



SELBORNE CHAMBERS

Renters (Reform) Bill: the end of “no fault” evictions?

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Although vague promises of the abolition of “no fault” evictions have been around for many years now, the introduction of the Renters (Reform) Bill (“**the Bill**”) to Parliament on 17 May 2023 suggests that the s21 possession procedure is indeed finally on its way out.

However, the Bill proposes many further changes that will be of critical importance to private sector residential landlords. This article will summarize the most significant of the proposed reforms and provide some analysis as to how the Bill will impact interested parties if it ultimately makes its way into legislation.

Periodic Tenancies and Possession

The Bill proposes five key changes to the way in which private landlords will now be able to obtain possession of their properties:

- *The Bill proposes to abolish s21 “no fault” evictions and introduce a new tenancy structure pursuant to which all assured tenancies will be periodic tenancies. The minimum period of an assured tenancy will be one month.
- The Bill introduces new s8 possession grounds so landlords are entitled to recover their property if they require possession for themselves or family members, or if they intend to sell the property. Further, the Bill introduces a mandatory ground for serious rent arrears. Under this ground, landlords will be entitled to possession as of right if at least two months’ rent were unpaid for at least a day on three separate occasions in the three years prior to service of the s8 notice. Finally, there has been a widening of the scope of the discretionary s8 ground 14, which now enables landlords to obtain possession where the tenant has engaged in conduct “capable of causing” a nuisance or annoyance (as opposed to actually being a nuisance or annoyance, or likely to be a nuisance or annoyance).

- The Bill extends the current notice period for s8 rent arrears possession claims from two weeks to four.
- If landlords seek to obtain possession on the ground that they require the property for themselves or a family member, they must not let or market the property for a period of three months after the date in the s8 notice by which the tenant is required to give up possession. To let or market the property in these circumstances will constitute a criminal offence if the tenant gives up possession without a court order for possession of the property being made. Further, landlords will be guilty of an offence if they obtain possession on a s8 ground if they know they are not entitled to rely on that ground or are reckless as to their entitlement to rely on it. Again, the offence is only committed if the tenant gives up possession without a court order being made. If convicted, landlords are liable on summary conviction to a fine. As an alternative to prosecution, local authorities may impose a fine of up to £30,000 on offending landlords.
- S215 of the Housing Act 2004 will be amended so that, where a tenancy deposit has been paid, courts will only be able to order possession in circumstances where the deposit is being held by an authorised scheme, the initial requirements of the scheme have been complied with, and the deposit prescribed information has been provided to the tenant. If any of those conditions are not satisfied, landlords will be required to return any deposit taken to the tenant prior to serving a s8 notice.

Comment

Although the proposed legislation clearly expands the protection afforded to tenants and makes it more difficult for landlords to obtain possession. It is unclear quite to what extent landlords will now face an uphill struggle to recover their property. Much will turn on the court's approach to the new mandatory grounds for possession. It should be remembered that possession hearings are typically first listed for a 10-15 minute hearing. If a tenant contests a landlord's bare assertion that they intend to move a family member in, or sell the property, will a deputy district judge consider that the matter needs to be listed for trial to resolve the factual dispute? In the writer's experience, judges in these scenarios tend to adopt a cautious tenant-friendly approach. In any event, if landlords do seek to rely on these new grounds, it would be prudent for them to put in as much evidence as possible to prove their reasons for requiring possession of the property.

In better news for landlords, they will now be able to rely on the new mandatory repeated rent arrears ground. Further, the widened scope of the discretionary ground 14 may prove helpful in making it easier for landlords to obtain possession where tenants have engaged in anti-social behaviour.

At present, it is unclear whether the s21 requirements to provide a valid EPC, How to Rent Guide and Gas Safety Certificates in order to obtain possession will be scrapped or retained in some form under the new regime.

Rent

The Bill prohibits the use of rent review clauses in assured tenancy agreement, and instead applies a statutory mechanism for determining rent increases. At intervals of no more than one year, landlords may propose a new rent by giving two months' notice to their tenant. The tenant may accept the proposed rent or refer the determination of the appropriate rent to the Tribunal. The Tribunal's role is to determine the open market rent of the property and apply that, regardless of whether it is higher or lower than the existing or proposed rent.

Comment

Perhaps the biggest concern for landlords is the capacity of the Tribunal to handle rent determinations. Litigators who spend any time in the County Court or Tribunal will appreciate how much of a backlog there is in the system. Considerable time may therefore elapse between the referral of a rent for determination, and the eventual resolution of the dispute. This is clearly unsatisfactory for all parties involved.

Presumably it is hoped (rather optimistically, perhaps) that landlords and tenants will therefore choose to resolve these matters out of court. However, if the determination of rent is not resolved amicably, another concern for landlords will be the costs of Tribunal proceedings, which will likely not be recoverable.

Other Reforms

The Bill makes provision for the introduction of a Private Rented Sector Ombudsman, which will allow tenants to seek redress for free where their landlord has failed to deal with a legitimate complaint about their tenancy.

It also allows for the creation of a Privately Rented Property Portal intended to help landlords understand their legal obligations and demonstrate compliance, alongside providing tenants with better information so that they can make informed decisions when entering into tenancy agreements.

Further, tenants will now have the right to request a pet in the property, which the landlord must consider and cannot unreasonably refuse.

This right will be accompanied by a right for the landlord to require pet insurance to cover any damage to their property.

Finally, the Bill introduces a raft of new offences and financial penalties if landlords fail to comply with their statutory obligations. Of note is the fact that there is no distinction between innocent oversights and intentional misconduct, although no doubt this will be relevant to the seriousness of the sanction imposed.

Comment

Again, there may be a significant disjunct between the way the Bill is intended to operate and how it will work in practice. For example, it is unclear to what extent local authorities will (or will even be able) to identify breaches and impose sanctions upon landlords in breach of the regulations. Likewise, the effectiveness of the Privately Rented Property Portal will depend on its being properly funded and maintained.

Conclusions

The Bill will no doubt be subject to much further scrutiny and change before it becomes law, but the direction of travel seems clear. Evidently, if the Bill becomes law, it is going to become more difficult for private residential landlords to obtain possession of their property. Further, the new legislation will most likely generate much more work for both the County Court and the First-Tier Tribunal which gives rise to real questions over the capacity of those forums to handle the increased workload. That said, there are some positives for landlords in the expanded grounds for possession under s8, which will undoubtedly form the basis of many possession claims in future should s21 finally be abolished.



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