
Campaigns briefing

Tackling rogue landlords

Let's put a stop to exploitation, harassment and negligence in the private rented sector.

Three million households in England rent their home from a private landlord and this number is rising sharply.¹

In the last 12 months, 96% of Environmental Health Officers working on housing enforcement in the private rented sector have encountered problems with damp and mould growth, 94% with excess cold, 91% with fire safety and 90% with electrical safety.

Source: Shelter/CIEH Survey, July 2010.

Most private landlords are responsible and honest in how they deal with their tenants and look after their properties. But a minority of landlords are exploitative or even threatening in their treatment of tenants, including wilfully putting tenants at risk by refusing to do essential repairs and maintenance.

A recent survey with the Chartered Institute of Environmental Health (CIEH) found that of those officers working on housing enforcement in the private rented sector, nine out of ten had encountered landlords engaging in harassment or illegal eviction, and 78% had dealt with landlords who persistently refuse to maintain their property to a safe condition.

The damage that rogue landlords cause to the lives of often vulnerable tenants is enormous, and can spread to the wider neighbourhood, with rundown properties blighting communities. National Government needs to wake up to the problem and work with councils to implement a tough programme of action to tackle it.

Rogue landlord behaviour

- Harassing tenants or evicting them without notice, effectively making them homeless.
- Failing to carry out essential maintenance leading to unhealthy or unsafe conditions.
- Deliberately ignoring the legal requirement to protect tenants' deposits using an approved scheme, and then unfairly withholding the deposit at the end of the tenancy. This can cost tenants hundreds of pounds and make securing a new home extremely difficult.
- Driving tenants into arrears by adding exorbitant fees/charges to their account without telling them, then presenting them and their guarantors with a huge unpaid bill at the end of the tenancy.

An estimated 23,000 HMOs in England fall under the definition of mandatory licensing but still remain unlicensed.ⁱⁱ

In 2008, a mother of two was found dead after she was electrocuted by a faulty heater supplied in a Cornwall property she was renting. The inquest heard that the electrics in the property had not been inspected since 1981 and the main earth had corroded through. The landlord was fined £5,000.

Rogue landlords know what they are doing is against the law and often behave in this way repeatedly. In addition to the misery they bring to their victims' lives, they also damage the reputation of the vast majority of landlords who are responsible.

Tenants need help

It is often difficult for tenants to fight back when landlords fail to live up to their responsibilities. Making a complaint is risky because the landlord can simply decide to evict the tenant and may refuse to give their deposit back without good reason. Taking court action to enforce the law against rogue landlords is complex and can cost thousands of pounds.

Local and national Government must make ending the scourge of rogue landlords a priority. Determined action is necessary to enforce the law, bring the perpetrators to justice and stop them permanently.

What does the law say?

- Harassment and illegal eviction are criminal offences. Local authorities can prosecute landlords who commit these crimes.
- Local authorities can serve an improvement notice or prohibition order where housing conditions fall below an acceptable standard. If the landlord fails to comply they can be prosecuted.
- Landlords and letting agents are legally obliged to protect tenants' deposits using an approved scheme, although this can only be enforced if a tenant takes them to court.
- Landlords are now obliged to obtain a licence from their local authority to rent out larger Houses in Multiple Occupation (HMOs), and need to meet certain standards in order to do so. Failure to obtain a licence is a criminal offence.
- A full list of landlords' legal duties, who has responsibility for enforcing them and the penalties for non-compliance, is set out in the Appendix.

How do rogue landlords escape the law?

Enforcement

The law is not enforced often enough. For example, in 2004 only 26 landlords were convicted or cautioned for unlawful evictionⁱⁱⁱ and in 2008, only one person received a custodial sentence under the Protection from Eviction Act.^{iv} In Shelter's recent survey with the CIEH, 66% of Environmental Health Officers working in the private rented sector said that in their area no landlords had been prosecuted in the last 12 months for failure to comply with an order under the 2004 Housing Act, although over 40% said that under a quarter of such orders issued by their local authority had been complied with.

