

Briefing

The Housing (Scotland) Bill: tackling unlawful evictions in Scotland

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Shelter

The Housing (Scotland) Bill: tackling unlawful evictions in Scotland

Despite the existence of laws intended to protect tenants, Shelter continues to be contacted by households who have been unlawfully evicted from their home; made homeless due to the actions of an unscrupulous landlord.

The Homelessness Monitoring Group has identified the issue of unlawful evictions as a priority, and Shelter looks forward to working with the group to find solutions to the problem¹. However, the Housing (Scotland) Bill contains the best legislative opportunity in some time to deal with unlawful evictions comprehensively and effectively.

This briefing contains proposals for legislative reform in the bill.

What are unlawful evictions and why do they occur?

Unlawful evictions, sometimes known as illegal evictions, occur when a tenant or someone else living in the property is 'unlawfully deprived' of occupation of the premises. It can be done in a number of ways: by evicting without following due process of law that requires gaining a court order for possession; by changing the locks when the tenant is away from the property; or by engaging in threats of violence towards the tenant.

Landlords are also guilty of harassment if they engage in behaviour that is intended to force the tenant from the property, for example intimidation, or withholding or withdrawing services such as gas or water.

Eviction without due process and harassment of tenants are a breach of the Rent (Scotland) Act 1984 and provisions in the 1988 Housing Act. However, despite the apparent strong legal protection for tenants, unlawful evictions and harassment persist. This is for a number of reasons.

- The laws protecting tenants from unlawful eviction are effectively unenforceable, because, unlike in England, there is no mandatory provision for investigating allegations of harassment or unlawful eviction. In other words, when an individual makes an allegation, the police cannot be compelled to investigate. The individual is often left with no alternative but to let the issue drop.

¹ The Homelessness Monitoring Group is the successor to the Homelessness Task Force, set up to oversee implementation of recommendations relating to homelessness policy and practice.

- As a result, legal action on unlawful eviction is extremely difficult to secure. This was recognised by the Homelessness Task Force in its 2002 report:

*'We are concerned to ensure that private tenants are given maximum protection from illegal eviction and harassment. While criminal liability and civil penalties attach to such actions, legal action rarely results.'*²

For a landlord to be charged with unlawful eviction, the tenant must report the matter to the police, who in turn can decide whether to refer the matter to the procurator fiscal for prosecution. However, heavy caseloads mean that the police and the procurator fiscal face competing priorities, and as a result illegal evictions can be overlooked. The difficulties involved in getting the police to investigate, and the fiscal to prosecute, act as a powerful disincentive to tenants to take a case against a landlord who has broken the law³.

- Tenants have very little knowledge of their rights regarding security of tenure or regarding due process of law on eviction. Many tenants are unaware that landlords must gain a court order before being able to evict, let alone understand that the law can protect them if the landlord fails to do that.

The current system effectively makes it easier for landlords to break the law. They can exploit the fact that tenants have little knowledge of the law, and that criminal prosecutions are difficult to secure and very rare.

Case study

In 2004, a couple that had been subjected to a high level of harassment by their landlord contacted Shelter for help. On one occasion, the landlord had placed loose stones in the entrance to prevent the tenant, a wheelchair user, from entering the property. The police were contacted and the procurator fiscal eventually raised proceedings under section 22 of the Rent (Scotland) Act 1984. The landlord was found guilty and fined £1,000. This is one of the rare occasions when a criminal prosecution has been brought under this section despite the fact that it has been on the statute books for some time.

The scale of the problem

An accurate assessment of the scale of unlawful evictions is difficult. This is because tenants have little knowledge of their rights, with many not reporting the matter to the

² *Helping Homeless People: An Action Plan for Prevention and Effective Responses*, Homelessness Task Force, 2002, paragraph 60

³ These disincentives are worsened by the fact that where the procurator fiscal does decide to proceed with a prosecution; no legal aid is available to the tenant, who faces the threat of court costs.

police in the first place. It may be possible to get a figure for the number of reported unlawful evictions per year, but this is dependent on a robust reporting system within each police force. In even fewer cases, the procurator fiscal agrees to take forward court action, though this is rare. The Homelessness Task Force made this point; only 15 people were prosecuted for unlawful evictions between 1995 and 1999.

