Consultation Response

CONSIDERING THE CASE FOR A HOUSING COURT

A Call for Evidence

Ministry of Housing, Communities & Local Government Consultation

Date: 22 January 2019

INTRODUCTION

The CLA is the membership organisation for owners of land, property and businesses in rural England and Wales. Our 30,000 members own over 10 million acres and operate over 250 different types of businesses in rural areas. Our members are the most significant provider of houses for rent in rural areas and our members' businesses also generate housing need and help sustain rural communities.

RESIDENTIAL LANDLORDS IN RURAL AREAS

The CLA recently undertook the first large scale survey on the contribution of rural landowners to the residential property market in over 20 years. It quantifies the contribution CLA members make to residential lettings and the development of new property in rural areas. Respondents were also asked wider questions regarding their motivations behind letting property and their experiences of development. The full results of the survey can be read here: https://www.cla.org.uk/sites/default/files/CLA%20Housing%20Report%20D7%20V2%2028.06.17%20AW%20HR%20SPREADS.pdf

A number of studies have shown residential tenancies are on average significantly longer in rural areas than those in urban areas. CLA data substantiates this with a mean tenancy length of 7.6 years (excluding Rent Act tenants who have regulated tenancies with long term security of tenure). When compared to the national average of 18 months reported by the Association of Residential Letting Agents in January 2017, it is clear that the rural sector is fulfilling a longer-term role than in many other parts of the country.

A reason for this could be that many of the properties will have originally been for agricultural workers who would have occupied them for many years, creating a culture where long term rental agreements are considered the norm. Many rural tenants tend to be older than those in urban areas and are far more likely to be families with children. Additionally, many rural settlements have a distinct sense of community as the parties are generally more likely to be known to each other.

Tenants staying in their properties for longer is also an indication they are satisfied with their accommodation. This is supported by the English Housing Survey in 2014/15 which showed that

75 per cent of tenants in rural areas were satisfied with the housing services provided by their landlords, which is 6 per cent above the national average and 12.4 per cent above tenants in London.

Given the nature of the call for evidence, needless to say, we have encouraged our membership to respond directly regarding their personal experience. However, we would like to supplement their individual responses with some general comments below.

GENERAL COMMENTS

Whilst the CLA gives its members free legal advice, we do not represent or act for them so we are not best placed to comment on the practical and procedural elements of the consultation. We would, however, like to take this opportunity to make some general observations on the experience of the many members we speak to on a weekly basis.

We would certainly agree with the view that landlords are becoming more reluctant to continue letting property as the regulatory burden increases coupled with the fear that it will be ever more difficult to repossess their properties quickly and smoothly if needed. When the tenancy relationship breaks down (for whatever reason) the burden in time, stress and lost finances can be extreme (see Case Study below).

We frequently speak to landlords whose tenants are not paying the rent, not responding to communications and the landlord is left unsure whether there has been abandonment or not. This grey area is extremely hard to navigate for risk of falling foul of the Protection from Eviction Act 1977.

There is often also then the issue of the tenant's belongings to deal with.

Advising Landlords who have often already put up with breach after breach of the tenancy agreement, whilst receiving no rent, who then have to collect and store the tenant's belongings in accordance with the Torts (Interference with Goods) Act 1977 seems to place them under an unfair and disproportionate burden.

These landlords are left wondering whether there is any justice in the system at all.

THE UNACCEPTABLE DELAYS

We whole heartedly agree with the view of the RLA that landlords seeking possession against a tenant who does not pay their rent have to wait too long between issue and finally obtaining possession.

A CLA member recently reported a case where the tenant "*fell behind with the rent in March 2017 – paying less than the full amount each month with promises that it was a short-term problem. In fact, by October they had paid £2,000 out of £6,000 due. She was advised to serve a Section 8 but whilst the notice was running she discovered the agent, who held the deposit*

had gone into liquidation with the deposit. This had to be returned to the tenant and the expiry of the S8 [notice] had to wait before she would have to serve it again. This took until late December. There was finally a court judgment in her favour in March and then a further wait as she could not actually get possession without the Involvement of bailiffs. You can imagine the toll of the cost and worry that such an exercise over the 12 months took"

The system should protect both landlord and tenant and neither should be able to abuse it. CLA members often complain that the court process should be much quicker and there should be the right of entry/to change the lock within a short time frame after the court order.

One of our members wrote (expressing the views of many others): "…. *I actually think the most important thing which the consultation picks up is the delay between obtaining a possession order and actually gaining possession if the tenant refuses to leave."*

THE EXPENSE

If the matter has gone as far as a possession claim then the reality experienced by many members is that often there is little or no chance of recovery of arrears of rent because the former tenant is either impecunious or will disappear. Therefore, the costs of proceedings simply add to the landlord's loss (court fees alone have risen to £355 from just £150 a few years ago). If the Housing Court/Property Chamber were a less expensive option than County Court proceedings that would obviously be a good thing.