36% of tenants are living in properties with out of date gas safety certificates, while 26% have never been given a gas safety certificate at all.
Source: spareroom.co.uk

Claire moved into a two-bed property with her partner Tim and their baby Sam. The property was in a state of disrepair when they arrived but promises were made by the landlord to fix problems such as the broken window in the living room and the condemned gas fires which were falling off the walls. Eight months later the repairs have yet to be done and more problems are emerging. The family are now squeezed into one bedroom because of damp in the other bedroom. The walls are so wet that the wallpaper has come off and black mould stains have soaked into the remaining sections of wall paper.

Awareness

Victims of rogue landlords frequently do not report them because they are not aware of their rights, or fear that if they come forward their landlord will find out and evict them. This means that many rogue landlords are able to continue operating under the radar. Even after tenants have moved out, few want to report their experiences, often due to a desire to put what has happened behind them, or because they are preoccupied with other issues.

Resources

Local authorities are faced with many demands on their resources. In Shelter's survey with the CIEH, lack of staff was cited by 51% of Environmental Health Officers working in the private rented sector as a barrier to bringing more prosecutions against rogue landlords.

The Government's *Rogers Review* showed that more than 60% of councils devote only a low or very low proportion of their regulatory resources to enforcing health and safety requirements or HMO licensing.^v

We cannot allow rogue landlords to continue getting away with wreaking havoc on tenants' lives for their own exploitative ends. A tough programme of action is needed from both national and local Government so that we can rid rogue landlords from the private rented sector for good.



Photography by Max Hamilton

Tenants on assured shorthold tenancies who have been in the property for longer than six months can normally be legally evicted without grounds. As such, many tenants are scared of making complaints.

If the will is there it is possible to bring the law to bear on rogue landlords. For example, Herefordshire Council and Hereford and Worcester Fire and Rescue Service prosecuted the landlord of an unlicensed HMO in Hereford that lacked any fire safety precautions. The landlord was fined more than £30,000.

Three key actions for local authorities

1. Prosecute rogue landlords

While formal enforcement action may not be required if landlords have inadvertently breached their duties and are willing to put matters right quickly, councils should be very clear that they will take a zero tolerance approach to rogue landlords. Each council should have an enforcement policy making it a priority to prosecute rogue landlords, and should ensure that all convictions are widely publicised. This will help deter future rogue landlord activity, and raise tenants' awareness of their rights.

It is important that councils make use of the full range of tools and powers that they have at their disposal to disrupt rogue landlords and bring them to justice. For example, Liverpool Council was recently successful in using the Proceeds of Crime Act to seize money from a rogue landlord who had continued to claim housing benefit for a property after they had been banned from letting it due to its dangerous condition.

2. Be proactive in protecting tenants

Councils should carry out regular housing conditions surveys, focusing on areas in which the stock is poorly maintained and the level of private renting is highest. As well as informing their overall housing strategy, this will enable them to identify rogue landlords who refuse to maintain their properties in a safe condition, or who have failed to comply with the licensing requirement for larger HMOs. In addition, it is important for councils to forge strong working relationships with local partners, such as other statutory agencies, advice providers and reputable landlord groups, who may be able to alert them to rogue landlords.

Where councils become aware of rogue landlords operating in low demand areas, they should also consider using their power to introduce a selective licensing scheme. This allows them to require all privately rented properties within a designated area to be licensed, and for their landlords to be assessed as being a 'fit and proper' person.

3. Ensure that enforcement is properly resourced

It is vital that councils back up their enforcement policies with adequate resources to make them enforceable. If this is not done, the cost of rogue landlords' activities will be picked up by councils in other ways, such as a higher number of tenants requiring homelessness assistance.

To help fund enforcement activities, councils should take advantage of the provisions of the 2004 Housing Act, which allows them to recoup their costs by charging them to the landlord. Some adjoining councils are also exploring merging their housing enforcement teams to create joint services, allowing them to build on their respective areas of strength and to achieve economies of scale.

