



Housing Law The Bigger Picture

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About this book

There is a lot of discussion (if you look for it) in the media nowadays about housing - and the fact that more people than ever before are living in rented homes.

Finally it seems, people are waking up to the fact that housing is important and that we need to do something about it.

This little book comes from a series I wrote on my Landlord Law Blog, which I began in June 2012. The series developed as I wrote it and ended up being rather long.

I don't claim to have all the answers, but I offer this book as a contribution to the debate.

But who am I to pontificate about housing matters (you might ask) and why should you bother reading what I say?

I'll tell you on the next page ...



I am, for my sins, a solicitor, and have been dealing with residential landlord and tenant law for over 20 years. So I do feel I know a bit about it.

I can remember for example, repossessions under the 1977 Rent Act, when I was working as a paralegal in London in the 1980's.

More recently, I have for the past 10 years run an online service for landlords and tenants, my blog has been online since 2006, and I have done a LOT of repossession work. I have also done talks, training and just generally talked to many people about their landlord and tenant problems.

I have included some legal background in this book which some of you may find helpful. Landlord & tenant law is not well known, so if this little book can help people understand it and the issues involved, it will have been worth the writing.

Tessa Shepperson

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<http://www.landlordlawblog.co.uk>



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Index of contents

1. A time to re-evaluate?
2. The statistics
3. Regulation?
4. Accreditation (1)
5. Accreditation (2)
6. Accreditation (3)
7. Greening the PRS
8. Retaliatory eviction
9. Tenancy agreements
10. Rent
11. Security (1)
12. Security (2)
13. Bad tenants (1)
14. Bad tenants (2)
15. Security (3)
16. Conclusion (1)
17. Conclusion (2)



1. A time to re-evaluate?

Housing law – setting the scene

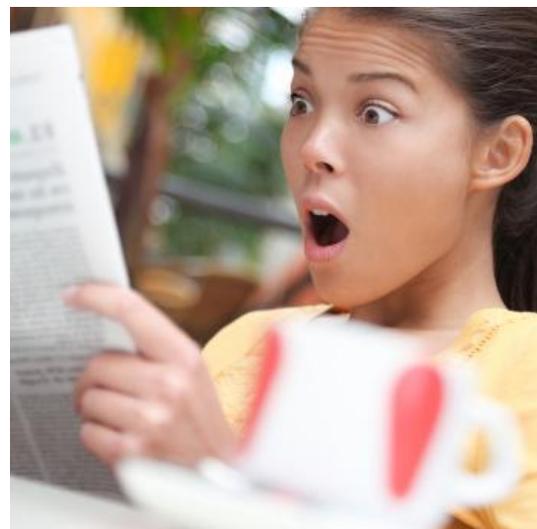
It all started with an article in the Observer - a lead article on housing, which I spotted from across the sitting room (as my husband generally gets the paper first).

It was the headline that caught my eye:

“Renting to be ‘way of life’ for young UK families”

The article was based on a report from the Cambridge Centre for Housing and Planning research which predicted that more than a third (36%) of British households will be renting by 2025.

That is a MASSIVE shift from the 8-7% of the population living in rented accommodation in the early 1990’s



From this and other reports I have seen, it looks as if the private rented sector is here to stay and will play a major role in the provision of housing in the UK.

This has a number of implications for the future which I will cover in future chapters of this book. However, a few initial points

The original problem

When the 1988 Housing Act introduced the concept of an assured shorthold tenancy (where a landlord has the right to recover a property after the end of the fixed term provided the proper form of notice had been served), this was at a time when the private rented sector had dropped to nearly 7%.

Much of this 7% probably consisted of unwilling landlords, forced to be landlords because there was no way in which they could get rid of their sitting tenants.

The PRS at that time was effectively moribund. No one in their right mind would seriously consider going into property renting as a business.

Many of the new lets during that time happened by accident - people letting someone in and then being unable to get them out again.

The Thatcher changes

The Thatcher government in 1987 was elected on a mandate to change things, and one of the things they wanted was to change and regenerate was the private rented sector.

However to do this, drastic action was needed. This is why the assured shorthold tenancy was introduced. In fact it took about five to six years before things started to take off, after the introduction of ARLAs buy to let mortgage.

However things are now different. Now we HAVE a buoyant private rented sector, I suspect that the genie is not going to be put back into the bottle:.

- many people have invested in bricks and mortar as an alternative to a traditional pension and need the income, and
- tenants are unable to afford to buy their own home and so need properties to rent

Today - a re-evaluation?

So taking this into account - maybe we need to have a re-evaluation of the whole system.

We need to consider whether laws introduced at a time of scarcity are really appropriate once that scarcity is no more.

The short ebook reviews the system (not all of it but the parts I know about), and I make a few suggestions at the end.

References:

The original blog post (with 5 comments):

<http://www.landlordlawblog.co.uk/2012/06/11/housing-law-the-bigger-picture-a-time-to-reevaluate/>

The Observer article, 9 June 2012 :

<http://www.guardian.co.uk/society/2012/jun/09/renting-price-rise-young-families?newsfeed=true>



2. The statistics

One of the inspirations for this book was a report from the Cambridge Centre for Housing and Planning Research. Let us take a look at what they found.

Changes between 1993 and 2010

The survey found that the balance of home ownership is changing. Mortgaged ownership has fallen across the country from 43% to 35%. Outright ownership has gone up from 25% to 34%.

But this increase in outright ownership is mostly in the older sector, meaning that fewer younger households and families are buying their own homes.

Also private renting is becoming the dominant rented sector (7% to 12% nationally) rather than the social rented sector as before. The increase in private renting is mostly in younger households.



These changes have accelerated in recent years.

The picture in London

The report states that there is a big difference between London and the rest of the country.

In London, social renting is far more important than in the country as a whole. However this has gone down from 30% to 23% while private renting has risen from 12% to 19%.

Overall, owner-occupation is running at around 55% while renting accounts for about 45% of all households - a very significant change from the 68%/32% split at the beginning of the period.

If this trend continues tenants will soon outnumber owners, with important political, social and economic implications.

The future

One of the conclusions made by the report is that these changes are affected by the economy. So if we have a strong economy, then the proportion of properties bought on mortgage will increase.

However if the economy continues to be weak, the private rented sector will continue to become more important - particularly for younger households and for families.

