

STATES OF JERSEY



RESIDENTIAL RENTAL PROPERTY: MINIMUM STANDARDS AND A REGISTER OF LANDLORDS

Lodged au Greffe on 1st April 2014
by Deputy M. Tadier of St. Brelade

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Housing to bring forward for approval no later than 30th September 2014 proposals to –

- (a) establish minimum standards for all categories of residential rental properties and a framework for the inspection and regulation of such properties;
- (b) create a register of landlords, for all individuals/companies wishing to rent out residential properties in the island;
- (c) investigate the introduction of rent control to set maximum levels of rents and fees that may be charged to tenants.

DEPUTY M. TADIER OF ST. BRELADE

REPORT

“I have always held the view that to require people to live in uninhabitable accommodation is unacceptable in any community, but particularly on this Island and I intend to do something about it.”

Deputy A.K.F. Green of St. Helier, Minister for Housing – 1st March 2011

Paragraph (a)

In March 2011, I asked the Minister for Housing what steps he would be taking in order to eliminate the letting of sub-standard accommodation in the island.

In his response, the Minister acknowledged that the existing statutory powers in this area were limited and relate mainly to lodging houses. He noted that the Residential Tenancy Law would give some protection to tenants, but stated that *he had for some time held the view that more should be done* and that *he had asked officers from his department to meet with officers from Health Protection Services with a view to seeing if we can introduce a system of minimum standards. (see Appendix 1)*

We are now 3 years on, and I hope we will shortly be at the point where minimum standards will be established and a corresponding system of regulation.

It is true that the Residential Tenancy (Jersey) Law 2011, which came into force in May 2013, does provide some protection for tenants against sub-standard property – *if it is uninhabitable*. Article 9 of the Law states that:

“If a residential unit that is the subject of a residential tenancy agreement becomes uninhabitable through any event other than a malicious act of the tenant –

- (a) the tenant is not required to pay any rent or other amount payable under the agreement in respect of any time during which the residential unit is uninhabitable;*
- (b) the Court may, on the application of the landlord or tenant, make an order varying or terminating the agreement if in all the circumstances the Court considers it just to do so.”*

So what is the definition of uninhabitable and who defines that meaning?

On 4th February 2014, the Solicitor General gave the following answer:

“I would give the word its ordinary meaning. It means that the property is unsuitable for living in. To take an extreme example a property that is severely damaged by fire will be uninhabitable. The second question is; who decides whether a property is in fact uninhabitable? The answer is that if the landlord and the tenant cannot agree then the Petty Debts Court has the jurisdiction to resolve any such dispute.” (see Appendix 2)

However, this process does not seem particularly user-friendly. Firstly, it is reactive not proactive; save for some legislation regulating lodging houses, there is nothing in place that ensures rental properties are in fit condition *before* the tenant moves in.

Secondly, a tenant may be unwilling to pursue such an avenue, for various reasons, not least if they know the landlord, and are otherwise happy with the situation of the property. Lastly, there is potentially a *high bar* to be met when ascertaining whether a property is *uninhabitable* – the law has yet to be tested in this regard.

A Level Playing Field

Recent comments by the Minister tend to suggest that he has also come round to the point of view that there is a need for over-arching legislation which covers the regulation of *all* sectors of rental accommodation. This seems a sensible way forward if we are to achieve a level playing field, in terms of regulation. It has been pointed out that lodging houses already have to meet basic standards, and they are inspected periodically to make sure they meet basic standards. Similarly, the new strategic housing unit will, itself, be independently regulated. It seems, therefore, logical that (i) a common minimum standard be established and (ii) that this be applied across the board, irrespective of sector.

Ongoing Work

As suggested in the response to a written question by Deputy G.C.L. Baudains of St. Clement on 4th February 2014 (see **Appendix 3**), work is already going on in the Department to with regard to a deposit protection scheme. A mechanism and authority will need to be appointed to carry this administration. The written answer also anticipates that the scheme would be operated at nil cost to the States of Jersey, (with costs being recovered by interest on balances and fees, if necessary). It is therefore likely that the current work going on in this area could be extended to a wider scheme, which would ensure minimum standards of accommodation across all sectors – again at neutral cost to the States.