Three key actions for national Government

1. Prioritise the private rented sector and give councils the tools they need to force rogue landlords out

Currently the Government believes that procedures and resources in place to tackle rogue landlords are adequate, but Shelter's investigation proves otherwise. The Government must send a strong signal to councils that it considers enforcing the law against rogue landlords to be a top priority, and must take action to ensure that they have the tools they need to force rogue landlords out.

Except in the case of properties covered by the HMO licensing requirements, there is currently no mechanism to prevent rogue landlords from having the opportunity to commit the same offences on a repeated basis. The law should be strengthened to allow people to be banned from being a landlord if they have unspent convictions relating to their previous behaviour as a landlord.

Giving councils the option to seek an injunction against landlords who commit an offence would provide them with an additional enforcement route that they could use as an alternative to criminal prosecution. Failure by a landlord to comply with the terms of an injunction would carry with it the threat of possible imprisonment in serious cases, ensuring that any injunction served carried real weight.

2. Close legal loopholes

The Government must tighten the law to close the loopholes that rogue landlords can currently use to exploit tenants, and to make it easier for tenants to enforce their legal rights. Measures required include:

- The introduction of a requirement for all landlords to have a periodic electrical inspection carried out by a qualified electrician at least every five years and to provide the tenant with a certificate.
- Removal of the anomaly that prevents assured shorthold tenants from challenging rent levels except in the first six months of moving in, to make it more difficult for landlords to hike rents at the point of tenancy renewal to levels massively in excess of the market rate.
- A requirement to have a written contract for all tenancies and mandatory standard clauses for both tenancy and guarantor agreements, including fair and transparent fee schedules.

3. Increase transparency and accountability

Information on what councils are doing to tackle rogue landlords is currently difficult to access. Greater transparency and accountability is required, so that the public are better equipped to hold local politicians to account.

As part of the localism agenda which is due to be enshrined in legislation, local authorities should be required to publish regular reports concerning trends and conditions in the private rented market in their area, and what they are doing to enforce standards. This should include information on the level of tenant complaints received, and the number of prosecutions taken.

Appendix: Current legal duties of landlords and enforcement provisions

Landlord responsibility	Relevant legislation	Who is responsible for enforcement?	Penalties
To properly maintain the property.	Section 11 of the Landlord and Tenant Act 1985 places an obligation on the landlord to maintain the structure and exterior of the property, including installations for the supply of water, gas and electricity, heating systems, drainage and sanitary appliances.	Court action by the tenant.	Tenant can seek an injunction ordering the landlord to carry out remedial works, plus compensation for any loss or inconvenience suffered.
To ensure the property is kept in a safe condition.	Part 1 of the Housing Act allows councils to take action where they consider housing conditions to be a danger to health and safety, for instance by serving an improvement or hazard warning notice or prohibition order, and places a duty on the councils to intervene when they identify a serious (category 1) hazard.	Council improvement notices and prohibition orders can be appealed by the landlord to the residential property tribunal.	Failure to comply with an improvement notice or prohibition order can result in prosecution and a fine of up to £5,000 (plus, in the case of a prohibition order, an additional £20 per day until the order is complied with).
To ensure the property is kept in a safe condition cont.	Section 80 of the Environmental Protection Act allows councils to serve notice on a landlord to carry out repairs to remedy conditions which are a nuisance or harmful to health.	If the landlord fails to comply the council can take them to the magistrates' court. Section 82 allows the tenant to go directly to the magistrates' court without the need for a council notice.	Failure to comply is an offence punishable by a fine of up to £5,000 plus one tenth of that amount for every day the required work remains outstanding following conviction. The council can also do the work itself and claim the cost back from the landlord.
To arrange an annual gas safety check by an authorised Gas Safety engineer, and to issue a copy of the certificate to all existing tenants within 28 days, and to new tenants prior to their moving in.	Gas Safety (Installation and Use) regulations 1998.	Health and Safety Executive and Trading standards.	Fine of up to £20,000 and one year imprisonment if tried in the magistrates' court. Unlimited fine and up to two years' imprisonment if tried in the Crown Court.

