point of view, difficulties then ensue when trying to enforce the Agreement or gain possession, as the other person is not part of the contract. This measure may help in that respect.

The phrase 'fully liable' does not make it clear whether this is a joint and several liability, this will need to be established. Otherwise a Court interpretation may mean that liability is apportioned between the JCH's rather than each being liable for *all* the responsibilities and obligations.

Schedule 6 leaves scope for interpretation and is widely drafted and case law will determine 'reasonableness' over time.

Right to occupy without interference

Welcomed.

Anti-social behaviour and other prohibited conduct

Welcomed and is a necessary tool for the Landlord.

Rights to deal

Welcomed and is a necessary tool for the Landlord, as is the right to expressly exclude dealing.

Transfer and succession

s.s.69-71 are welcomed, provided that the right to transfer an OC can be expressly excluded in the OC.

Succession is in theory a good thing to include, with the caveat that the priority successor (especially those aged 16/17 yrs) may not be capable of fulfilling the contract if they are without the financial means to do so. It would be prudent to provide for a right for the Landlord to negate these provisions if the successor is without such means. Otherwise the effect of this provision will be to increase the

possibility that possession claims will be inevitable in the months following succession, leading to further stress on those already bereft.

Landlord's Consent

This is welcomed, mainly because the interpretation of 'reasonable' does not fall under Schedule 6, which may not allow all of the factors under consideration to be taken into account.

Compensation

Please see comments made above under *Written Statements*.

iii. Part 4 – Condition of dwelling

s.91 &92 are obligations that currently stand, although the standard of repair is currently reliant upon case law. This provision will be clearer for the tenant and the Landlord going forward.

S.96 (& s241) – along with permitted occupier the Bill should also include visitors invited to the dwelling by a permitted occupier. Damage in the past has been experienced by the respondent when guests invited by the tenant have caused damage, either wilfully or neglectfully. Permitted occupiers should have to take responsibility for the actions of those they invite into their home.

s.101 – The respondent wishes to comment in the strongest terms that should s.101 stand then the remedies for the Landlord will be greatly diminished as there is no FP stating that a CH must look after the property.

It is understood from the explanatory memorandum that regulations will be developed that provide SP's to cover 'waste' and 'tenant –like manner' within the agreement. This is not enough to safeguard properties from irresponsible tenants and therefore, the SP's should be underpinned with an FP designed to ensure that the CH adheres to such obligations.

The Bill has been developed to encourage parity within the Housing Sector, thus if the Landlord is to be held accountable regarding the condition of the dwelling then so must the CH.

Furthermore, the criteria for fitness for human habitation include such hazards as mould and damp. It is well known in the sector that, despite the best efforts of some Landlords, mould can form as a result of condensation caused by the tenants' life-style i.e. not heating or ventilating a dwelling appropriately. This issue is just one of many whereby it is the actions of the tenant that cause problems and worsen existing problems. The regulations supporting this Act will have to be robust enough to cater for these issues, otherwise unnecessary litigation will be the consequence.

Moreover, if the above point is left unaddressed and is coupled with the removal of the equitable rule governing specific performance (s.100) many Landlords will find that their chances of successfully defending a claim under s91 & 92, where the tenant is at fault due to their acts or omissions, are minimal as the s.96 (1&2) do not include 'tenant –like manner' & 'waste'.

Landlord's right to access

This provision is welcome as is good practice. Also, should you have good rapport with your tenants, most will be accommodating if the notice is given perhaps the evening before, rather than 24hrs, because you have only just heard from the plumber that he can make it tomorrow morning!

v. Part 6 – Provisions applying only to periodic standard contracts

Exclusion for specified periods

No comment – not applicable to the respondent.

Variation of contracts

s.s122 – accepted as necessary.
s.123 - annual rent variations with two months' notice– is welcomed.
s. 128 – the respondent has grave concerns over the time limits and expense that this provision will cause.

The requirement that the Landlord inform the CH of any amendments will be very onerous upon the Landlord in the manner prescribed in the Bill. Changes in regulation are frequent and statutory changes in sectors other than Housing which will affect the terms of the OC are commonplace (e.g. OFT, HSE Immigration etc).

The Model OC as put forward by the Welsh Government currently includes the Contract and 2 separate annexes and runs to some 28 pages and further prescribed information may be applicable. If the Landlord has to update the OC each time there is regulatory change, the expense will become a real burden. Each of these varied and updated OC must be signed by both parties, which may prove prohibitive for those who do not live near to their rental properties.

If in the alternative, all that is required is an updater or statement of variation, it will be incumbent upon the CH to ensure these updaters are filed with the existing OC, leading to a myriad of papers and updaters that will serve to be the OC- the chances for confusion are great and many Landlords and CH's will not be able to keep track of such changes, meaning the chances of keeping track of the original OC as varied will be impossible for many.

Furthermore the 14 day deadline is not clear. If the contract is deemed varied at the date of enactment of any regulation or legislation, then 14 days is not enough time to allow the Landlord to learn of the variation or indeed seek any advice with regard to the implications of the variation.