Given the high cost of legal representation (especially in relation to the rent levels which are often modest in rural areas) many members feel forced to represent themselves. The degree of regulation and the pitfalls mean that many will inevitably fall foul of one requirement or another and are forced to start again losing more money and more rent.

Advising our members in this regard is difficult as, although many cannot afford representation, we are getting to the stage where the reality is that even the most able and conscientious, cannot afford not to be represented.

Another example of unfair expense borne by landlords is where they are required by local authorities to pay the tenant's council tax bill where the tenant has absconded before the end of the tenancy.

THE COMPLEXITY

We wholeheartedly agree with the view expressed by other landlord organisations – "*For too long, debate surrounding private rented housing has focused on a perceived need for more regulation to protect tenants. With over 140 acts of parliament and more than 400 regulations affecting the sector, it is not simply the case that we need more law. Rather, with councils under considerable financial constraints, tenants and good landlords are being let down by a lack of effective enforcement to root out the criminals."*

In many cases, the process is just too complicated for people to navigate and yet, as mentioned above, the cost of representation too high.

THE ADMINISTRATIVE BURDEN

The CLA has some members with large portfolios but, in line with your statistics (78% having only one property) the majority of our members let 1-2 residential properties. [56% of our members who own less than 500 acres let 1-2 properties and 83% of such members let 1-5 residential properties.]

The increase in administrative requirements following in particular:

The Housing Act 2004 – tenancy deposit protection

The Deregulation Act 2015 – further prescribed information

The Immigration Acts of 2014 and 2016 – "right to rent" checks

has been a considerable administrative burden and, in practice, meant that many private landlords who are trying their best to keep up with the intricacies of the requirements will fail.

Prescribed Requirements –

Landlords are being required to jump through too many hoops. For example. where a landlord has served the Governments' How to Rent Guide on the tenant at the outset of the tenancy, it seems disproportionately burdensome that the landlord has to ensure that if the tenancy runs on after the fixed term as a statutory periodic tenancy (as the majority do) that a new How to Rent Guide is served on the tenant if the guide has been updated by the Government since the start of the original tenancy.

The result of such an administrative oversight is the inability to use the section 21 notice to regain possession of the property. This strikes us as an unintended consequence that unfairly penalises landlords and the CLA feels that this is disproportionate penalty in such cases.

Any new Housing court would in our view need to be combined with a simplification of the requirements on landlords if a real and fair balance is to be struck between the rights and responsibilities of the parties.

Right to rent –

CLA continues to argue that the duty to check the immigration status of prospective tenants puts a completely inappropriate burden on private residential landlords.

In rural areas, prospective tenants often do not have a passport which makes the process that much more complicated.

THE DILUTION OF ABILITY TO USE SECTION 21 FOR REPOSSESSIONS

The Government will be well aware that the additional steps that a landlord is now required to take prior to granting a tenancy is meaning that in practice far fewer section 21 notices are successfully relied upon. This will be the case regardless of whether the application is heard in a new Housing Court or not and is a cause for real concern.

One of our member's summarises the combination of all the above issues:

"*Our views which I am sure are shared by many members:*

1. Section 21 notice procedures now fraught with potential difficulty and ways tenants can try to frustrate/delay good service.

2. If you do get a valid notice in place it takes so long to actually get possession back if the tenant does not go at the end of the notice period. It has taken us 12 months in once case from service of notice to actually taking possession back.

3. The reasons are many:

i) CAB and local authority housing officers advise tenants to stay put as they have no housing stock/budget to help.

ii) If the tenant does try to rent another house we have to give a reference which leaves us in a difficult position.

iii) It takes so long and is so expensive to even get to a court hearing during which time the tenant never pays rent/utilities or looks after the property.

iv) *Even after the hearing, the eviction process then takes another huge amount of time and the courts awards of a few pounds a week to pay rent back are totally unenforceable. During this period the problems in iii) above continue.*"

Whilst some of our members welcome a review of the court process, others feel that this is entirely missing the point. They welcome a fair system where tenant's legitimate rights are protected and rogue Landlords are brought to book but the counter to this is they as landlords must be able to make possession actions quicker and easier.

THE BALANCE NEEDS TO BE RESTORED

The CLA of course believes that tenants should have rights and these should be protected but in the current political climate stampede over regulation has ensued.

The experience of many members is reflected in the following account:

"*I write as a responsible landlord. Well reputed agents we have worked with for more than one generation frequently tell us so. Our service to our tenants is excellent and we look to be environmentally responsible when the opportunity arises (fitting secondary glazing etc). We look to help our tenants where we can. We are proud to do this and want to do the right thing by all concerned.*

However, the system often feels one sided and sometimes people take advantage of it. I think this is aided by the political discourse which usually portrays 'the landlord' as the evil one and the 'tenant' as the victim.