Landlord responsibility	Relevant legislation	Who is responsible for enforcement?	Penalties
To ensure that all electrical installations and electrical appliances supplied with the accommodation, are maintained in a safe condition thorough the duration of the tenancy.	<p>Landlord and Tenant Act 1985.</p> <p>Consumer Protection Act 1987.</p> <p>Electrical Equipment (Safety) Regulations 1994.</p> <p>Plugs and Sockets etc. Regulations 1994.</p> <p>NB: it is recognised good practice for landlords to engage a professionally qualified electrician to carry out a periodic inspection every five years or on change of tenancy and to conduct regular portable appliance testing – however, there is no specific legislative requirement for them to do so.</p>	Trading standards.	Up to six months imprisonment and/or a fine of up to £5,000 per instance of non-compliance.
To ensure all upholstered furniture complies with statutory fire resistance requirements.	<p>Consumer Protection Act 1987.</p> <p>Furniture and Furnishings (Fire) (Safety) Regulations 1988.</p>	Trading standards.	Up to six months imprisonment and/or a fine of up to £5,000.
To protect the tenant's deposit from being unfairly withheld at the end of the deposit, using one of the three approved tenancy deposit schemes, and to provide details to the tenant within 14 days. (This applies to all assured shorthold tenancies commencing after 6 April 2007.)	Housing Act 2004.	Court action by the tenant.	<p>Tenants whose landlord fails to protect their deposit can apply to a court to order the landlord to repay the original deposit plus an additional sum of three times the deposit amount.</p> <p>Failure to protect the deposit also means the landlord is unable to repossess the property under section 21 of the Housing Act 1998.</p>

Landlord responsibility	Relevant legislation	Who is responsible for enforcement?	Penalties
Not to include unfair terms in the tenancy agreement.	<p>The Unfair Contract Terms Act 1977 stipulates that the terms contained in standard contracts should be reasonable.</p> <p>The Office of Fair Trading has issued guidance on unfair terms and conditions in tenancy agreements, see www.oft.gov.uk</p>	OFT, Trading standards.	Unfair terms and conditions are not enforceable against the tenant.
Not to harass or illegally evict a tenant.	The Protection from Eviction Act 1977, the Criminal Law Act 1977 and the Protection from Harassment Act 1997 make tenant harassment and illegal eviction a criminal offence.	The council has the legal power to prosecute offences under these acts. The police also have the power to prosecute, but would normally expect the council to do so.	Maximum fine of £5,000 and six months' imprisonment if tried in the magistrates' court and an unlimited fine and up to two years' imprisonment if tried in the Crown Court.
Requirement to obtain a landlord licence.	<p>The Housing Act 2004 requires landlords of (larger) Houses in Multiple Occupation to obtain an HMO licence from their local authority. Licensed properties have to comply with a variety of additional requirements, for instance concerning fire and electrical safety, and their landlords must pass the test of being a 'fit and proper' person.</p> <p>The Act also gives the council the ability to introduce selective licensing requirements for all private sector landlords in designated areas suffering from low demand and/or antisocial behaviour.</p>	Council.	Failure to obtain a licence is a criminal offence carrying a fine of up to £20,000. Where a landlord is convicted, their tenants can also apply for a rent repayment order.

Landlord responsibility	Relevant legislation	Who is responsible for enforcement?	Penalties
Requirement to provide prospective tenants with an energy performance certificate from an accredited domestic energy assessor.	Energy Performance of Buildings Regulations 2007.	Trading standards.	Fine of £200.

ⁱ CLG, *English Housing Survey 2008-09*.

ⁱⁱ CLG/Building Research Establishment, *Evaluation of the Impact of HMO licensing and selective licensing*, January 2010.

ⁱⁱⁱ The Law Commission, *Housing: Encouraging Responsible Letting*, August 2008.

^{iv} House of Commons Hansard, 6 July 2010, column 171W (PQ 6084).

^v Cabinet Office, *Rogers Review: National enforcement priorities for local authority regulatory services – supplementary volume*, March 2007.