The report also shows that the dependence on renting, in particular private renting, is going to be (as you would expect) in the middle to lower income sector who will, if the economy remains

weak, be excluded from owner occupation

In conclusion the report makes a number of telling points, a few of which are:

- That tenancies with longer terms should be considered as these are often better for families - but that these may need to be regulated differently to make them acceptable to both landlords and tenants
- Social housing is vulnerable to being reduced by the right to buy, and
- 'Affordable housing' is more expensive than social housing so if this replaces social housing it will cause difficulties for low income families - many of whom work in essential but low paid jobs
- Home ownership via inheritance is less likely if older people live longer and the cost of care reduces the equity in their properties
- This means that many people in the middle to low income sector may never be able to own their own homes

And finally

The biggest problem of all is the undersupply of housing and lack of investment in building new homes.

However this is not something that can be solved by landlord and tenant law (my speciality) so I leave this thorny topic to others.

Even if we had an oversupply of properties, the questions I discuss in this book would still be important and need dealing with.

References:

The original blog post (1 comment):

<http://www.landlordlawblog.co.uk/2012/06/18/housing-law-the-bigger-picture-the-statistics/>

Whitehead, Williams, Tang & Udagawa (2012) *Project: Housing in Transition: Understanding the dynamics of tenure change*, Cambridge Centre for Housing & Planning Research,

Download from

<http://www.cchpr.landecon.cam.ac.uk/outputs/detail.asp?OutputID=276>



3. Regulation?

Housing is important. Poor housing can have a very detrimental effect in an area, and on the people who live in it.

They are more likely to get ill, which impacts on the National Health Service (poor housing is believed to cost the NHS some £600 million per year), and children are less likely to do well at school (and subsequently in life in all too many cases).

It is important for all of us that our housing is in good condition, not just for the people living in it.

Yet this important function is increasingly provided by people who know little about housing law, considering their property to be merely a financial investment.

Some have no interest whatsoever in the well being of their tenants, being purely motivated by getting a maximum return for a minimum outlay.



A minority of landlords can only be described as criminal. Can we afford to allow this to continue?

Enforcing standards

Much of the property rented out by PRS landlords is in a good or excellent condition, but this is generally down to the professionalism of the individual landlord concerned.

Many landlords take a pride in their properties, look after them well, and generally have a responsible attitude towards things. Standards *have* improved as a result of the buy to let landlords coming into the market.

But what about the others?

It is clear, for example from the Battersby Report, that Local Authorities are not up to the task of policing bad landlords and enforcing the law. They are underfunded, and do not have the staff.

But is this not storing up problems for the future, as well as putting unnecessary strain on our public health services, which we all ultimately pay for?

Maybe the time has come for a landlords register.

The case for landlord registration

Landlords (on the whole) don't want a register. They consider it to be a gross intrusion on their privacy. I can understand that.

But landlords are not just 'private investors'. They are providing an important public service. There need to be proper records and accountability.

Having a landlords register would also allow us to introduce some form of licensing - requiring landlords to undergo training and ensure that property is kept up to a certain standard, as a condition of being allowed to continue as a landlord. As discussed further below.

References:

The original blog post (with seven comments):
<http://www.landlordlawblog.co.uk/2012/06/25/housing-law-the-bigger-picture-regulation-what-regulation/>

Landlord Law Blog report on the Battersby Report :
<http://www.landlordlawblog.co.uk/2011/07/18/local-authorities-failing-to-protect-vulnerable-tenants-says-new-report/>

(The online report itself seems to have been taken down)



4. Accreditation (1)

The case for landlord accreditation

I don't think something as important as people's housing should be allowed to be provided by just anyone.

I am not saying that people should not be allowed to rent out homes - we desperately need more homes for people. However, the people managing those homes should be property trained and accredited.

So if a landlord wants to manage his properties himself, he should undergo training, and his properties should be subject to periodic inspection. Good landlords will often have undergone voluntary training anyway.

I also think that any system set up should be a national scheme rather than left to the Local Authorities.

For example it is unfair when a landlord who holds properties in more than one area has to pay multiple fees. And also when different local authority systems have different standards and levels of enforcement.



As they do now for HMO licensing fees. It should be the same for all.

Landlords who take the training and acquire accreditation should be rewarded for this by having a proper nationally recognised qualification (lets call it an accredited landlord).

Something they can feel proud of and which will give them status and standing in the community.

Landlords provide an important service - they should be respected for this.

Accreditation could also bring extra rewards. For example accredited landlords could come within the more favourable business tax regime rather than having their property portfolio taxed as an 'investment'.

Maybe there could be other financial incentives such as grants for property improvements and the right to reclaim VAT for certain business expenses.

Landlords who are not accredited should not be prevented from renting, but they should be required to use a properly accredited letting agent.

If these is not done then there should be penalties. Maybe fines and/or the right for tenants to withhold rent.

But, you will be saying, at present we don't even have accreditation for letting agents!

I discuss this next.

References:

The original blog post (17 comments):

<http://www.landlordlawblog.co.uk/2012/07/02/housing-law-the-bigger-picture-the-case-for-accreditation/>



5. Accreditation (2)

The case for agent accreditation

At present there is no requirement for agent accreditation. At all. There are voluntary schemes but today a letting agent can set up with no training whatsoever.

This is a national scandal.

Letting agents hold huge amounts of other people's money and yet are subject to no control at all (other than through voluntary schemes such as those provided by ARLA and SafeAgent).

With the result that we regularly read in the press stories about agents going bust, after having spent money which does not belong to them, to shore up their failing businesses (or sometimes on extravagant living). Resulting in massive losses for their hapless landlords, and generally a poor service all round.

There are also tales of estate agents who fall foul of the estate agency regulations, closing down and setting up shop as a letting agent where they can act as they please.



Even the thousands of well meaning agents, can do untold damage through ignorance. Frequently they will economise on training when times get hard, or just consider it unnecessary.

But letting agents should not be **ALLOWED** to economise on training. It should be a mandatory requirement for being allowed to continue in business.

Surely government must recognise this soon and introduce compulsory letting agent regulation?

An example

I am a solicitor and I am regulated by the solicitors regulation authority (SRA). Every year I must :

- Have my accounts audited by an authorised accountant who then has to submit a report about me to the SRA
- Obtain professional indemnity insurance that has to comply with special standards
- Contribute to a fund which is used to compensate people who have suffered loss caused by a solicitor in circumstances where the loss is not covered by insurance
- Obtain at least 16 hours CPD (continuing professional development) per year
- Apply and pay for a practising certificate annually, which will only be provided if I certify that I have obtained the required PI insurance and CPD

Not to mention the practical and academic standards we have to achieve in order to become a solicitor in the first place.

