Northern Ireland Assembly

Committee for Communities

OFFICIAL REPORT (Hansard)

Private Tenancies Bill: Chartered Institute of Housing Northern Ireland

2 November 2021

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:
Ms Paula Bradley (Chairperson)
Ms Kellie Armstrong (Deputy Chairperson)
Mr Mark Durkan
Mr Paul Frew
Ms Áine Murphy

Witnesses:

Mr Justin Cartwright	Chartered Institute of Housing Northern Ireland
Ms Heather Wilson	Chartered Institute of Housing Northern Ireland

The Deputy Chairperson (Ms Armstrong): I welcome Justin Cartwright. Justin, thank you for joining us. You can go ahead with a short briefing, and then you will get to lovely questions from us.

Mr Justin Cartwright (Chartered Institute of Housing Northern Ireland): Good morning, everyone. The Chartered Institute of Housing is the professional body for people working in housing. As an education charity, we run qualifications for private landlords and letting agents. Several hundred learners in Northern Ireland have undertaken those qualifications. It is our belief that knowledge has an important part to play in professional conduct. From the outset, I declare that we recently completed commercial research for the Department on a further extension to notice-to-quit periods, which will be enabled by clause 11. Therefore, to avoid a conflict of interest or influencing the forthcoming consultation, we have not submitted evidence on that clause.

On the other clauses, our view is that the Bill represents much-needed change against the backdrop of a growing private rented sector. I will get straight to it. Clauses 1 and 2 enable the Department to require the provision of written information, which would help to stop the practice of verbal agreements. That is to be welcomed. We believe that good practice in housing management includes things like written tenancy agreements and tenant information packs. We think that those documents help to inform tenants and landlords of their responsibilities, which helps to reduce differences that lead to disputes. Something on condensation and mould growth, for example, would be useful. It is a poorly understood area in the private rented sector.

Similarly, we support clause 3 on providing tenants with a receipt when paying in cash. There should be written evidence of all payments. We urge that the receipt be provided when the money is exchanged, as is the case with many consumer transactions. Currently, the clause allows that to take place afterwards. We also recommend that there be a requirement for a receipt for other allowable fees that can be accrued.

Moving on to the deposit requirements under clause 4, we agree with a cap on deposits. That will help access and affordability for tenants. We recommend that the maximum deposit be raised slightly from one month's rent to five weeks' rent. The reason for that is that, in practice, most tenancies are, and will continue to be, ended with four weeks' notice, because most tenancies — about two thirds — are ended by the tenant. That is commensurate with a month's deposit. However, once you start to increase notice periods for landlords, rent that is owed over the additional period of notice can then exceed the amount that is held in deposit. If you have a case of serious rent arrears, for instance, that stores up the potential for protracted debt recovery action. Therefore, we think that raising the maximum slightly to five weeks' rent would help to address that, in part, while not introducing unreasonable affordability barriers for people who rent privately. By way of example, five weeks is the maximum that is allowed in England and Wales. Therefore, it has been tested in those markets, many of which are much less affordable than those in Northern Ireland.

On clause 6, we support its provision to make it an ongoing offence to fail to protect a deposit or to give prescribed information. Most tenancies are longer than six months, yet the current prosecution time bar on a deposit-related offence means that action cannot be taken six months after the offence is first committed. Enforcement really is critical to ensure that, in all cases, a tenant's money is protected and that all parties can avail themselves of dispute resolution for deposits.

On clause 7, we support restricting rent increases to once a year, given that that addresses the frequency of price adjustments rather than their value. Rent control, on the other hand, is a much more complicated issue. We think that the proposals in clause 7 will reassure tenants that their rent will remain the same for that period without the fear of any unexpected increases. When it comes to exemptions, we urge caution when defining "alterations", in order to ensure that any rise in rent is for genuine alterations and not small alterations that might be used as a way round that particular requirement.

