

# FAIR POSSESSIONS COALITION

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Theresa Wallace  
Chair, The Lettings  
Industry Council

## STATEMENT

**A thriving private rental market that provides choice for tenants hinges on landlords having confidence that they can regain possession of their property in a timely and efficient way. At present, only Section 21 repossession provides that certainty. It should be kept unless and until a new system is in place that provides landlords with the same level of certainty. The other routes currently available for repossessing properties do not meet this test.**

## **1.0 KEY PRINCIPLES FOR RESPOSSESSIONS**

1.1 The process for repossessing properties should meet the needs of tenants and landlords in a modern private-rented sector and must be established upon the following key principles.

- Landlords must have confidence that they are able to regain possession of their properties when they have legitimate reasons for doing so and that this process should not be unduly difficult, lengthy or expensive. This must also take account of situations where a fixed term tenancy is a requirement, such as letting to students.
- The grounds upon which landlords are able to repossess properties need to be unambiguous and reasonable both to them and to tenants.
- There needs to be an effective and efficient system of adjudicating cases that are disputed. This should include the development of a properly funded housing court.
- The proposals should avoid the introduction of any forms of rent control other than those which already exist to prevent market abuses.

## **2.0 THE CASE FOR FAIR POSSESSIONS**

2.1 Private landlords prefer to have reliable tenants in their property long term. Changes in tenants creates greater work and costs which no landlord actively seeks, whilst a desire for continuity makes in-tenancy rent increases less likely.

2.2 That is why the average length that a private sector tenant has been in their current property is increasing and is now 4.1 years (English Housing Survey (EHS), 2017-18). It is why in the last 3 years around 90 per cent of tenancies which came to an end were ended by the tenant (EHS, 2016-17). Also, 70 per cent of landlords have said they kept the rent the same following their most recent tenancy renewal (English Private Landlords Survey, 2018).

2.3 With the Royal Institution of Chartered Surveyors warning of average annual rent rises of 3 per cent over the next five years as a result of the demand for private rented homes exceeding supply, it is vital that the vast majority of landlords who do the right thing are supported to provide the homes to rent the country needs. Quite simply, security of tenure will mean nothing without there being sufficient homes to rent in the first place.

2.4 As a consequence it is essential private landlords have confidence that in legitimate circumstance they can swiftly and easily regain possession of their property, in the same way mortgage lenders and social landlords can if they need to.

2.5 Much of the focus of debate has been on the use of Section 21 repossessions. Some have argued that they amount to 'no fault evictions' but that is not the case. All the evidence from our respective organisations shows that the overwhelming majority of landlords use Section 21 for legitimate purposes such as tenant rent arrears or anti-social behaviour, where Section 8 is often ineffective.

2.6 For the vast majority of landlords, using Section 21 is the only certainty they have that in legitimate circumstances they can regain possession in a timely way. Section 8 is simply not working as it should for two key reasons:

- The current Section 8 grounds to repossess a property are not adequate. There are a number of key grounds that do not exist, such as a landlord wanting to sell a property. Likewise, many of the current grounds do not work as they should. A clear example is that the level of evidence required makes addressing the problem of anti-social tenants difficult, causing misery for neighbours and, in the case of Houses of Multiple Occupation, fellow tenants as well.
- The problems with the current Section 8 grounds are compounded by a court system which is not fit for purpose, overly complex difficult to access and under resourced. According to the Ministry of Justice it can take an average of 21.6 weeks (over five months) from a private landlord applying to the courts for a property to be repossessed to it actually happening.

2.7 There are clearly a small minority of landlords who abuse their position and seek to evict tenants simply for raising concerns about standards in a property. This is unacceptable, but as the Deregulation Act makes clear, such 'retaliatory evictions' are already illegal and councils have powers to prevent them. Sadly, as with too much legislation in the sector, these powers are not being properly used or enforced.

### **3.0 GOVERNMENT'S PROPOSALS**

3.1 The Government has made clear its plans to scrap Section 21 repossessions in favour of reforms to Section 8 and improvements to the Court Processes.

