

ANGUS COUNCIL

NEIGHBOURHOOD SERVICES COMMITTEE – 7 OCTOBER 2010

SAFEGUARDING TENANCY DEPOSITS – THE TENANCY DEPOSIT SCHEMES (SCOTLAND)
REGULATIONS 2010

REPORT BY DIRECTOR OF NEIGHBOURHOOD SERVICES

Abstract: This sets out Angus Council's response to the Safeguarding Tenancy Deposits – The Tenancy Deposit Schemes (Scotland) Regulations 2010.

1. RECOMMENDATIONS

1.1 It is recommended that the Committee:-

- (i) Agree the response.

2. BACKGROUND

- 2.1 The Consultation papers sets out that it is common practice in the private rented sector for landlords and agents to require a tenant to pay a returnable deposit at the start of a new tenancy. All or part of the deposit may be legitimately withheld at the end of the tenancy if the tenant has failed to meet their obligations under the tenancy agreement. For example, where damage has been caused to the property.
- 2.2 Evidence from the Review of the Private Rented Sector, published in March 2009, indicates that a significant minority of tenants in Scotland may have had their deposits unfairly withheld. Concerns over poor tenancy deposit practice led to Scottish Ministers being granted powers in the Housing (Scotland) Act 2006 to bring forward regulations to approve mandatory national schemes to safeguard tenant deposits.
- 2.3 The Scottish Government has engaged with a stakeholder working group to consider the nature and scale of problems linked to tenancy deposits practice, and to decide on the best way to tackle this issue.
- 2.4 The main objectives in bringing forward regulations for the approval of tenancy deposit schemes are to safeguard tenancy deposits by reducing the number of unfairly withheld deposits and ensuring that funds are available when a tenancy ends. Scottish Ministers believe that tenants should also have access to a simple and effective means of resolving disputes with their landlord over tenancy deposits, where they arise, without resorting to legal action.
- 2.5 Part 4 of the 2006 Act allows the Scottish Government, with the approval of the Scottish Parliament, to set out the conditions which a tenancy deposit scheme must meet before it can be approved. The purpose of this consultation is to gather views and feedback on the proposed regulations in order to implement the most effective framework for approved schemes to operate within.
- 2.6 There are 26 questions in the consultation, primarily focused on the regulations.
- 2.7 The Response to this consultation Paper is set out in Appendix 1.

3. FINANCIAL IMPLICATIONS

3.1 There are no financial implications arising from this report.

4. HUMAN RIGHTS IMPLICATIONS

4.1 There are no human rights implications for the Council arising directly from the information contained within this report.

5. SINGLE OUTCOME AGREEMENT

5.1 This report contributes to the following local outcomes contained within the Single Outcome Agreement for Angus:

- Good quality housing is available throughout Angus.

6. CONSULTATION

6.1 The Chief Executive, the Director of Corporate Services, the Head of Finance and the Head of Law and Administration have been consulted in the preparation of the report.

7. EQUALITIES IMPLICATIONS

7.1 The issues dealt within this report have been subject of consideration from the equalities perspective and is regarded as exempt.

8. CONCLUSION

8.1 This consultation paper builds on previous work and positive direction of improvement in standards in the private rented sector. Whilst the withholding of tenancy deposits is not a significant issue in Angus, the response sets out a supportive line to the regulations.

**RON ASHTON
DIRECTOR OF NEIGHBOURHOOD SERVICES**

Note: The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report.

Hsg/NS/RA/AMcK

Appendix 1 – Draft Angus Council Response

CONSULTATION QUESTIONS

Chapter 1: General Provision about Tenancy Deposit Schemes

Question 1: Do you support the proposal that the tenancy types covered by a tenancy deposit scheme should be aligned with existing landlord registration legislation?

Please answer either Yes or No and explain your response.

Yes

Angus Council believes that all tenancies should have the protection of the Scottish Parliament and Scottish Ministers and we welcome the clarity and securing this consultation brings for both tenants, landlords and their agents.

No

Question 2: Do you agree with the provisions relating to the date that the duty to comply should take effect for tenancies covered by tenancy deposit regulations?

Please answer either Yes or No and explain your response.

Yes

We would like to see the safeguards and protections in these regulations brought in as soon as possible with any lead in work beginning as soon as is practical.

No

Question 3: Do you consider that the sanctions are appropriate and proportionate to the action or inaction that prompts them?

Please answer either Yes or No and explain your response.

Yes

In comparison to the previous consultation on quality in the private sector, the sanctions set out in this paper are lenient by comparison. The two papers do not sit well together in terms of sanctions and we would support a tougher approach to the sanctions in this paper. We would also wish to see previous known breaches considered to ensure landlord/agent overall practice was being considered.

No

Question 4: Are there additional sanctions that you think would be more appropriate and effective? If so, how would they be enforced?

As with the Quality in Common consultation, we would support the use of financial penalties to ensure good landlord/agent practice and a disincentive to questionable practice.

Question 5: The regulations currently provide for sanctions to apply to the person who receives the deposit and fails to comply with tenancy deposit regulations. Do you agree with this?

Please answer either Yes or No and explain your response.