Clauses 8 and 10 deal with fire, smoke, carbon monoxide and electrical safety. As the Grenfell Tower tragedy warns, the importance of fire safety cannot be overstated. We support the requirement for private landlords to keep fire and carbon monoxide alarms in proper working order. It is also important that tenants know how to use them, particularly carbon monoxide alarms, so there is a role there for information exchange. Likewise, we support electrical safety checks. Most accidental fires in Northern Ireland are linked to electricity. An annual gas safety certificate is already required, so it makes sense to extend that to electrical safety. We would support five-yearly safety checks by a registered electrician of all electrical installations that are provided as part of the tenancy.

Finally, clause 9 is on energy efficiency regulations. In the fight against climate change and fuel poverty, it is our view that tenants should live in warm, energy-efficient homes without high running costs. Minimum energy efficiency standards will obviously play a role in that. We must, however, ensure that higher standards are achieved and that we do not inadvertently encourage, through financial disincentives, landlords to sell properties. Homes could be sold to owner-occupiers, and there may then be fewer trigger points through which to improve standards. We think that financial incentives, as well as minimum standards, will play an important role.

We thank the Committee for the opportunity to give evidence, and we are happy to take any questions. I am joined by my colleague Heather Wilson, who is our policy manager in Northern Ireland.

The Deputy Chairperson (Ms Armstrong): Hi, Heather. I was just going to introduce you formally. It is lovely to see you this morning.

Ms Heather Wilson (Chartered Institute of Housing Northern Ireland): Hello. Thank you.

The Deputy Chairperson (Ms Armstrong): I remind all members who are present or on StarLeaf that, if they want to ask a question, they should raise their hand and make sure that I see them.

I will start, Justin and Heather, by going back to your comments about clause 7. Your paper states that the wording of that clause:

> *"may allow for an abuse of rent raising if the bill fails to further define these circumstances; for instance, clause 7 (4) may allow for a landlord to increase the rent for replacing a cracked kitchen tile and replace it with new laminate flooring under the guise of 'alterations'."*

We talked, for instance, about the necessity to ensure that environmental standards will be in place. Do you feel that more work is required on clause 7 to ensure that its intentions are properly met?

Mr Cartwright: I will start on that, Heather, and you can join in.

Ms Wilson: Yes, go ahead.

Mr Cartwright: Clause 7(3) specifies that regulations will determine those circumstances, so it would really be about providing additional security if you were to define "alterations" in the Bill. The risk with its being defined through forthcoming regulations is the question of what the definition of "alterations" will be. We want to make sure that it is for genuine alterations — those that perhaps raise the capital value of the property — or that there is some kind of benchmark or substantial measurement, rather than leaving it as just "alterations", which could mean that you then find that there is a perverse incentive to use that as a way around the requirement.

The Deputy Chairperson (Ms Armstrong): It will be important that the Committee includes that in its report.

The other thing that I will ask about relates to clause 3(5)(3)(b). Your paper states, and you said today:

"like any consumer transaction ... a receipt"

should

"be provided at the time money is exchanged and not at any later date."

Do you think that paragraph 5(3)(b) of clause 3 should be removed from the Bill? That is the one that talks about a reasonable period and states that, if the receipt is not available at that precise moment, it should be provided:

"as soon as reasonably possible after that time".

Do you think that that should be taken out?

Ms Wilson: Will I answer that one, Justin?

Mr Cartwright: Yes, go on.

Ms Wilson: We would agree to that being taken out, Kellie. In any consumer transaction, you or I would expect to receive a receipt upon paying for something in cash. We felt that tenants paying rent or any other fee in cash should not be treated any differently and that they should not have to wait for that receipt. We would support that being removed.

The Deputy Chairperson (Ms Armstrong): OK, thank you.

I will go to Committee members in the room and on StarLeaf.

Mr Frew: This is a very interesting submission, so thank you very much. I will ask about the point that Kellie raised on clause 3. I tend to agree that paragraph 5(3)(b) should be removed, because, for any transaction involving money, I do not think that it is acceptable to not have proof of the exchange. It seems bizarre that somebody would be forced to leave themselves open like that.

Should there be a provision in the Bill whereby a letting agent or landlord must allow choice of payment so that it is up to tenants to take up whatever method of payment they see fit, whether that be cash or bank exchange? Should the letting agent at least offer that choice? What do you think of that? Would that be reasonable?