3.2 In the interest of maintaining confidence in the market and the supply of sufficient private rented housing it is vital that rather than tinkering with the current regulations wholesale reforms are made to legislation and processes governing the repossession of properties by landlords. This is more likely to achieve a result that is fair to both landlords and tenants.

3.3 This means not rushing change and also ensuring that all the elements for the reformed regulations and processes are in place well before Section 21 is removed. This would give essential confidence that any new system put in place works and that space is available to properly address any teething problems before Section 21 is abolished.

3.4 The Government should also consider the law of unintended consequences. This includes:

- Ensuring that the new system does not adversely impact the confidence of landlords to rent to more vulnerable tenants who can bring with them a higher risk of rent arrears. This would be a particularly acute problem in rural areas and smaller towns where the choice of homes to rent is far less than in larger cities.
- Considering the position of members of the armed forces who let properties whilst stationed abroad and then may need to repossess them swiftly ahead of a return to the UK.
- Ensuring that the position of students who do not require security of tenure beyond the academic year is properly considered and accounted for.

## 4.0 FAIR GROUNDS FOR REPOSSESSION

4.1 Landlords have legitimate reasons to repossess. These need to be laid out so they are clear and comprehensive. This will ensure that both landlords and tenants understand their rights and responsibilities to each other. It will also make it clear where a landlord is abusing their position making it more difficult for them to do so. Equally, a tenant will be clear about when a landlord has the right to ask them to leave and when and how this may be open to challenge.

4.2 We will be preparing a detailed note on what the grounds for repossessing properties should be and the processes and time scales that should apply alongside this statement. In the meantime, the basic grounds should include:

- **Anti-Social Behaviour** – Landlords must be able to take swift action to prevent neighbours having to put up with bad behaviour by tenants of a property.
- **Rent arrears** - Landlords must be able to take action promptly to prevent arrears rising to levels that are unreasonable and to be able to recoup what is owed. Possession orders that are being sought for rent arrears should lead to a County Court Judgement (CCJ) being recorded in the Official Statutory Register of Judgments, Orders and Fines for England and Wales as is the case with any ordinary debt claim.
- **Serious breach of tenancy**- There are numerous other clauses in a tenancy agreement, many of which are specific to the property that has been rented. Landlord must be able to recover their property from tenants who break their agreements.
- **Damage to the property or contents** – Tenants who are damaging a property or its contents cannot be allowed to stay in it so potentially causing more damage.
- **End of a student tenancy** – Ensuring grounds are available to repossess properties where students complete their studies or reach the end of their academic year. Students do not need to be caught within indefinite tenancies.
- **Repairs and renovations** – Landlords needs to regain possession where repairs and renovations require a property to be empty.
- **A property being sold** – Landlords must have the right to be able to sell their property when they want or need to.
- **Landlord or a family member wanting to live in the property** – Landlords should be able to repossess property where either they and/or a member of their family want to move into the property.
- **Repeated refusal of access to a property** – Landlords sometimes need to access their property to carry out their legal responsibilities. They should be able to repossess properties where they are prevented from gaining access by their tenants.

- **End of employment linked to a rental property** – Ensuring grounds are available to repossess properties at the end of someone's employment where it is linked to the provision of a rental property.
- **Landlord refused a licence to let by the local authority** – A process needs to be put in place to enable landlords to repossess properties in such circumstances without making them liable for a Rent Repayment Order for up to 12 months.