So I do know a bit about regulation and what it involves. I don't say I like it, but it is a part of being a solicitor.

Letting agents manage people's homes. They should be subject to something similar.

Accreditation for agents

When (and I very much hope it IS when) accreditation is introduced for letting agents I would suggest it include the following:

- A qualification - lets call it an accredited letting agent (ALA) which is recognised nationally
- A requirement that all letting agent firms should be owned by ALAs or (in the case of limited companies) have a majority of directors who are ALAs
- Compulsory CDP for ALAs
- A requirement that all agencies which hold other people's money (presumably all of them) be audited annually and a report sent to a national regulatory body

- Strict standards for holding other people's money in a separate ring fenced account (like a solicitor's client account)

No doubt there are other things I have missed.

Good for the industry

I think one of the big gainers from all this would be letting agents themselves. This is why ARLA has been calling for regulation for years.

It would cut out the cowboys and therefore improve the reputation of the industry - giving those who DO act with honesty and integrity the good name that they deserve.

References:

The original blog post (14 comments):

<http://www.landlordlawblog.co.uk/2012/07/09/housing-law-the-bigger-picture-the-case-for-accreditation-2/>

The Solicitors Regulation Authority :

<http://www.sra.org.uk>

ARLA (association of residential letting agents)

<http://www.arla.co.uk/>

Safeagent : <http://www.safeagents.co.uk/>



6. Accreditation (3)

In the previous two chapters I have suggested that we should no longer allow the private rented sector to remain unregulated (something already being considered in Wales).

The framework could work something like this:

1. Compulsory accreditation and regulation.

Letting agents

All letting agents would be required to obtain proper qualifications and be regulated by a national body as a condition of being allowed to stay in business. In the same way that solicitors are.

This need not be that difficult. We already have excellent training programs run by national bodies such as ARLA. The better agents already provide regular training for their staff.

Agents should also be required to hold clients and tenants money in separate ring fenced accounts.



As more and more cowboy agents to bust, taking their hapless customers money with them, it is being recognised nationally that this is something that needs to happen.

I don't see how anyone can argue against it.

I also think that letting agents should have their accounts audited annually, as solicitors do.

Landlords

All landlords should be required to register as a landlord and register the properties to be rented out in a national rented property register.

I don't think this is something that can be left to local authorities as standards need to be imposed nationally.

Otherwise, if different landlords in different areas are subject to different standards and fees this will be perceived as unfair (as the current licensing fees regime is seen as unfair now).

If a landlord wants to manage his properties himself, then he would need to become accredited as a landlord. This could be based on the accreditation schemes that already exist.

For example the UK Landlord Accreditation Partnership (UKLAP) already has an accreditation system and training courses for their landlords.

Any landlord who did not have the accredited landlord qualification would be required to use an accredited agent.

2. A national rented property register

All rented property would be required to be registered as a condition of being rented out. The landlord could either nominate himself as the manager (if he is accredited) or nominate an authorised letting agent.

Part of the register would be closed - for example landlords renting through an agent could choose to have their ownership kept confidential.

Some records could be available just to tenants of that property, and others could be available to anyone conducting a search of the register.

All or part of the cost of the register could be met from registration fees, fines for non compliance, and fees charged to anyone searching the register.

Here are a few advantages that would flow from this:

- It would help prevent fraud - for example maybe it could be linked to the Land Registry records so fraudsters could not purport to rent out properties they do not own
- It could contain links to tenancy deposit and EPC records to allow tenants to check these important matters
- If a property was found to be sub standard, say after an HHSRS inspection by a local authority, any category 1 hazards could be noted on the register.
- It would also help government plan for the future.

At present no-one really knows how many landlords there are in the private rented sector. We know (more or less) how many rented properties there have been in the past from surveys and the census.

But we don't know exactly how many there are NOW.

3. Carrot and stick

The new system could provide benefits for accredited landlords. For example:

- more favourable taxation
- access to grants to improve their properties
- maybe online guidance, forms and information

However landlords who failed to register could:

- be fined heavily
- be unable to use the section 21 procedure to evict their tenants, and
- tenants could be entitled to withhold rent and claim back rent already paid

It is also possible that where a landlord persistently refuses to register and/or put his property in proper repair, it could be taken into public ownership, repaired and then used to house the homeless (only as a last resort - but why not?).

Many landlords will not like any of this. However it is clear that the sector cannot regulate itself (any more than the financial sector can).

Individual landlords and agents may be excellent, but there will always be those who fail to comply with voluntary standards.

With the increasing importance of the private rented sector, this is no longer acceptable.

Having a national register could also help in other areas, which I consider below.

References:

The original blog post (7 comments):

<http://www.landlordlawblog.co.uk/2012/07/16/housing-law-the-bigger-picture-the-case-for-accreditation-3/>

The Welsh Government: *Proposals for a Better Private Rented Sector in Wales* :

<http://wales.gov.uk/consultations/housingcommunity/proposalprivaterentsector/?lang=en>

The UK Landlord Accreditation Partnership :

http://www.londonlandlords.org.uk/portal/index/about_the_scheme/



7. Greening the PRS

What with financial crashes and the like, its all gone a bit quiet on the 'save the planet' front.

But if scientists are right and we are on the verge of catastrophe, its not going to stop just because the economy has gone a bit wobbly.

I am not a scientist and I don't know of my own knowledge whether the environmentalists are right or not about global warming (although who does? Really and truly?).

Some reasons why

However there are other reasons to try to reduce our dependence on fossil fuels and develop renewables:

- one day we are going to run out of gas, oil and coal (e.g. peak oil). We may as well face up to it and prepare



- I don't know about you, but I feel uneasy about depending for our fuel supplies so much on foreign powers who may one day decide to pull the plug on us
- After all the development and setup costs have been paid, I strongly suspect that renewable energy will prove to be MUCH cheaper

My belief is that technology has a long way to go with renewable energy, and that we ain't seen nothin' yet.

For example, in the 1950's, who would have thought that one day you would be able to carry an immensely powerful computer (more powerful than anything in existence at that time) around in your top pocket masquerading as a phone?

That same kind of development can and hopefully will take place in the green energy industry. All that power beaming down daily from the sun. There **MUST** be more efficient (and safe) ways of harnessing it and using it. We just haven't found them yet (or maybe they have been found but need to be developed). It will come.

But research and development need to be kickstarted by demand. Which can be ensured through regulation.

Which brings us back to landlords.