Paragraph (b)

Whilst the *fine detail* of any regulatory apparatus will need to be determined, I believe it important that the States give the Minister a steer on the creation of a *landlord register*. This is not my idea, but one which has arisen following discussion with officers in the department, and, of course, one I think necessary for the functioning of such a scheme.

It may be of interest to members that Northern Ireland has recently introduced its own landlord register. As of 25th February 2014, all landlords must register with the authorities. This is part of a broader package of legislation that clarifies the rights and responsibilities of both tenant and landlord.¹

As stated above, a list of landlords will likely be necessary anyway, for the establishment of a functioning deposit protection scheme.

Paragraph (c)

In 2010, in a question relating to the Rent Control Tribunal (see **Appendix 4**), newly elected Senator F. du H. Le Gresley asked the then Minister for Housing, Deputy S. Power of St. Brelade, if he was ‘*concerned that average rents in the private sector increased by 24.6 per cent during the 3-year period January 2007 to December 2009*

¹ For more information see http://www.nihe.gov.uk/index/advice/renting_privately.htm

while rents in the public sector increased by 8.7 per cent, and during that same period the R.P.I. only increased by 7.44 per cent?’

The Minister replied that there was ‘*a direct correlation between the lack of affordable housing on the Island and the provision for social rented housing in the Island which will have to be increased.*

Asked what he was going to do about it, the Minister replied: ‘*The inflationary portion of part of the private rental housing sector is caused by demand exceeding supply. That can only be addressed by us increasing [...and] improving the provision of affordable housing and increasing the provision for social rented housing.*’

This analysis, is no doubt correct, however, under current plans, this will take a long time to achieve. Some are sceptical if the current plans for new, affordable housing even go far enough. Either way, in the meantime **the lack of affordable housing remains just as acute today** as it ever was, and there needs to be a solution **now** if people are not to be pushed into further poverty and state dependency, at a time when States spending is under rigorous scrutiny.

Before discussing Rent Control, I ask the question: who benefits from high rents and the lack of affordable housing and who loses?

Winners:

Private landlords, especially those with multiple properties, are the winners. In some case these will be owned by companies whose beneficial owners do not live in the island.

Losers:

- (i) **The tax payer.** As we all know too well, the lack of affordable housing – including Social Housing, means that we have to help people financially to pay their rents. Not only does this help keep rents higher than they would be if free market forces were at work (because the States will pay the rents), but it also means that money that should be going into core public services like, health, education, roads, etc., instead go into the back pocket of those who do not need it – wealthy landlords. Perversely, when young families cannot afford to buy because they cannot make up the deposits, landlords can rely on the States to pay their buy-to-let mortgages every month.
- (ii) **Would be homeowners.** As suggested above, people paying significantly high rents, are unable to use this money to buy their own properties. In many cases, the cost of rent is higher than that of a mortgage – but the lack of a deposit or a meaningful States organised scheme, keeps them off the property ladder.
- (iii) **States tenants.** Because we have agreed to ‘peg’ States rents to the private sector, even though we have no control over the private sector, States tenants are at the mercy of market forces. Their rents will already be going up, and as the population increases, so will the demand for housing and prices too.

However, there is a solution. If we are already setting up a regulatory system and if the private sector are to truly be our partners in the provision of affordable rental

housing, there is no reason why rent control – i.e. the setting of *fair rents* (based on a set of criteria, such as floor space, amenities, modernity, etc.) – cannot be implemented at the same time. And it could well be that rather than States’ [the strategic housing unit’s] properties being pegged to private rentals, that private rentals had to be pegged to States’ – or fair – rentals.

Setting a threshold for fair rents would also provide a mechanism for tenants to be able to distinguish between the quality of premises, before they move in, as it may not be possible to ascertain the level of insulation and energy efficiency of a property, for example, simply from appearance. If, however, properties are inspected and even rated accordingly, then it would also be possible for these factors to be reflected in the maximum rents able to be charged.