If the contract is deemed varied at the time that the Landlord draws up the written statement of variation, after learning of the legislative change, then any time limit is pointless, if the Landlord only learns of the change say, 6 months after it was enacted.

s.128 (and the similar provisions for the other OC types) needs to be considered in context of what the reality to landlords and CH's will be, regarding notification

of variations. Especially, as the penalties under s.129 are based around the relevant date of 14 days.

Withdrawal from a joint contract

A massive assumption is being made here: that people who live together enter in any formal arrangement at all! The respondent thinks that this provision is one of those that will be great in theory, but in everyday life most CH's won't even consider it, FP or not!

viii Part 9 – Termination etc. of occupation contracts

Termination without a possession claim

Welcomed as is similar to existing regime.

Termination of all occupation contracts.

s.156 is very much welcomed with the ability to apply for possession after one month, as well as the accelerated possession provisions regarding s55 breaches.

Termination of periodic standard contracts.

The respondent is pleased to see that the Bill has not substantially changed the possession rules from the existing regime. However, the Landlord's responsibilities regarding the restrictions in s.174 & 175 are noted. The respondent adheres to the current requirements and will have no difficulty incorporating the new.

The current difficulties with valid NTQ's have been circumvented, by what appears to be the ability of either party to give notice at any point during the periodic rental period. One assumes that in each case rent would be calculated for the notice period on a daily basis, taking into account any rent that has been paid in advance for a proportion of the notice period.

s.179 – is a welcome introduction, giving the Landlord secure grounds to gain possession in cases where rent arrears have become a problem.

Termination of fixed term standard contracts

This again appears at first sight to be in line with the existing regime for fixed term AST's and the clarity given is welcome.

Possession claims

The respondent considers that the retaliatory eviction claim may be open to abuse by some unscrupulous CH's in the future.

Take the example where the Landlord has had to approach the CH regarding damage they have caused to the property (or even perhaps noise, rent arrears or some other breach) and has warned the CH that a possession claim may result if they do not resolve the issue. At this point the CH can make a claim under s91 or 92 regarding the damage (real or invented).

The way in which these claims are made or investigated is yet to be determined, but it is safe to assume that there will be a considerable delay before the damage is assessed.

This leaves the Landlord in a position where if he issues a possession notice he will spend many months wrangling with the Courts and damage assessors attempting to prove that this was not a retaliatory eviction attempt. It appears that opinion seems stacked against the Landlord in that all possession attempts in this respect are due to the Landlord failing in this obligations rather than the fault of a troublesome tenant.

Abandonment

This is welcomed with two caveats:

s.217 – it is evident on first sight that the Landlord will end up out of pocket due to this provision, but the respondent is pleased to see that the Bill recognises that the Landlord having to dispose of the CH's belongings is often a reality.

s.218 – if the CH does return and the property has not been let to another, then the CH should only have the OC re-instated if they pay the rent for the period of abandonment.

Should the property have been re-let in the ensuing period and the private Landlord doesn't own any other properties, or indeed, has nothing suitable, how can suitable alternative accommodation be provided? This needs clarification prior to enactment.

Forfeiture and NTQ's not available

Although the respondent does include a right to forfeiture in the current tenancy agreements, the option has never been taken. This common law remedy is at odds with current legislation (e.g. Protection of Eviction Act 1977) and is of little relevance to today's residential market. Its exclusion is understandable.

NTQ's are a cumbersome and over complicated way of terminating a tenancy and the new regimes afforded by the Bill appear to make the process much simpler, with less chance of getting dates wrong and ending up with an invalid notice.

ix Part 10 – Miscellaneous

Young people

Welcomed

Trespassers

Accepted – this is not a situation that the respondent has ever encountered. It would depend upon the trespasser and the situation before comment could be made.

Existing tenancies and licences;

It is not clear, whether existing signed Tenancy Agreements will stand (and be interpreted as per the new provisions in the Act) or whether all existing tenants must be issued with new Model Contracts.

Neither is it clear what the Landlord's actual responsibilities are regarding converted tenancies. Has a Landlord complied with s.31 by having already provided a written tenancy agreement when the existing tenancy started, or will he fall foul of s.s. 36-40 by not signing new Model OC's with all existing tenants? This may have enormous implications for the Landlord and may open the door to an avalanche of unnecessary litigation if it goes ahead without further clarification.

s.234 – there appears to be provision for hand delivery of notices only in the Bill. How effective will this be and what about Landlords who live miles away from their rental properties or indeed CH's living miles away from the Landlord. Although electronic delivery has been catered for there is no provision whatsoever for delivery by the postal service. Consideration needs to be given to the eventuality that many notices arriving by mail will therefore be invalid. If 'left at that place' is the only method to serve notices then Landlord's (and occasionally CH's) will have no option, but to use process servers and incur fees of more than £80.00 plus VAT for service of each document as required.

The service requirements regarding postal service (Part 6 of the Civil Procedure Rules) could be incorporated in s.234 with little difficulty.

The respondent has included in the above comments his responses to points 2-5 of the Terms of Reference.