The problem

Vast amounts of energy are used and wasted in domestic housing. Regulations are being made to ensure better standards in new housing.

However, as we all know, not a lot of new housing is being built at the moment. Most of us live in older housing. The vast majority of which is massively energy inefficient. A lot of work needs to be done to improve this.

Many of the problem properties are in the private rented sector and this sector is also notoriously bad at improving property to make it energy efficient. Hardly surprising really as the benefits will mostly accrue (or are perceived to mostly accrue) to the tenant rather than to the landlord.

There are plans to improve things via the Green Deal, but more could be done.

A solution?

If there was a national rented property register as suggested above, this could be a very useful way for funding and services to be delivered and improvements monitored.

It could have a very big impact on the greening of our rented property sector.

How this would be done would depend very much how the regulation system was developed and set up, but I would suggest that this is something that should be taken into account from the very start.

After all, if the scientists are to be believed, we may not have that long to sort things out ...

References:

The original blog post:

<http://www.landlordlawblog.co.uk/2012/07/23/housing-law-the-bigger-picture-greening-the-prs/>

Wikipedia : *Peak oil*:

http://en.wikipedia.org/wiki/Peak_oil

The Dept of Energy & Climate Change : *Green Deal*

http://www.decc.gov.uk/en/content/cms/tackling/green_deal/green_deal.aspx



8. Retaliatory eviction

One of the big problems faced by tenants and indeed the authorities, in dealing with sub standard properties is that of retaliatory eviction.

This is where rogue landlords bring eviction proceedings against tenants (or 'troublemakers' as they are often called) who try to assert their statutory rights, eg as regards disrepair.

This is not illegal. An eviction order under section 21 can often be obtained by landlords within six months. Few disrepair claims will have progressed far in that time.

The tenants dilemma

This is not a new problem. Way back in 2007 the CAB published a report called 'The Tenants Dilemma' highlighting this, and providing case studies.

However although few people will condone retaliatory eviction, it is difficult to find a way to deal with it satisfactorily.



The solution generally suggested is to strengthen tenants rights - eg by giving a 'retaliatory eviction' defence to section 21 claims.

However there are fears that this could discourage landlords from investing in the PRS, worried that dishonest tenants will invent false retaliatory eviction defences simply to stall the eviction process and allow them to live longer at the property (often without paying rent).

This would almost certainly happen.

However, there is another solution. It could work like this.

Lets say a tenant (or his parents or a concerned friend), reports substandard conditions in a rented property to the local authority housing department.

In due course the Local Authority will attend and carry out a Housing Health and Safety Rating System inspection (as per the Housing Act 2004).

If they find any 'category 1' hazards, the landlord would be given a period of time to carry out repair work. If this was not done, it would go on the Register (suggested in previous sections above).

This could trigger automatic penalties, in particular the inability to evict under s21, until the works had been done (and certified as completed).

Landlords would be entitled to appeal - one ground could be that the tenants themselves are responsible for the disrepair. If this is found to be the case, it could form the basis of a mandatory ground for eviction.

However, the big advantage would be that removing the tenant would not remove the problem (from the landlords point of view).

The disrepair record would remain on the register (and the landlord would not be allowed to re-let) until an inspection showed that the works had been done.

So there would be no point in retaliating by eviction.

This is just an idea and I expect people will have objections to throw at it. For example landlords may be unhappy at the power placed in the hands of Local Authority inspectors, who many landlords feel are biased against them.

But a system like this WOULD help solve the retaliatory eviction problem.

References:

The original blog post (14 comments):

<http://www.landlordlawblog.co.uk/2012/07/30/housing-law-the-bigger-picture-eliminating-retaliatory-eviction/>

Citizens Advice article and link to the Tenants Dilemma:

http://www.citizensadvice.org.uk/press_20070613



9. Tenancy agreements

When renting, most people would agree that a tenancy agreement is an essential record of:

- what was agreed (ie rent of £550 not £500)
- the parties rights and obligations and
- the existence of the tenancy (eg for housing benefit applications and court claims)

However under our current laws a tenancy agreement is not a legal requirement!

Even where a tenancy is provided there are a couple of other problems:

The tenancy agreement does not tell the whole story -

Many laws are incorporated into a tenancy whether or not they are written down in the agreement (or indeed whether or not there is a written agreement at all). But they are scattered across several acts and it is often hard for non lawyers to find out what they are



The clauses in a tenancy may be unenforceable -

The Unfair Terms in Consumer Contracts Regulations 1999 make any clause which is 'unfair' void.

However it is often difficult to know whether any specific wording is invalid until after a Judge has made a decision in a court case - and who wants to go to court to find out if a tenancy clause is enforceable or not?

These problems have been recognised in the past, eg when the Law Commission did its report in 2006, but nothing has been done about it.

Here are two suggestions:

1. The Law Commission in its report suggested the right for tenants to withhold up to two months rent if a written tenancy agreement is not provided. Needless to say, this option is not favoured by landlords!

2. There are things which are part of all tenancy agreements, whether or not there is a written agreement. For example :

- the covenant of quiet enjoyment
- the landlords' repairing obligations
- the rules regarding tenancy deposits
- the need for landlords to use the court process for eviction of tenants

These could be regularised and set out (in plain English) in a standard booklet in a

prescribed form, to apply to ALL tenancies, as its 'core terms'.

The booklet could be easily available via the Internet, and in courts and Citizens Advice Bureaus etc.

This would go some way towards solving the problem.

References:

The original blog post (12 comments):

<http://www.landlordlawblog.co.uk/2012/08/06/housing-law-the-bigger-picture-the-tenancy-agreement-problem/>

The Law Commission : *Renting Homes* :

<http://lawcommission.justice.gov.uk/areas/renting-homes.htm>



10. Rent

Although this is not something I wrote about on the original blog series, I think I ought to include a short section in this ebook on the problem of the very high rents, particularly in London, which have been making life difficult for many tenants.

My view is that, ideally, this is not something that should be dealt with by way of increased rent regulation.

A question of supply and demand

To my mind, the high rents are essentially a problem of supply and demand. We don't have enough homes available for the people who want to live in them.

So rather than squeezing the rents we need to increase the supply.

We should be looking at encouraging house building, dealing with empty properties and the conversion of unused commercial buildings to residential use.



These are all issues for builders and planners rather than landlord and tenant lawyers such as myself.

After all, capping rents is not going to cap property prices, and investor landlords need to recover via rent sufficient to cover their mortgage payments. Otherwise its not going to be economic for them to be landlords.

If there was an abundance of properties, then rents should automatically level out.

