

Association of Tenancy Relations Officers

This is the first ATRO Newsletter that will be produced every two or three months that will include news of the activity that the Committee has taken on behalf of members in the previous period. It will also include information and links to issues relating to the private rented sector that will be of interest to members.

We mentioned in the letter to members in December that 2013 produced an unprecedented level of interest and activity in the field of private sector tenancies from both statutory and voluntary organisations. A brief summary will be included here.

Section 21 Notices

The most important recent issue is the Court of Appeal decision in *Spencer v Taylor* that concerns the validity of Notices Requiring Possession issued under Section 21 of the 1988 Housing Act for tenancies that were originally for a fixed period but subsequently lapsed into a statutory periodic term. The accepted legal position had been that a notice under Section 21(1)(b) could be issued at anytime during the fixed term up to the last date of the period, after which a notice had to be issued under Section 21(4)(a) – and importantly comply with the slightly different criteria in relation to the date of expiry.

The strict rules of 4(b) frequently caused problems to landlords if they did not obtain professional advice before issue; but it also gave tenant advisers and TROs the opportunity to

use the period after the issue of an invalid Notice or the dismissal of a possession claim, to attempt to resolve difficulties between the parties and also ensure that landlords were informed of their obligations and would in future act within the proper legal procedures. The decision of the CA means that a landlord may opt to issue a notice under Section 21(1)(b) at anytime after the end of a fixed period providing that tenant and landlord have not agreed a further fixed period tenancy.

The technical defence that has often been used by tenants' representatives will no longer be available. A link to the full case report on *Bailii* is given below. The decision has been welcomed by most landlord organisations and has been widely discussed on NearlyLegal and Landlord Law websites.

<http://www.bailii.org/ew/cases/EWCA/Civ/2013/1600.rtf>

House of Commons Select Committee on the Private Rented Sector

The most important issue of the year was the Select Committee investigation and subsequent report led by Clive Betts MP. The Committee took oral and written evidence from landlord and tenant groups, academics and professional organisations. The ATRO Committee submitted written evidence.

A link to ATRO submission is given below on page two.

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/50iii94.htm>

Subsequently, but before the report was published, Clive Betts gave a talk to ATRO at the June AGM. The Select Committee were unanimous in support of those giving evidence who were seeking stricter regulation of Letting Agents, whom were seen as 'ripping off' both landlords and tenants alike. In that respect the Committee agreed and has made recommendations for increased control of the manner in which agents operate. Consideration was given to the possibility of extending the ambit of RROs or 'fixed penalty' notices for minor property defects. The Committee commented that they wanted to see a, 'change of culture' in the industry; that perhaps was more a hope than a possibility. However, the Committee concluded that significantly stronger regulation of the market was not necessary except at the margins, and that what was needed was a 'localist' approach with Councils

Private Landlords and Letting and Management Agents (Regulation) Bill

During the last session of Parliament, Alan Meale MP introduced a Bill that was debated at Second Reading but was vociferously opposed by MPs on the government benches, one of whom believed that it was the "dead hand of socialism". It is unlikely to progress further as it is a Private Members Bill and does not have government support. This was introduced at the same time as the Select Committee was sitting.

Letting Agents formal redress systems

learning from each other and developing local best practice shared between local authorities. They made some minor recommendations in relation to property safety such as the consideration of the need for Electrical Safety certificates.

A link to the full report is here. (See pages 19 & 60 with reference to ATRO)

<http://www.publications.parliament.uk/pa/cm201314/cmselect/cmcomloc/50/50.pdf>

The Government rejected many of the more significant recommendations that the Committee made but has suggested further research is required. It supported the idea of a Tenants' Charter. Their full response is here.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251147/CM_8730.pdf

The one area that received government support is to provide for tenants and landlords to have access to a grievance scheme against Letting Agents. The proposal has been approved subject to the Secretary of State commencing the Redress Schemes Order under the Enterprise and Regulatory Reform Act 2013

The RLA said "We welcome the Government announcement as it is clear that it has listened to the industry's concerns and intends to use the ERR Bill to tackle the difficult issue of providing consumer redress in the private rented sector".

Hot on the heels of the Select Committee Report and Government response, various landlord and tenant organisations conducted their own research in to issues of the private sector lettings industry.