Mr Cartwright: That is an interesting question. To be honest, we have probably not given an awful lot of thought to that. From having our finger on the pulse of the sector, we know that cash payments are probably dwindling. They still happen, as you heard from Renters' Voice, but, in my experience as a private renter for many years, the expectation was always that rent would be paid by standing order,

which, in effect, gives a tenant a record of payment without requiring a receipt. To us, the purpose of the clause is more to mop up the discrepancy with cash payments by ensuring that people have a written record of the exchange. We do not have any substantive thoughts on the method of payment beyond that, but it is an interesting question. Do you have anything to add, Heather? *[Pause.]*

Mr Frew: I probably need to explore that further as we proceed.

On electrical testing — I declare an interest as a qualified electrician by trade — clause 10 talks only about the Department making regulations, so we are not really going into detail, but, so that we flag it early, I make the point that the electrical risk that you cite in relation to fire is as much to do with portable equipment as with electrical installation.

When you say that you agree with the five-year term for inspection, does that include portable appliance testing (PAT)? If it does, should the onus not be on the tenant, given that they own the equipment that will need to be tested? That in itself might put a financial burden on the tenant, but there would also be a financial burden on the landlord, if he had to pay for inspections. Have you considered that? Should PAT be included in the regime of testing?

Mr Cartwright: Again, it is a good question. I do not know whether you know of the electrical safety charity Electrical Safety First. We have been working in partnership with that body on some of this stuff. I will defer to Heather. She may have some observations on conversations that we have had with it. Our position is that five-year checks should be on appliances provided as part of the tenancy, but, as you said, there is definitely additional risk from portable equipment that the tenant owns.

You would think that, from the point of view of ease of process and making sure that you cover and reduce as many risks as possible, you would test the equipment that is in the house as well as the stuff that is provided. If you are paying for the one PAT visit, testing a handful of portable items would be cost-effective and reduce the risk, so it is certainly something to consider as part of the regulations.

Heather, did that come up in our chats with Electrical Safety First?

Ms Wilson: It is a good question. Portable electrical items per se did not come up, but, in my experience as a student, everything, even down to my straighteners and my hairdryer, was tested, and the landlord paid for that. We have not given much thought to it, but we can speak to the Electrical Safety First guys and come back to the Committee.

Mr Frew: You can imagine a scenario in which a landlord is inspecting his property — maybe he has come to collect rent or whatever — and he sees, for example, a radio or hair straighteners lying on the floor with a bad lead, or maybe they are charred by carbon, which suggests a fire risk. The landlord then asks the tenant to replace the item or remove it from the property for fear of damage. There would be a dispute, with the tenant saying, "I cannot afford a new radio" or "I cannot afford a new hairdryer". That dispute could happen. The landlord has a right to try to protect his or her property in that regard, so there may be something in this.

Mr Cartwright: I think so. If you tie it to PAT, you then have clear, recorded evidence that a particular appliance has failed. Perhaps there is room for additional thought about what then happens as part of that frequent failure event.

Mr Frew: OK. Thank you very much.

The Deputy Chairperson (Ms Armstrong): Justin, on clause 11, "Validity requirements for notices to quit given by landlords and tenants", I would like clarification on the notice to quit, whether from a tenant or a landlord. Say, for instance, a landlord is giving a tenant notice. Does the period of notice start from the date of the letter or the date on which the tenant receives the letter? A landlord could sit on a letter for a fortnight, as could a tenant.

Mr Cartwright: Although I should know the answer to that, I have to say that I do not. Technically, off the top of my head, the definition of the notice is that it is given in writing. I do not want to give you a half-incorrect answer on that. In practice, I think that it would be when the tenant gets the notice.

The Deputy Chairperson (Ms Armstrong): I would like to have that clarified. It may well be that we have to speak to the Department to see what the legal position is. My concern is for those who are

under a 12-month tenancy. If they are afforded four weeks' notice, for two of those weeks, they may not even know about it. They may be away on holiday or whatever when served with notice to quit, leaving them only two weeks to get out. That makes it extremely difficult, especially if someone has nowhere else to go. All of a sudden, they are presented with a homelessness situation. We might ask the Department to clarify that.