## 5.0 A FAIR PROCESS FOR REPOSSESSION

- 5.1 There should be an initial 'starter' tenancy, as is the case in the social rented sector, before it switches to the indefinite model being proposed by the Government. It is not reasonable to expect the private sector to offer better terms than a social sector which is the beneficiary of generous funding and tax breaks.
- 5.2 There needs to be clear and adequate periods of notice given by a landlord when seeking repossession.
- 5.3 The grounds for repossession need to be made clear to the tenant.
- 5.4 There need to be safeguards for tenants to ensure that they have protection against abuse of these rights by the minority of bad landlords.
- 5.5 The level of evidence that a landlord is required to produce when making an application under any ground should not be set at such a high level as to make it unreasonably difficult for them to comply but also should be sufficient to fully justify an application.
- 5.6 Applications to repossess properties should be easy to use to ensure landlords are not required to invest considerable sums of money for legal representation.
- 5.7 There should be a clear time frame for each ground of repossession to be applied for and implemented.
- 5.8 There should be clear and easy to understand rights for a tenant to challenge an application. Where there is a challenge there should be a clear, and easy to apply for, process for adjudication.
- 5.9 This needs to be efficient, expeditious and inexpensive.
- 5.10 Councils and others should be instructed not to encourage (or even insist that) tenants disobey court orders to leave by a specified date on the basis that the tenant will not be re-housed unless they have held on until the bailiffs arrive.
- 5.11 There should be a minimum fixed-term before which a tenant may not unilaterally serve notice that they intend to leave the property. This would protect landlords from uncommitted tenants who leave very shortly after a tenancy has commenced.
- 5.12 The Government should establish a dedicated and properly funded housing court to address the failures in the current system, namely that it takes too long to repossess property through the courts and the system is far too confusing for landlords and tenants to uphold their rights given that multiple bodies currently adjudicate on different matters in the sector.

5.13 A housing court should build on the work of the existing Property Tribunal. This would have the advantage of:

- Having most cases decided on paper making the process swifter, cheaper and easier to access for all concerned.
- Using the mediation and enhanced Alternative Dispute Resolution procedures the Tribunal operates, particularly for cases in respect of property disrepair.
- Enabling the use of the Tribunal's in-house surveyors and inspectors, thereby reducing the need for costly, external experts' reports to be obtained.
- Being able to integrate with, and take full advantage of, the new online courts so that the majority of paperwork and case management could be dealt with online.
- The more informal operation of the Tribunal (compared to a county court for example) would make it much less daunting for tenants and landlords allowing easier access for unrepresented parties.
- The Tribunal currently holds hearings in local public buildings such as schools, making it physically easier to access and reducing the pressures on the existing court estate. This is especially important since court closures have meant landlords and tenants currently have to travel considerable distances in order to obtain and access hearings.

5.14 Work should be carried out to look also at different models around the world to establish what might work in the UK.

## **6.0 PREVENTING RENT CONTROLS**

6.1 We are concerned that the logic of the Government's plans for indefinite tenancies is that there will be calls for restrictions to prevent landlords increasing rents as a means of encouraging tenants to leave a tenancy where they may have no other ground available.

6.2 The reformed structure for repossessions should ensure that this does not open the way to rent controls which, all the evidence proves, would be highly damaging and lead to a very significant reduction in supply.

6.3 Rather, the Government should reiterate that the law as it currently stands already includes provisions to prevent market abuses.

## **7.0 FURTHER REFORMS ARE NEEDED**

7.1 We further call for the proposals to form part of a much broader package to support tenants and good landlords. This should include:

- **Welfare Reform** – ending the housing benefit cap and giving all Universal Credit claimants a right, from the start of their claim, to choose, where they feel it is best, for the housing element to be paid directly to their landlord.
- **Smart taxation** – to encourage the development of genuinely new homes for rent and encourage sales of properties with tenants in situ, thereby reducing the need to evict them.

- **Proper implementation of the Homelessness Reduction Act** – ensuring that councils have the resources they need to end the practice of councils telling tenants to wait until bailiffs before leaving a property when a court has agreed that a property can be repossessed.
- **Improving the Bailiffs system** – a number of the organisations in the coalitions believe that the county court bailiff system should be privatised, as is the case with High Court Enforcement Officers. This would relieve the Ministry of Justice from funding the service and a fee could be charged to prospective service suppliers. There would be no loss to tenants with the same level of oversight as already exists in the High Court.