SHELTER

Firstly, Shelter undertaking research, reported on what it suggested could be done to improve the operation of the sector for both landlord and tenant. Amongst other things it proposed an optional five year fixed term tenancy that a landlord and tenant could agree which would provide for a tenant to be able to give a two month notice to terminate during the fixed term and allow the landlord to seek possession for breach of tenancy terms or if they wished to sell the property. A form of rent control was proposed that would be linked to the CPI that it believed would operate for the benefit of both parties so that rent increases would allow a landlord an increase in line with costs. In addition they recommended that the MoJ should speed up the court process for eviction claims, particularly where rent arrears were substantial.

A link to the report is given here.

http://england.shelter.org.uk/_data/assets/pdf_file/0009/587178/A_better_deal_report.pdf

The reports indicate how far the two organisations are away from each other that makes it very problematic to make progress and develop the market for all the stakeholders. In the latter part of the year Shelter continued to work on issues arising from the report and convened a number of meetings of interested parties that were independently chaired by a senior staff member from British Gas.

Residential Landlords Association

In response to Shelter, the RLA commissioned a report from Prof Michael Ball of Henley Business School at Reading University that was published in late 2013 that looked at the market situation in the private rented sector. It concluded that the market was not “broken” and did not need fixing and that the Shelter proposals for any new controls would destabilise the market and harm vulnerable tenants and that at present both tenants and landlords are freely able to negotiate the best terms and conditions for themselves. The report said:-

“If such tenancy rent control schemes were introduced they would fatally undermine the huge increase in the private rented sector over the past two decades. Despite claims to the contrary, landlords would face higher risks and lower returns while the beneficiaries amongst tenants would be few and the losers many” (page 35). The report did not make any suggestions for change or improvement in the market.

A link to the report is here.

<http://www.longertermtenancies.com/long-term-tenancies-ball-report-october-2013.pdf>

ATRO was represented by Kieran Gillen at a round table discussion in December. Shelter sought the 'unfiltered' views of participants and therefore the meeting was chaired in a fairly 'hands-off' way. Unfortunately, this allowed the meeting to be dominated by the loudest voices among the contributors, some of which had little constructive to say, and the quality of debate was often poor.

One of the landlord representatives, the loudest voice of all, said repeatedly

that Local Authorities do not understand the private sector so that negotiation about systems or processes would serve no useful purpose, and that the worst landlords are merely criminals and should not be regarded as landlords at all. Some of the agenda was lost in the process, including a proposed discussion of 'tenant bargaining power' which was not discussed at all.

Further meetings with other groups, including Environmental Health services, were planned for this year.

Good Practice

Since the late autumn ATRO Committee has been working with the Local Government Association to look at ways that we can implement the Select Committee and government recommendation to share good practice. If members have any procedure documents concerning methods that they use in connection with protection from eviction and harassment issues please send them to colin5465@hotmail.com

If members agree the documents will be added to the website in due course. We will then be able to discuss possible wider circulation.

LANDLORDS AND IMMIGRATION

Last summer the Home Office proposed that private landlords should have a legal duty to investigate the immigration status of potential tenants. This issue united lawyers, landlord organisations and tenant groups in opposition to both the practicality and principle of such a law that would in some ways make landlords act like Border Agency staff. The government believed that the provision would be no more problematic than existing employers' obligations to check the status of potential employees but failed to recognise that a potential employee will usually have been verified in some way by the issue of national insurance and other data by a government department.

The Home Office proposed that they would create a dedicated hot line for landlords to speak to an Immigration Officer if they had any difficulties understanding what they should do in a given situation. They also produced a 60 page guidance booklet that

shows little understanding of the informal ways that many tenancies are created.

Parliament put the proposal 'on the back burner' and agreed to organise a pilot scheme towards the end of 2014 that will mean it is unlikely to be introduced nationally until after the General Election in 2015, if ever.

Shelter - Retaliatory Eviction Research

ATRO is currently working with Shelter to look at the effect on the private rented sector and the related costs that are incurred by local authorities in relation to those evictions and their potential homelessness duties.

Further details will be sent to members soon.