But ...

Many people though, are now starting to say that the problem is so severe that it is adversely affecting the economy.

For example I have been referred to a blog by Peter Jefferys saying that high rents are inhibiting economic recovery.

Collectively (claims Jefferys) tenants have in the region of 8 billion less disposable income than they would have done had rents risen at the rate of inflation, and much of this money is going as mortgage repayments to banks who then fail to re-lend, rather than back into the economy.

There is also the point that if 'affordable' rents are supposed to be 80% of market rents, then with rents at their current level, this is going to make them pretty unaffordable for many people.

If things continue to get worse, there may realistically be no option other than to bring in some kind of rent control.

However this worries me - 'knee jerk' legislation has a habit of backfiring with consequences unforeseen by the legislators. And I don't think rent regulation is the right answer.

Long term the only real answer to the problem is to increase the housing stock.

However it is a rather slow answer as houses take time to build (and obtain planning permission). So urgent steps need to be taken to start now.

References:

Peter Jefferys on the LSE Blog: High rents are holding back the recovery :

<http://blogs.lse.ac.uk/politicsandpolicy/2012/09/26/are-high-rents-holding-back-the-recovery/>



11. Security (1)

Security of tenure and longer fixed terms

One criticism of the current PRS is the lack of security for tenants. Lets take a look at the issues:

Under the current system most fixed terms are for a period of six months.

As tenants can be evicted after a mere two months notice (so long as it does not expire before the end of the fixed term), their security can never be more than either the end of their fixed term or two to three months away (depending on when the exact expiry date of their notice is).

The problem with this is that tenants are often unable to put down roots into the community as they are constantly at risk of being 'moved on'.

This is not good for families and is arguably not good for the local community either.



On the other hand:

- It means that landlords will not be stuck with unsatisfactory tenants, like they were under the Rent Act 1977.
- It offers a degree of flexibility to tenants who may not want to stay in one place for a long time

There are a few conflicting interests here.

Landlords:

- Most landlords would like long term tenants so they have a regular income with no voids
- However if they give a long fixed term there is the risk that they will be stuck with an unsatisfactory tenant they cannot evict
- Short fixed terms allow landlords to use s21 to evict bad tenants instead of the s8 notice/statutory grounds in schedule 2 route which tends to be more difficult and take longer
- Even if landlords would like to give longer fixed terms, this is normally prohibited by their mortgage company

Tenants:

- Some tenants, particularly older tenants and those with families, would like more security of tenure so they can put down roots into the community, but
- Others do not want to be tied down and prefer to have the option to move after a few months.

Mortgage lenders:

- There are also the needs of the mortgage lenders who provide the finance which has allowed the private rented sector to develop.

How can all these needs be reconciled in a system which satisfies them all?

References:

The original blog post (12 comments):

<http://www.landlordlawblog.co.uk/2012/08/13/housing-law-the-bigger-picture-longer-fixed-terms/>



12. Security (2)

Security of tenure and longer fixed terms

In the last part we saw that there are a number of conflicting interests.

However what is the law here? What can landlords do and tenants ask for?

Housing law – security of tenure

Generally a landlord and tenant will sign a contract which gives the tenant a specific period of time during which both parties are tied to the agreement - the fixed term.

So a landlord cannot normally evict and the tenant has to remain in the property, or at any rate pay rent, during that time.

After this fixed term comes to an end, unless it is replaced with another fixed term, under the current housing law the tenant is entitled to remain under a rolling 'periodic tenancy'.



A periodic tenancy is normally created under statute (and will be implied anyway if the tenant stays on paying rent which the landlord accepts).

The 'period' depends on how rent is paid. In the vast majority of cases rent is paid monthly so the periodic tenancy will be a monthly one.

However this is not always the case. Quarterly or even annual periodic tenancies are possible.

Housing law – ending a tenancy

Here is a quick summary of the ways a tenancy can end (looking at ATs and ASTs only):

During the fixed term:

- break clauses
- Landlords' claim to the courts for a possession order under the statutory grounds (the ground for unpaid rent is by far the most common)
- agreed surrender (ie both parties agreeing to end the tenancy)
- landlords accepting an 'implied surrender' from tenants (e.g. where tenants have 'done a runner')

Also, after the fixed term:

- tenants leaving at the end of the fixed term / after service of a tenants notice to quit

- Section 21 (ASTs only)

Although note that a possession order under s21 cannot be made during the first six months (say if the fixed term was very short) after the tenant first moves into the property.

Fixed term periods:

There is actually no reason in housing law why a landlord cannot grant a fixed term for any period of time the parties want.

So they could grant, say, a fixed term of two weeks, seven months, four years or fourteen years.

However housing law treats different terms in different ways:

- Although a tenancy agreement is a 'document of title' which normally would have to be signed as a deed, there is a special dispensation in the Law of Property Act 1925 which provides that this is not necessary for tenancies with a term of three years or less. This is why you can create an 'oral' tenancy agreement with no written document.
- However tenancies with a fixed term of over three years must be created by deed
- Fixed terms of seven years or more need to be registered at the Land Registry and the landlords' statutory repairing covenants will no longer apply.
- **A fixed term of just a few weeks or months.** This is known as a short let. Although note that the landlord cannot evict the tenant until after the first six months under s21, no matter how short the fixed term
- **A long fixed term of say 2 to six years.** This could also be purchased by a 'premium' like long leases, although if so, the landlord would not be able to forbid assignment
- **A long fixed term of between seven and say 20 years.** This however would be significantly different, as the landlord could impose repairing obligations on the tenant. Again it could be 'purchased' by a premium payment, and would operate under the same legal regime as a long 99 year lease save that it would be for a shorter period.

So what is possible?

Apart from the usual 6 or 12 months fixed term, the following options are possible:

The reasons why the second two rarely happen is landlords not wanting to lose control over their property for so long, fears of being stuck with a bad tenant and the prohibitions of the mortgage lenders.

We will be looking at the question of bad tenants in the next section.

References:

The original blog post (1 comment):
<http://www.landlordlawblog.co.uk/2012/08/20/housing-law-the-bigger-picture-longer-fixed-terms-2/>

A blog post explaining periodic tenancies:
<http://www.landlordlawblog.co.uk/2011/08/11/what-is-a-periodic-tenancy/>

A blog post looking at implied surrender :
<http://www.landlordlawblog.co.uk/2012/07/19/four-essential-things-for-landlords-to-check-if-a-tenant-vacates-without-warning/>

My ebook on section 21 :
<http://www.yourlawstore.co.uk/the-secrets-of-assured-shorthold-tenancies-and-section-21/>



13. Bad tenants (1)

Getting rid of a bad tenant

In the last part we saw that landlords and lenders are unwilling to grant longer fixed terms, mainly due to the difficulty of getting rid of bad tenants.