I understand that any suggestion of rent control may be anathema to some free market purists, however, I would hope that the majority would agree that when it comes to accommodation, urgent action is needed and that we are not looking at a simple *commodity* which is to be traded according to the laws of supply and demand, but something much more fundamental and essential to each of our citizens. All of our residents deserve affordable, structurally sound, habitable homes, whether they own them or not. Whilst it may not be possible, even desirable, for government to supply all of those home, it should be incumbent on all of us to try to make life better for all our residents, especially those struggling with the issues relating to sub-standard and/or expensive housing, in a sustainable way.

Financial and manpower implications

It is anticipated that any such schemes should be self-funding and therefore cost neutral to the States. There will need to be manpower input, which will be met from within existing staffing.

Hansard: 1st March 2011

2.15 Deputy M. Tadier of the Minister for Housing regarding measures to eliminate the letting of substandard rental accommodation in the Island:

What measures, if any, does the Minister plan to introduce in order to eliminate the letting of substandard rental accommodation in the Island?

Deputy A.K.F. Green of St. Helier (The Minister for Housing):

The Deputy will be aware that the existing statutory powers in this area are limited and relate mainly to minimum standards in lodging houses. Soon the Residential Tenancy Law will give some protection to all tenants, but I have for some time held the view - and still hold the view - that more should be done and can advise Members that I have asked officers from my department to meet with officers from Health Protection Services with a view to seeing if we can introduce a system of minimum standards. Also, a fundamental part of the social housing transformation programme will focus on regulatory framework for all social landlords, including ourselves, and these proposals will be outlined in a White Paper which we will issue later this year.

2.15.1 Deputy M. Tadier:

I appreciate that currently we are limited as to what we can do to eliminate substandard accommodation. Does the Minister appreciate that the situation with, let us be frank, uninhabitable accommodation is particularly acute in the non-qualified sector? What will the Minister do to address this particular issue?

Deputy A.K.F. Green:

As I said, I am aware that there are problems there and I have always held the view that to require people to live in uninhabitable accommodation is unacceptable in any community, but particularly on this Island and I intend to do something about it. I need time to do that. We intend to have the Residential Tenancy Law back from the Privy Council soon. That will bring in some regulations and we will work with this.

2.15.2 Deputy M. Tadier:

Could I ask if one of the immediate steps the Minister would look to undertake is extending the depositor protection for tenants to cover non-qualified tenants? If not, what are the challenges in doing so?

Deputy A.K.F. Green:

The Deputy identifies an area that is a problem because the law only applies to tenancies and, as such, unqualified people cannot be tenants. So, this is an area that we need to work on.

2.15.3 Deputy G.P. Southern:

I do not know if the question has been answered, but when are we to see the rental deposit scheme in concrete form before this House, because it was passed in principle some time ago? How close is it to finalisation?

Deputy A.K.F. Green:

If my information is correct, I think this forms part of the Residential Tenancy Law, which is currently with the Privy Council.

2.15.4 Deputy M. Tadier:

The question relates to regulation. Can the Minister inform the Assembly how quickly he envisages being able to bring in a system, as simple as possible, of regulation for the whole of the sectors- both private non-qualified and qualified - whereby one simply cannot rent a room out or a property out unless one is registered, has paid a certain amount of money which will go towards inspection, and then a permit will be issued in order to be able to rent that property out?

Deputy A.K.F. Green:

The department has a massive piece of work in the social housing transformation programme and regulation will be part of that work, and I hope to issue a White Paper later on this year.

Oral Question: 4th February 2014

4.3 Deputy M. Tadier of St. Brelade of the Solicitor General regarding the determination of ‘uninhabitable’ under Article 9(a) of the Residential Tenancy (Jersey) Law 2011:

Will Her Majesty’s Solicitor General in this case explain what constitutes uninhabitable under Article 9(a) of the Residential Tenancy (Jersey) Law 2001 and who determines this?