What can be done?

Unlawful evictions take place because legal recourse is extremely difficult to secure. However, unlawful evictions could be prevented in the first place, and cases dealt with more speedily, if better practice was the norm. In this section, proposals for legal reform as well changes to practice are set out.

Legal reforms

The Housing (Scotland) Bill provides a long-awaited legislative opportunity to deal with unlawful evictions. As identified above, the problem lies in getting the police to investigate alleged instances, and convincing the procurator fiscal to prosecute. The police face many competing priorities and would benefit from the issue of unlawful evictions being dealt with elsewhere.

- Shelter recommends an amendment to the legislation that would change the way investigations are carried out. The bill would place a **duty on local authorities** to take reasonable practicable steps to investigate where there are accusations of alleged unlawful evictions - similar to the duty they currently have under environmental health legislation to investigate instances of nuisance⁴. This would take the burden off the police, and into the hands of local authorities.

An individual who has been the victim of alleged unlawful eviction would therefore contact the local authority, which would have a duty to investigate. As part of that investigation, it would notify the police as a precautionary measure, though the onus is on the local authority to assemble a case and present this to the procurator fiscal in order to consider whether a prosecution is merited. Such a system fits much more efficiently with new duties on local authorities due to be implemented this year. From November 2005, staff in local authorities will be required to assess whether landlords are 'fit and proper' as part of the new registration scheme introduced under the Antisocial Behaviour (Scotland) Act 2004. It is conceivable that such staff could investigate instances of alleged unlawful evictions.

⁴ Part III of the Environmental Protection Act 1990 imposes a duty on a local authority to take reasonable practicable steps to investigate any complaints of a statutory nuisance it receives.

- There is an argument for a more comprehensive overhaul of the law on unlawful evictions in the long term. The proposals above will create a more streamlined system, with cases being assembled by housing experts, and therefore the fiscal being more likely to take up a case. However, the fiscal is not obliged to do so. It may therefore be worth considering the situation in England, where far more cases result in prosecution. Dedicated tenancy relations officers in England have the power to take private landlords to court where they believe an unlawful eviction has occurred. In other words, local authorities could bypass the procurator fiscal and initiate the prosecution themselves. However, this would require a greater overhaul of the current system, and therefore is something for the longer term.

Changes to practice

Better practice in relation to dealing with unlawful evictions should include dealing with disputes between landlords and tenants, encouraging best practice in landlord management and preventing homelessness. Later this year, Shelter is due to produce a good practice guide on preventing and responding to unlawful eviction and harassment. It will cover the issues below in more detail.

- Some English local authorities attempt to deal with disputes between landlords and tenants by appointing dedicated 'tenancy relations officers' to mediate in disputes. Staff within local authorities should be seen as having a preventative function in relation to unlawful evictions, particularly in relation to preventing homelessness and encouraging best practice.
- Training police and local authority staff in the law on unlawful evictions and harassment and best practice, has been proven to increase their ability to identify cases, and initiate best practice in investigation.
- Local authorities have a corporate duty to prevent homelessness. Best practice would ensure that all private tenants (who will from 2005 be contactable under the registration scheme) are sent information on their rights under the law, and the legal protection available.

Conclusion

The Housing (Scotland) Bill provides a long-awaited opportunity to implement the Homelessness Task Force recommendation on unlawful evictions. Amending the bill to place a duty on local authorities to investigate is a practical step towards enforcing the current legal framework and securing legal actions.

A duty on local authorities to investigate won't automatically ensure that the procurator fiscal initiates more prosecutions. However, research has shown that the police have little knowledge of the detail of housing law; better investigations by expert local authority staff with knowledge of housing law may result in the fiscal being more likely to take action. A

well-investigated and assembled case is also more likely to result in prosecution in court. A small change to the law in the Housing (Scotland) Bill will make a major change to how we deal with landlords who act unlawfully and put households at risk of homelessness.

For more information, contact Grainia Long, Shelter Scotland Policy Manager, on 0131 473 7194 or grainia_long@shelter.org.uk