But what is the law?

The main housing law act regulating tenancies today, the Housing Act 1988, provides for bad tenants to be evicted under the various 'grounds' set out in Schedule 2.

These are divided into 'discretionary grounds' and 'mandatory grounds'.

As you would expect from their names:

- **discretionary grounds** are where the Judge has a discretion to refuse to make an order for possession, and



- **mandatory grounds** are where he has no such discretion.

Then there is the section 21 procedure.

This allows a landlord to evict a tenant willy nilly, so long as the fixed term has ended and the proper form of notice (giving not less than two months notice to the tenant) has been served.

Using the schedule 2 grounds

Discretionary

As a solicitor advising landlords, my advice to them is NEVER to use the discretionary grounds. If tenants defend, the proceedings can become long drawn out and expensive.

Why should a landlord spend thousands of pounds in lawyers fees for drafting up witness statements, complex court forms and dealing with a contested trial (should the tenant decide to defend - which they probably will).

When, if they wait a couple of months, they can evict the tenants more quickly and with considerably less hassle and expense, via the section 21 procedure?

I am rapidly coming to the view also that the mandatory rent arrears ground should also be avoided, if section 21 is available.

Mandatory - rent arrears

Although I have had many successful rent arrears cases, it is all too easy under housing law for a tenant to de-rail a claim by putting in a defence and counterclaim.

Sometimes this will be justified, but often it will be a complete fabrication. Resulting in the case being delayed, giving the tenant a further rent free period in the property.

For example I can remember one serious rent arrears case where the tenant claimed at court that he had paid the rent and had not received the possession notice. Both of which were totally untrue.

As a result the Judge adjourned the hearing, which was then set down by the listing department for a date three months hence.

The poor landlord was tearing his hair out.

But I can see it from the Judge's point of view too.

At these initial hearings, many possession claims are listed at the same time. If a Judge is going to get through his list, he simply does not have time to consider a contested claim. An adjournment is the only option.

But this can delay the final resolution of the case for many months. With no prospect of the landlord being compensated for his lost rent.

The problem with schedule 2 grounds

Private sector landlords with a bad tenant, particularly a non paying bad tenant, will want them out as soon as possible.

If they are not receiving rent for example, this puts their entire business at risk.

Or they could be a pensioner where the rent is their sole income. Yet tenants, simply by putting in a fictitious defence can (sometimes, not always) obtain a further three months or more free accommodation.

Surely this is wrong?

References:

The original blog post (1 comment):

<http://www.landlordlawblog.co.uk/2012/09/03/housing-law-the-bigger-picture-bad-tenants-2/>



14. Bad tenants (2)

Getting rid of bad tenants

Despite the fact that the statutory possession grounds in Schedule 2 of the Housing Act 1988 cover most 'bad tenant' situations, it is often very difficult to bring a claim to a speedy resolution - sometimes even if the tenant is in serious arrears of rent.

So landlords are left with section 21 as the only reliable and quick means to evict bad tenants.

But as section 21 can only be used after a fixed term has come to an end, this rather militates against having longer fixed terms.

How can we resolve this conundrum?

The biggest problem is with unpaid rent. A landlord can perhaps put up with a badly behaving tenant, but if his rent is not paid, this puts his whole business at risk.



Yet Judges, when assessing 'reasonableness', will routinely consider a tenants right to a home to be more important than the landlords right to rent.

In a way they are right, but it results in massive injustice to landlords. Why should private landlords be expected to house unsatisfactory tenants free of charge?

Here are some suggestions as to how this could be dealt with.

Fast tracking rent claims

I would suggest that if a landlord has a claim for unpaid rent which is in excess of, say, two months, he be entitled to use a special fast track procedure.

This would be like the accelerated procedure in that there would normally be no court hearing. If there is no defence put in, the landlord would be entitled to an order for possession after 28 days.

The tenant would not be able to obtain any extension unless they paid a an amount of rent equal to the amount of time they required, to the landlord in advance.

Or perhaps it could be paid into court (to avoid disputes), to be paid out to the landlord as soon as the cheque has cleared.

So in effect a tenant would be 'buying' an extension of time. With a limit of say, six weeks.

If the tenant was able to pay off the whole of the arrears and fixed costs, BEFORE any bailiff appointment, then the possession order could be set aside.

Dealing with disputes

If on the other hand the tenant was withholding rent because of some other issue, such as disrepair, then they would only be allowed to proceed with a defence if

- they paid their rent into court, to 'abide the event' or
- if they were able to produce receipts covering the cost of any disrepair work along with proof that they had followed the proper procedure of notifying the landlord in advance of these works being carried out.

If the courts did not want the extra administration of dealing with payments into court, no doubt other organisations such as banks, credit unions etc could provide this service.

As with the accelerated procedure, a Judge would be able to set the claim down for a hearing if he considered it appropriate.

So far as bailiffs appointments are concerned, landlords should be entitled to apply for this as soon as the possession order has been granted.

Rather than, as now, having to wait until the date for possession has passed - which often gives the tenant a further 2-8 week rent free period.

If a system like this was in place, then landlords would have less to fear from granting a longer fixed term.

Assuming the registration and accreditation suggestions made earlier in this series are

implemented, this fast track procedure should only be available to accredited landlords or those using an accredited agent.

This system need not be more burdensome on the courts - indeed if a paper based procedure such as the accelerated procedure can be used, this would save court time as there would be considerably fewer hearings.

It would require some amendments to the to the Civil Procedure Rules - maybe to expand the remit of the accelerated procedure - and probably some amendment to the Housing Act 1988.

Other problems

Other problems can be dealt with by always giving new tenants an initial provisional tenancy of say six months to a year.

In most cases if a tenant is going to be a troublemaker of some kind, this will manifest itself within this initial period of time.

After this, a longer fixed term of several years could be granted to those tenants who wanted them, or who were willing to pay the premium (see later).

The rules for repossession on bad tenant grounds (other than rent arrears) could be similar to those available today.

I will be re-visiting the subject of longer fixed terms next.