Mr. H. Sharp Q.C., H.M. Solicitor General:

Article 9 of the Residential Tenancy (Jersey) Law 2011 provides a tenant with a statutory right to cease payment of their rent and/or to obtain a court order varying or even terminating the tenancy agreement in the event that the premises have become uninhabitable. I am asked 2 questions in respect of this particular provision. The first question is; what does uninhabitable mean? For my part I would give the word its ordinary meaning. It means that the property is unsuitable for living in. To take an extreme example a property that is severely damaged by fire will be uninhabitable. The second question is; who decides whether a property is in fact uninhabitable? The answer is that if the landlord and the tenant cannot agree then the Petty Debts Court has the jurisdiction to resolve any such dispute.

4.3.1 Deputy M. Tadier:

In the event that a landlord and a tenant cannot agree on the definition of uninhabitable and there is a decline in goodwill would the Solicitor General outline the process starting at which point the tenant may reasonably withhold their rent and whether or not, in the absence of an escrow service, what should happen to that money in the interim?

The Solicitor General:

If a tenant reaches the view that their property is uninhabitable then Article 9(a) of the law provides them with a right to stop paying rent and they do not need to go to court to do that.

Written Question – 4th February 2014

3.4 DEPUTY G.C.L. BAUDAINS OF ST. CLEMENT TO THE MINISTER FOR HOUSING REGARDING THE SAFEGUARDING OF TENANTS' DEPOSITS:

Question

Would the Minister clarify, with regard to the Housing (Registration) (Jersey) Law 1962 and the retention of deposits, how many proprietors have been found guilty of not refunding deposits in the last five years?

How, where and by whom is it intended to safeguard deposits in the future under the Regulations made under the Residential Tenancy (Jersey) Law 2011?

Would the Minister also advise of the costs involved in operating any new scheme and whether deposit capital or interest will be used to offset those costs?

Answer

The Lodging Houses (Registration) (Jersey) Law 1962, deals with whether a lodging house, as defined under the Law, may be registered, primarily with reference to the standards of the accommodation. There is no express offence relating to the non-refunding of a deposit. However, the recently introduced Residential Tenancy (Jersey) Law 2011, requires tenancy agreements to make provision for deposits, and actions can then be undertaken under the Law with reference to the Petty Debts Court, including by persons in registered lodging houses, in the event of a dispute.

The programme of work of the Strategic Housing Unit for the first 6 months of 2014 includes measures to support tenants and landlords under the Residential Tenancy (Jersey) Law 2011, including:

- (i) bringing forward by Order the requirement to complete a “condition report” on commencement of a tenancy (to assist in navigating deposit disputes); and
- (ii) bringing forward by Regulation a compulsory deposit protection scheme for all tenancies.

The deposit protection scheme will require deposits for new tenancies to be paid to a scheme administrator, with avenues, including mediation and adjudication, available on completion of the tenancy if the parties do not agree on the amount to be returned. This is consistent with States decisions. As to who the scheme administrator will be, that will be subject to a procurement process to conclude should the Regulations be approved.

As to the costs of the deposit protection scheme, these will be published with the Regulations, but the intention is that the scheme is at nil cost to the States of Jersey, with costs to be recovered from interest on balances held and fees to meet costs, if necessary.

Hansard, Oral question: 13th September 2010

2.2 Senator F. du H. Le Gresley of the Minister for Housing regarding access to the Rent Control Tribunal:

Further to my raising the matter of high rents charged in the private sector during the debate on 20th July 2010 on P.77/2010, and my subsequent exchange of emails with the Minister concerning the inability of many private sector tenants to use the Rent Control Tribunal due to restrictive clauses in their leases, could he advise what action, if any, he proposes to take to remedy this situation?