This is extracted from the Local Government Association Knowledge Hub



5 December 2013

Clive Betts MP (Lab, Sheffield South East) is Chair of the Commons' Communities and Local Government Select Committee and a Vice-President of the LGA.

The private rented sector is growing. Between 1999 and 2011/12, the number of households renting privately increased from around two million to 3.8 million. More people now rent privately than live in social housing. Yet the market is still relatively immature and too often fails to offer what renters require. For example, the predominance of the standard six-month tenancy agreement is becoming increasingly unsuitable for many in the sector, including a growing number of families who require a stable home to develop community links and from which their children can attend school.

In July, following a six-month inquiry during which we received evidence from nearly 200 individuals and organisations, my committee published its wide-ranging report on the private rented sector. The report contained a number of recommendations to the Government on how to improve private renting. Government responses to our reports can sometimes be disheartening. I was therefore pleased to see the Government embrace so much of what we said on private renting, not least in its proposal for a tenants' charter, which although perhaps not going as far as I would like, is a step in the right direction.

The Government's decision to conduct a review into the rules around carbon monoxide detectors and smoke alarms is also welcome. Moreover, I am pleased that it intends to examine whether rent repayment orders could be used to claw back rent or housing benefit payments from landlords renting properties found to have serious health and safety risks. We could not see why a minority of landlords who had little concern for the safety and wellbeing of their tenants should be subsidised by the taxpayer.

The Government still, however, rejected a number of our calls for action. In particular, it missed a key opportunity to give local authorities the powers and freedoms they need to raise standards in their areas.

Councils are already working hard to improve life for those living in the private rented sector. We were impressed, for example, when we visited Leeds in May, by the steps the city council was taking to raise standards in the sector. There were a number of strands to its approach. These included a voluntary landlord accreditation scheme, which has not only helped to educate members of the scheme about their responsibilities but drive out some bad landlords as tenants moved to the better landlords.

Leeds had also introduced selective licensing in the Cross Green area of the city, leading to a number of prosecutions, reduced anti-social behaviour, and an improved local environment. And it had begun to target neighbourhoods on a street-by-street basis, inspecting properties and providing help, advice and support. Leeds had achieved these commendable improvements under the current law, but much more could be done if they, and other councils, had greater flexibility.

One of the criticisms of voluntary accreditation is that the worst landlords do not join the schemes, and therefore do not have to meet the standards required. Why not then give councils the power to make accreditation compulsory? We also heard from Leeds about the bureaucracy around selective licensing: developing the business case and getting it approved had cost the council around £100,000. Other councils told us that they could not introduce such a scheme because their areas did not meet the criteria of low demand or high anti-social behaviour. Under a localist approach, councils should be given much more discretion over how and when selective licensing can be introduced.

Discretion in the use of powers should be matched with greater freedom in the use of resources. Many hard-pressed councils are struggling to meet the costs of their enforcement work. In its response, the Government accepted that landlords sometimes avoided prosecution because the costs of the council taking them to court were too high. It was concerned, however, that "over-zealous" councils would issue fines as a way of generating revenue. This belies a lack of trust in councils and contradicts the Government's claims to be localist.

Councils should have greater ability to generate their own resources and should be trusted in doing so. One option would be for them to be given the ability to impose penalty charges for certain breaches without automatic recourse to court action. There is much to be welcomed in the Government's response to our report. However, more action is needed if we are to raise standards across the private rented sector and it is to become a viable alternative to owner occupation. A more localist approach, with greater freedoms for councils, is a good place to start.

AGM 2014

The AGM will be held in Central England for easy access for all members
in June

(location to be agreed)

If any members have ideas for a potential speaker please contact Andrew at
Birmingham
asap

Andrew.greathead@birmingham.gov.uk

ATRO TRAINING COURSES

Currently available

**“Deterring illegal eviction and harassment through successful
prosecutions”**

This course was given at Sheffield in July for any TROs or other staff and then
in November for Tendring DC. A further training course is due to be provided
for Stevenage DC in February

Contact Andrew for further information of upcoming courses

Andrew.greathead@birmingham.gov.uk

**Members are invited to submit articles about issues or prosecutions,
successful or otherwise, or innovative work that may be circulated as
good practice to be adopted by other authorities.**

Send any copy to Colin5465@hotmail.com

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