Of course, it can well be the other way around. Some tenants use the lengthy legal process to not pay rent or not vacate.

In one case we had a tenant, who we let the property on a 6 month AST as we were selling the property – which we fully declared. However, at the end of the notice period the person refused to move out knowing full well that it could take us 4 months to evict them. This was an abuse of the system. The fact that they were running a brothel (as it turned out) did not help and my lawyers said that it would have been even more expensive to have evicted them on the basis that they were in contravention of the AST by using the apartment for immoral purposes. I learnt from the police that this is a common problem."

The difficulty and expense in obtaining possession seems especially unjust when the tenants, as we often hear, are using the property as: drug dens, brothels, cannabis farms and intimidate landlords with violence and threats of violence.

The point we want to make is that many of our members feel that the venue for enforcement is in some ways academic – if people are flouting the system and regulations are simply not being enforced fairly then there is no justice in any event.

WHAT NEEDS TO CHANGE?

The views among our membership will no doubt vary but we would certainly be in favour of a system that works better for landlords as well as tenants i.e. is faster and less expensive – especially where the tenant is in flagrant breach of the tenancy agreement and the laws that govern it.

Any steps to streamline and simplify the process for ordinary people (especially those who would struggle to pay for legal representation) would be very welcome.

If this can be achieved with a new Housing Court whilst not compromising access to justice from a geographical stand point then this is to be welcomed.

The CLA would also like to make a plea that whatever the future developments that there would be sufficient resources to assist those parties who are less able to use electronic systems.

The CLA would want to see a system that does not disproportionately burden landlords who are left clearing up the tenant's mess. Perhaps a review of the Torts (Interference with Goods) Act

1977 or improved guidance in this area would help ease the confusion when this arises. We often talk to landlords who experience a huge burden of time and expense when goods are left behind.

This and other costs for dilapidation and damage (usually paired with rent arrears) are rarely covered by the deposit and this will be further challenged when the sum is limited to only 5 weeks' rent.

The issue of whether a new Housing Court will make it easier to resolve disputes, reduce delays and secure justice will, we suspect,depend largely on the adequacy of funding which seems at least in part the problem with the current system

A FINAL CASE STUDY

I hope that you can recall our correspondence of last year over my let property near Halifax. Just to recap, there were two main issues, as follows: -

1. *Regardless of my fulfilling all the appropriate requirements of the legislation (usefully provide by you) I had to pay the Council Tax where the tenant claimed that she did not owe it once the initial Agreement duration had expired – such an assertion supported by the Tribunal in a situation where [the] Council failed to present any evidence to the Tribunal, and I was not even informed that it was "sitting". When I myself tried to appeal, the Tribunal said I couldn't because the case had already been heard. Clearly, the process isn't working properly, and I lost a lot of money, and an unfortunate precedent has been set.*

2. *The same tenant at the same property brought in a much younger partner (who was a really bad lot) without my knowledge, and when I found out the letting agents said they couldn't evict him, because it would be deemed as "harassment" by the Courts. At the end of the Tenancy, the tenant was happy to leave (in fact it was she who brought it to an end) but her new partner wanted to stay. The property was in a very poor state with, it subsequently transpired, suffering over £14,000 of damage, much of it, in the nature of malicious damage (e.g. cement poured into the header tanks to block all the plumbing, wiring tampered with to give electric shocks off the light switches, and over 50 sachets of rat poison put in the private water supply tank).*

   On the day of departure, the agents suddenly said that they couldn't attend at the handover, and so I and my wife had to do it – 100 miles away. When we reached the property at the pre-agreed appointed hour, the tenant initially let us in, and then her partner forced us out again. When I tried to resist, he knocked me unconscious and hit my wife (we are both in our 70's) with a lump of wood. We called the Police but they wouldn't come "because the partner was known to them as having mental health problems and their hand were tied". When we applied to retain the deposit, having subsequently entered the empty property a few days later, we lost our claim, "because we had failed to do a proper inspection of the property on the day of departure."

This also sets an unfortunate precedent in suggesting that all the tenant has to do is physically prevent an inspection, and he/she keeps the deposit, notwithstanding the damage done.

Our problems with this property/tenants over this year caused us very considerable financial hardship, and unfortunately, further latent damage is still coming to light and which is causing us even further problems with the subsequent (seemingly good) tenant and who we have had to compensate.

Anyone can have a bad tenant, but on this occasion the problems were with a partner who we didn't know about. All the organs of Authority, from Police to various Tribunals, seem to have systematically worked against us.

For further information please contact:

Harry Flanagan
Senior Legal Adviser
CLA, 16 Belgrave Square
London SW1X 8PQ

Tel: 020 7235 0511
Fax: 020 7235 4696
Email: harry.flanagan@cla.org.uk
www.cla.org.uk

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