Yes

We would like to see a straight and clear relationship between the tenant and the landlord/agent. Would be concerned if relationships were complicated and there was difficulty in tracing who received the deposit and who conducted the tenancy management. This consultation and Quality in Common must be seen as a package and in the absence of a direct linkage it seems obvious that the landlord/agent who receives the deposit should be responsible for managing its repayment.

No

Question 6: If your response to Question 5 is No, who do you think sanctions should apply to and in what circumstances?

Question 7: Do you think that the regulations should require a financial penalty to be imposed in all cases?

Please answer either Yes or No and explain your response.

Yes

We believe, as per Quality in Common, it should at least be an option to act as a disincentive to poor practice and to demonstrate consistency with the robust action taken in the earlier consultation (Quality in Common).

No

Question 8: Should the court have discretion to decide on the amount of financial penalty?

Please answer either Yes or No and explain your response.

Yes

We would support a scale which could be linked to any history of poor practice. Again, there needs to be a clear link to the message, tone and sanctions set out in Quality in Common.

No

Question 9: If your response to Question 8 is Yes, do you think there should be a minimum penalty e.g. at least an amount equal to the deposit?

Please answer either Yes or No and explain your response.

Yes

As a minimum, deposit level plus costs.

No

Question 10: The regulations permit a scheme to hold deposits in a designated interest bearing account. Do you have any views on whether other types of investment should be allowed?

Our preference is for a scheme which is risk free, subject to formal and comprehensive regulation and oversight and safeguards tenant's deposits.

Question 11: Do you have any views on the provisions relating to the use of excess income accrued on deposits?

We believe these should be returned to tenants based on a clear and fair allocation, centred on level of deposit and time on deposit, less any legitimate costs.

Question 12: Do you have any particular views on the requirement for schemes (particularly insurance schemes) to be available to all landlords?

We are content that a range of well managed and regulated options are available. It would be helpful to link these to reputable trader schemes if possible.

Question 13: Do you consider that both custodial and insurance scheme models afford adequate protection for tenancy deposits and should be permitted in the regulations?

Please answer either Yes or No and explain your response.

Yes

Yes, if formally regulated.

No

Question 14: The regulations currently only provide for fees to be charged in respect of insurance schemes. Do you think that fees should also be permitted for custodial schemes?

Please answer either Yes or No and explain your response.

Yes

Only where legitimate.

No

Question 15: If your response to Question 13 is Yes, what would be an appropriate fee structure?

Fees only at cost and no profit element.

Question 16: What are your views on whether the regulations should specify an amount or maximum amount of any fee which may be charged and the impact this might have on a scheme's ability to be self financing?

As per 15.

Question 17: If you think a specific amount or maximum amount of any fee charged should be set, what would be an appropriate level?

As per 15.

Question 18: What are your views on whether approved schemes should repay deposits to lead tenants if so used, or to individual tenants?

It should be a tenant responsibility to set out who gets the deposit and comply with any reasonable verification process.

Question 19: Are you content with the proposals that ADR should be provided and funded by approved tenancy deposit schemes or do you think there might be more effective and affordable alternatives?

We would be agreeable to this as a legitimate cost, provided it is delivered at cost. We would recommend that a landlord or agent pays an initial fee into the scheme so that deposits are not unnecessarily eroded and to ensure that professional management and landlord/agent responsibility is set out as important to the scheme at the outset.

Question 20: Is the proposal to apply a lower limit of £15 for disputes an appropriate approach to ensuring that the costs of ADR are not disproportionate to the amount of deposit that may be disputed?

Please answer either Yes or No and explain your response.

Yes, we do not wish to see deposits eroded and believe that the suggestion above of the creation of a landlord/agent financial stake, set the scheme off on a positive course.

Question 21: Are you content with the proposal for ADR to be free of charge for tenants and landlords, at the point of access?

Please answer either Yes or No and explain your response

Yes

Yes, on the basis set out in the paper and in the hope that deposit practices are improved as necessary, swiftly and without significant disagreement.

No

Question 22: If your response to Question 21 is No, what would an appropriate charging structure be, and who should the charge apply to?

Chapter 4: Miscellaneous

Question 23: Do you have additional views on how approved schemes should be publicised?

We support an approach which makes use of all communication mediums and builds up to launch as soon as possible. Current landlord databases and existing social landlord waiting lists can also be exploited as direct routes to communicate with people in housing need.

Question 24: Do you support the proposals in relation to the requirement for a landlord to provide information about his or her registration status?

Yes.

Question 25: Are there any other circumstances in which you think it would be appropriate for a scheme administrator to share information with local authorities? For example, of sanctions and penalties applied to a landlord, or the outcome of an adjudication found against a landlord.

Yes, especially where this may have an impact of the use or review of the fit and proper test for registration.

**Question 26: Do you agree with the proposals relating to the requirement for approved schemes to submit annual and quarterly reports to Scottish Ministers?
Please answer either Yes or No and explain your response.**

Yes

Yes to ensure and demonstrate progress on increasing standards and housing outcomes.

No

Question 27: Do you have any other ideas which might help address the problems encountered by tenants when their deposit is unfairly withheld? As part of this, what is your view on the desirability of banning the practice of taking of tenancy deposits in Scotland?

The sanctions in Quality in Common and in this paper must be linked and links to the registration scheme also considered.

If you have any additional feedback on any element of the draft SSI please comment in the text box below.

We have no additional comments.