

Reducing eviction in the social sector: A Shelter Scotland Briefing

Summary

- The Scottish Government consulted on whether tenants of social landlords should be given equivalent legal protection to that enjoyed by homeowners under new legislation commencing at the end of September 2010.
- Four out of five (78%) respondents agreed that a set of 'pre-action requirements' would help to reduce evictions for arrears. These pre-action requirements would set out a series of steps that landlords had to take before going to court.
- Respondents also support better sharing of practice, improved monitoring of evictions and a new proposal to allow tenants to remain in a tenancy after the court has granted decree.
- Shelter Scotland looks forward to the Scottish Government introducing proposals at Stage 2 of the Housing (Scotland) Bill.

Background

In 2008-09 social landlords in Scotland took almost 20,000 tenants to court, almost all of them were for rent arrears.

When the Scottish Government brought in new legal protection for home owners struggling to make their mortgage repayments¹, it was recognised that social sector tenants should also be protected against losing their homes. In March 2010, the Scottish Government launched the consultation *Eviction of tenants in the social rented sector: Protection of tenants with rent arrears*² to assess whether new mechanisms should be introduced to reduce evictions for rent arrears. The consultation proposed 5 potential options:

- Identifying and sharing good practice;
- Including an outcome on sustaining tenancies in the Social Housing Charter;
- Pre-action protocol;
- Pre-action requirement; and
- Allowing tenants to retain the existing tenancy.

These options are not all mutually exclusive. However options 3 and 4, a pre-action protocol and a pre-action requirement, cannot both be implemented since they constitute the same

¹ The Home Owner and Debtor Protection Act (Feb 2010)

² <http://www.scotland.gov.uk/Resource/Doc/308168/0097017.pdf> The consultation ran from March to May 2010

process being introduced, one where adherence is voluntary (protocol) and one with legislative backing (requirement). The issue of whether to amend primary legislation by introducing the pre-action requirement is the central question being consulted on.

There were 93 respondents to the consultation from a range of individuals and organisations across the public and voluntary sectors. This included 20 local authorities, 27 Registered Social Landlords (RSLs) and 13 tenant, resident or community groups. There were also 16 responses from representative bodies or campaigning organisations such as CIH, SFHA, COSLA and Shelter Scotland³.

Key consultation findings

- 85% of respondents agree that there is a need to do more to reduce the number of evictions for rent arrears in the social sector. This includes 18 of the 20 local authorities and 15 of the 27 RSLs.
- There is a consensus about the negative impact of eviction to the tenant but also the significant cost implications for landlords, sometimes exceeding the level of arrears.
- A majority of respondents - 78% - think that the introduction of a pre-action requirement (PAR) would help to protect tenants from arrears. This includes 17 of the 20 local authorities who responded.
- There is broad support for improving arrears interventions and pre-court procedures but it was emphasised that the primary responsibility for paying rent lies with the tenant. Lack of engagement from tenants was cited as a significant issue.
- It is almost unanimously agreed that the introduction of either a Protocol or legislative Requirement would help to ensure there is greater consistency across social landlords to make sure eviction is used as a last resort only when all other avenues have been exhausted.
- It is argued that whatever pre-action process is introduced, it should not unduly delay the court procedures or add unnecessary time delays. Increased landlord costs were also raised by some respondents as a potential implication of a change in procedure.
- Only 9 respondents (9%) didn't support either the introduction of a pre-action protocol or a requirement. The majority of these are RSLs.
- There were 65 positive responses to the proposal of including a tenancy sustainment outcome for landlords in the forthcoming Social Housing Charter, although 32 of these were with conditions around how this would be framed and measured.

³http://scotland.shelter.org.uk/_data/assets/pdf_file/0008/268163/Pre_Action_Requirements_Consultation_April_10_FINAL.pdf

- The proposal to amend legislation to allow tenants to retain their tenancy even after Court decree for repossession has been granted, received strong support, with 85% of respondents agreeing, albeit some with conditions around allowing landlords discretion on a case by case basis.
- There were a lot of detailed suggestions for good practice around tenancy sustainment much of which centred on better communication and engagement with tenants at the earliest possible stage.

Conclusions

Despite the responses coming in from a variety of organisations representing both tenants and landlords, there is a strong consensus that more can and should be done to reduce evictions for rent arrears. A majority of respondents agree that the introduction of a pre-action requirement would help to ensure landlords make every possible attempt to resolve the dispute with their tenants before moving to court action. Many respondents agree that more should be done to disseminate best practice across the sector, particularly regarding culture change around tenancy sustainment.

Shelter Scotland looks forward to the Scottish Government acting on these recommendations and bringing in legal protections to reduce unnecessary evictions.

Shelter Scotland, August 2010

For further information contact Fiona King on 0344 515 2456 or fiona_king@shelter.org.uk