On clause 9, your paper states:

> *"We would urge the department to ensure that any adverse policy impacts from making private stock more energy efficient are mitigated at an early stage."*

Do you have any proposals as to how those could be mitigated?

Mr Cartwright: That proposal comes from departmental proposals for change that have been in the pipeline for some time. We flagged that a few years ago in the hope and expectation that, by now, the climate conversation would be further along, minimum standards would be established, and additional funding streams would be in place. Due to the ongoing impact of the Assembly's collapse and the big legislative backlog that you have, that has not happened.

That is not a reason not to set minimum energy efficiency standards for private rented properties. In the context of the climate challenge, we need to move ahead on that. In the meantime, behaviour will have a major impact on the use of energy efficiency technologies. Again, it is about exchanging information to make sure that tenants are involved in the conversation and know how to use new technologies. In the social rented sector, where a lot of our members are based, there have been horror stories in recent times. New measures were installed but had to be removed because there was no support in, for instance, the supply chain to maintain those new technologies. In some instances, tenants and residents did not know how to use them, and they were using the equivalent of immersion heaters when, say, the heat pump was not working properly, which obviously made their fuel bills skyrocket. So, there needs to be early engagement with groups like Renters' Voice and Supporting Communities to the extent that this conversation extends into the social rented sector as well. Exchange of information will be pretty important from an early stage.

Mr Durkan: Thanks, Justin and Heather. I have one issue. Justin was talking about the importance of engagement with groups, and, early in the paper, the importance of communication is touched on. While this legislation undoubtedly proposes to do some good, beneficial things, any legislation is only as good as those enforcing or applying it. So, there will be a vital role for landlords. We know that the vast majority of landlords are responsible. Without a doubt, there are some rogues out there. It is about how we communicate the changes, improvements and new protections to landlords, who will ultimately be responsible for communicating those to their tenants or prospective tenants. Justin, will you elaborate on what you think the Department should be doing in that respect?

Mr Cartwright: Housing Rights touched on that in an earlier session, and we would also support landlord licensing. It is not in the Bill, but I think that licensing is a framework for a much more formal way of exchanging information and setting requirements around management standards and things like that. Inevitably, when we call for private landlord licensing, there can be a bit of kickback: it is using a sledgehammer to crack a nut and is too onerous. However, we always say that licensing can be whatever you want it to be and to whatever standard you like.

Essentially, HMO licensing is around a fit and proper person test, which is a pretty introductory level when it comes to onerous requirements on landlords. For instance, for the Northern Ireland market, an all-singing, all-dancing licensing system, like the ones that you see in some parts of GB, would probably be more than is necessary, but there is scope to set minimum standards in some way that includes an element of accreditation. As part of that, having some kind of training requirement and knowledge transfer would be a good opportunity to help to disseminate some of that information to landlords. Perhaps they might have to undertake an information or training session, or something like that, as part of the licensing requirements.

Mr Durkan: Thank you again. I do not think that we can overstate the importance of communication. We have so many vulnerable people living in the private rented sector, many of whom are likely be kept in the dark, figuratively and, at times, even literally. So, I think that a robust communication strategy for this legislation is imperative. Thank you, guys.

The Deputy Chairperson (Ms Armstrong): Justin, this is not prompted, and you do not owe me a fiver or anything, but, as part of my research for this session, I talked to a landlord who, having undertaken your training for landlords, said that it was excellent and should be mandatory, so that is a good push for you. I am not asking for the full detail, but it might be useful if you could send the course content of what you cover in that landlord training to the Committee. That would be very helpful.

For now, we have everything that we need from you. Thank you so much for your paper. It is very worthwhile. We know that the Chartered Institute of Housing is always on hand for Committee members to contact. If you want to send in further information on any questions that we have asked you today, please feel free to do so, but, for now, thank you very much, Justin and Heather.