References:

The original blog post:

<http://www.landlordlawblog.co.uk/2012/09/10/housing-law-the-bigger-picture-bad-tenants/>



15. Security (3)

Earlier, I suggested that there are two types of tenant -

- Those who want long term security of tenure, and
- Those who do not want to be tied down, and want the option to move after a few months

On the whole, older tenants and families fall into the first category. Younger people tend to fall into the second.

Those in the first category are mainly the people who about 20 years ago would have opted to buy their own property but who are now unable to do so.

So how can we accommodate them and their needs in the private rented sector?



There are two main obstacles to long fixed terms:

- Landlords' fear of being unable to evict bad tenants and
- The terms of the landlords mortgage deed

I have looked at the problem of evicting bad tenants earlier.

If the system were changed to allow easier eviction in rent arrears cases, then not only would it mean that landlords would be less worried about this, it would also mean that there was less reason for banks and other mortgage lenders to raise any objection.

So assuming this was the case, how could the system work?

There are two ways you can get long term security of tenure.

1. Automatically extend tenancies.

This is the method used in the Rent Act 1977 and in the Housing Act 1988 for assured tenancies.

Tenancies run on automatically on a statutory periodic basis after the end of any fixed term, and it is impossible to evict other than for

- bad tenant grounds or
- what are known as ‘estate management’ grounds - e.g. moving the tenant to another property.

2. Give a longer fixed term.

Although note that if the fixed term is more than seven years, the landlords repairing obligations will no longer apply and the tenancy will need to be registered at the Land Registry.

The main difference (at the moment) between the two options, is that the ‘statutory periodic tenancy’ only protects the named tenant.

If an assured or protected tenant moves out, for example after subletting the property to someone else, his tenancy will revert to a common law one which the landlord can end easily under a Notice to Quit.

However a long fixed term tenancy will not end automatically if the tenant moves out and it can more easily be assigned to another tenant. Particularly if the tenant has paid a premium

So how best to grant long term security to tenants who want it?

I suspect that once the fear of not being able to evict non paying tenants is removed, a consensus will develop. Here are some suggestions:

Purchased long fixed terms

Some landlords may be open to granting long fixed terms for a premium.

They could be protected from assignment to unsuitable tenants by having in place a requirement for consultation and the right to object to assignment if this is reasonable.

Return to the protected periodic tenancy

Alternatively, there could be a change in the law, maybe to give tenants automatic long term tenancy rights (where landlords cannot use section 21).

This could be after a probationary period (say one year) unless the landlord applies to the court to extend the probationary period, or restore it later, if the tenant proves unsatisfactory.

Similar to the introductory and demoted tenancies used in social letting.

The problem with any change in the law along these lines is the shadow of the Rent Act 1977 and its predecessors, which had such a destructive effect on the private rented sector in this country between about 1918 and 1989. Landlords, understandably, do not want a return to this.

There is also the prospect of landlords routinely evicting tenants at the end of the first year to prevent them obtaining any security.

I would therefore reject this option.

A tenants right to purchase a long fixed term

An alternate, and possibly better, way to 'force' landlords to grant a longer term security of tenure (eg two years or more) would be for tenants to have the right to apply to buy a longer fixed term after a set period of time.

If the premium fee could not be agreed the amount could be set by the Residential Property Tribunal. No doubt there could be a formula based on (for example) the size of the property, the rent, and the length of fixed term asked for.

This may be more popular in the landlord community as it would allow them to earn some extra income as well as the regular rent - which would carry on as before - plus the landlord could protect his position by including a rent review clause.

If the tenant did not apply to buy a longer fixed term (for example if they did not want it), then the current rules would remain.

This would be more affordable than buying the freehold of a property, and would allow ordinary people to have reasonable security of tenure. Particularly if they then had the right to renew the fixed term (upon payment of a further premium) when it came to an end.

References:

The original blog post (6 comments):

<http://www.landlordlawblog.co.uk/2012/09/17/housing-law-the-bigger-picture-longer-fixed-terms-3/>



16. Conclusions (1)

Before I start considering recommendations, I want to take a look at the chief objection that has been made by landlords in their comments, when this series was published on the blog -

The necessity to do anything at all.

“There is no problem”

Admittedly many, probably a majority, of landlords are decent and honourable and provide quality properties. But there are many who do not.

At present these landlords are ‘getting away with it’.

Do we want to live in a society where bad and often criminal landlords are allowed to rent out substandard and often dangerous property with impunity?



“We already have laws for this sort of thing”

Why, people demand, do we need anything else?

The answer is that it is often difficult if not impossible, to enforce the existing laws under the current system.

The Police generally refuse to have anything to do with housing issues, despite the fact that unlawful eviction (for example) is a criminal offence.

The people generally charged with the task of enforcing the regulations are local authorities. However it is difficult for them:

- A criminal prosecution needs to be proved beyond reasonable doubt
- This is difficult to do if the main witnesses (the tenants) are too scared to give evidence in court
- Even if they agree, you need a lot of very clear evidence to prove your case, and
- As trials generally do not take place for many months, many witnesses will have moved on and / or will find it difficult to remember the events clearly
- Local authority officers are over worked and there are not many of them. It is, practically, very difficult for them to find the time to bring prosecutions, particularly as many of them have not had proper legal training, and

- When a case DOES succeed at trial, the penalties handed down by Judges are fairly derisory

So at present, the system is not working. Also, I have to say that I am not sure this is the correct system to deal with the problem of bad landlords.

Why local authority prosecutions are not the answer

For the problem to be resolved by local authority prosecutions the following would have to happen:

- There would have to be a massive increase in local authority housing staff
- They would all have to be properly trained in housing law and the law of evidence
- Ideally cases would need to come to trial sooner
- There would have to be some sort of protection scheme for witnesses, and
- The penalties for housing relating offences would need to be changed to make them more of a deterrent

Doing this would be hugely expensive and would increase the council tax bills for everyone.

I don't think this is an option, do you?

This is why local authorities are coming round to the view that it is better for the landlord to be compelled to undergo training and comply with the proper standards before being allowed to rent out a property at all.

That way it is more objective, and landlords are unable to 'get away with it' by terrorising tenants so they refuse to give evidence.

“Regulation will only increase rents for tenants”

Yes, it will be an extra expense, but if the result is greater rights for tenants and a better system, I suggest it is worth paying. Nothing in life is free. But it shouldn't be too expensive.

If, say, the registration fee is £500 this equates to about £40 per month.

That is not a huge amount and I think most landlords could afford it. It will be a business expense and they will be able to offset it against their tax. However the fee may be a lot less than that.

The real objections?

I suspect that the real (and understandable) reason why many landlords are unhappy about further regulation, is because they see it as taking away the freedom they have had up to now.

They are worried that they are going to be ordered to do a lot of 'unnecessary' and expensive work to their properties by 'landlord bashing' local authority officials.

The answer to this is for the landlord associations to work with local authorities and the government in setting the standards, and to assist landlords challenge unfair decisions to the Residential Property Tribunal (which will almost certainly be the body for appeals, rather than the courts).

There is no perfect answer to the problem of bad landlords and whatever solution is decided on someone will object to it.

But personally I think a system of landlord registration is more likely to deal with the problem of bad landlords than the current system of leaving it to local authorities to bring prosecutions.

And I think, in view of the increase and projected increases in the private rented sector, the problem of bad landlords is something which needs to be tackled.

“Tenants don’t want longer fixed terms”

This is true of many tenants, but by no means all.

However under the current system, landlords get no advantage and may (if they are unlucky enough to get a bad tenant) be under a considerable disadvantage, if they grant a long fixed term.

It is also very much in the interests of letting agents to retain the current system, as their income is largely derived from finding new tenants and charging for ‘renewals’.

But is it good for society as a whole?

References:

The original blog post (5 comments):

<http://www.landlordlawblog.co.uk/2012/09/17/housing-law-the-bigger-picture-longer-fixed-terms-3/>



17. Conclusions (2)

This has been a long journey.

It started with me picking up on a report which said that current statistics indicate that the private rented sector is set to house a considerably higher proportion of the population than it does now.

This made me wonder whether the time has come to change our rules and regulations.

These rules were made at a time when the private rented sector housed a considerably smaller percentage, around 7%, of the population, rather than the 12-20% as of now and the predicted 20-40% for the future.

Along the way I have looked at registration and accreditation, tenancy agreements, longer fixed terms and getting rid of bad tenants.

It is time to set out my conclusions. However first I want to talk about :



The point of view

When considering housing law and the private rented sector, there are three ways you can approach it.

1. From the point of view of the landlord. Looking at the situation with a landlord's eye there is probably not a lot of reason to change things.

The system is not perfect but works reasonably well from the landlords point of view.

2. From the point of view of the tenant. Here the situation is unsatisfactory and tenants' supporters often express a desire to go back to the days of the Rent Act 1977 when tenants had long term security of tenure and protected rents.

However realistically this is not possible. People are not going to invest in property under those circumstances, neither are banks going to lend money. A return to this regime, or anything like it, is more likely to kill the private rented sector dead. Therefore this is not really an option.

3. From the point of view of society. This is the point of view that government has (or should have).

Here you need to strike a balance between the rights of the landlord and the rights of the tenant. But the most important thing is the interests of society generally.

This is the point of view I have striven to take in this series.

With that in mind, let's take a look at the various conclusions I have come to.

1. The current system is not fit for purpose

There are two main issues -

- dealing with bad landlords and
- giving tenants who want it, greater security of tenure

Bad landlords are largely 'getting away with it' due to the difficulties of prosecution and the lack of local authority staff to do the prosecuting.

Landlords are discouraged from giving (and lenders from permitting) longer fixed terms to tenants who want them (mainly older people and families) because of the difficulties of evicting bad or non paying tenants.

The only reliable and (comparatively) quick eviction method, section 21, can only be used once the fixed term (and the tenants long term security) has come to an end.

Both of these problems are bad for society:

- Poor housing leads to poor health and increased costs for the NHS (which we all pay for).
- Families in particular need long term security so children can remain in their schools.
- Local communities suffer if residents cannot put down roots due to the risk of being 'moved on' after six months.

2. Landlord / letting agent registration and accreditation is the best solution to the 'bad landlord' problem

Stopping poor landlords from letting in the first place is likely to be more effective than prosecuting them when they break the law.

I propose a nationally operated registration scheme where all rented properties have to be registered.

All properties would have to be managed by an accredited letting agent unless the landlord had undergone training and obtained a landlord qualification.

The letting agent industry should be properly regulated with agents being required to have an accredited letting agent qualification, CPD obligations, professional indemnity insurance and client money protection.

Where properties are not properly registered penalties should apply and landlords be unable to use the quicker eviction procedures.

3. The eviction process should be changed to make it easier to evict bad or non paying tenants

This is key.

The problems involved in evicting non paying tenants during the fixed term is the main (and perhaps the only) deterrent to longer fixed terms.

If change in the eviction procedure does not happen then neither will the longer fixed terms.

I suggest that landlords be entitled to prompt possession orders against non paying tenants as of right, and that if tenants seek to defend and counterclaim, for example because of the property's poor condition, they be required to pay their rent into court (or an authorised organisation) to abide the event.

However hopefully tenants will be able to deal with poor property conditions under the registration / licensing system and will not need to deal with it by way of withholding rent.

After an order for possession is made (based on rent arrears), if tenants want extra time before they are evicted, this would be on condition that the rent is paid to the landlord, or into court.

I also suggest faster processing for bailiffs appointments, as this can cause long delays, especially in London.

This system need not be more burdensome on the courts - indeed if a paper based procedure such as the accelerated procedure can be used, this would save court time as there would be considerably fewer hearings.

It would require some amendments to the Civil Procedure Rules and maybe to the Housing Act 1988.

An efficient and speedy repossession system for rent arrears would give landlords more confidence in the system and encourage them to grant longer fixed terms to their tenants. Crucially also this would make it more difficult for lenders to object.

4. Tenants should be entitled to apply for a longer fixed term.

For example after they have been in a property for, say, a year.

This would be on payment of a premium fee which if not agreed between the parties could be set by a court, following a prescribed formula.

This would allow tenants who cannot afford to buy their own homes, to buy long term security in their rented property, allowing them to settle in the community without fear of being evicted after a few months.

However tenants who do not want to remain in the property long term, could continue to sign up for 6-12 month fixed terms allowing them greater flexibility. It would be the tenant's choice.

Landlords would continue to be able to use the section 21 procedure after a fixed term has come to an end.

However maybe there could be a right for a tenant who has purchased a premium tenancy to be able to renew this within a set period of time upon making a further payment.

5. Mandatory core terms for tenancy agreements

Freely available and in plain English.

Conclusion

These are just ideas. On further consideration they may prove unviable. On the other hand they may be just the job!

Further investigation and analysis will be needed and extensive consultation if any change in the law is to be made.

I hope you will agree with me however that SOMETHING needs to be done. These suggestions and the analysis is my contribution to the debate.

Tessa Shepperson
2012



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