Deputy S. Power of St. Brelade (The Minister for Housing):

I do acknowledge an exchange of emails between myself and the Senator at the end of July. There are some issues with a small number of landlords in the private rental sector, however I would point out to the Assembly that the Dwelling Houses (Rent Control) (Jersey) Law, which practises best tenancy agreement, has the important 6 points to underwrite the agreement between the landlord and the tenant and these are: a cap on rent increases to no more than the retail price index; a cap on the level of deposit to no more than the rental payment period; that no rent be payable if the premises are unfit for purpose or unfit; that premiums cannot be levied legally including as to services, including the sell-on of utility charges and as to notice periods, giving 6 months' notice in writing to longstanding tenants. However, as the Senator will know from his current career and his previous career, we do not live in an ideal world. We do not live in an ideal world and there are a number of small problems out there.

2.2.1 Senator F. du H. Le Gresley:

The Minister has referred to cap on rents, no more than R.P.I. (Retail Price Index). Could I ask him if he is concerned that average rents in the private sector increased by 24.6 per cent during the 3-year period January 2007 to December 2009 while rents in the public sector increased by 8.7 per cent, and during that same period the R.P.I. only increased by 7.44 per cent? If he is concerned, what does he propose to do to help private tenants who, on this evidence, are being exploited by landlords?

Deputy S. Power:

I am aware that the Senator is quoting an accumulative figure over 3 years, some of it in the boom times before we went into recession. However I will say this to the Senator, there are a lot of factors out in the private rental sector, including the unqualified sector that are fuelling increases which may relate to his question, and I would say that there is a direct correlation between the lack of affordable housing on the Island and the provision for social rented housing in the Island which will have to be increased. I do, however, acknowledge the Senator's question and I do acknowledge that there is a problem which may have to be dealt with, but it can only be dealt with over a longer period of time.

2.2.2 Deputy G.P. Southern:

Will the Minister please kindly answer the question, what action, if any, does he propose to take to improve the situation? He acknowledges the problem, there is a problem. What action does he intend to take to improve the situation and by when?

Deputy S. Power:

The Minister for Housing does not do miracles but I would answer his question by saying the following. The inflationary portion of part of the private rental housing sector is caused by demand exceeding supply. That can only be addressed by us increasing... or this Assembly, through the Minister for Housing or the Minister for Planning and Environment and the Minister for Treasury and Resources, improving the provision of affordable housing and increasing the provision for social rented housing. I cannot give Deputy Southern a timescale at the moment as to when that is likely to happen because the draft Island Plan is a draft. We are all making submissions on the draft Island Plan next month and I will be very forcefully expressing my views as to how we need to increase the provision for affordable housing, social rented housing and, indeed, my Assistant Minister is leading on this.

2.2.3 Deputy G.P. Southern:

The Minister has very kindly pointed out there is a problem, that he has a clause in the relevant regulations to deal with it and yet it is not being dealt with and he acknowledges that. When, if at all, will he act to tighten-up this particular regulation on which he already has powers and if not, why not?

Deputy S. Power:

Deputy Southern will be well aware, as most Members of the Assembly are aware, that the increase in rents in part of the rental sector is an area outside the (a) to (h) sector and those are the very people we need to protect that the law does not protect. So the answer to the Deputy's question is that they will be protected in a number of ways next year when the Residential Tenancy (Jersey) Law comes back from the Privy Council and is rolled-out under a new regulation to what is now the unqualified sector. So I will try and do something about it. I am as unhappy about it as are many people in this Assembly, but at the moment I do not have the legal power to enforce.

2.2.4 Deputy M. Tadier of St. Brelade:

This may already be in the pipeline, so excuse the question if that is the case, but concerning specifically the case of 'unfit for purpose' accommodation in either sector, would the Minister be supportive of having an inspection system prior to being able to rent a property out so that one does not have to go through the process after a property becomes discovered to be unsatisfactory for dwelling?

Deputy S. Power:

That is a difficult one to answer in a minute or 2. There are premises out there, particularly in the (a) to (h) sector and in the unqualified sector, that are unfit for purpose and would not meet modern decent home living standards. I recently moved a lady from an unfit for purpose (a) to (h) into one of our units. The problem is a lot of people do not complain. There is such a demand. The demand is so much greater over the supply situation that people will take units that are not fit for purpose. I have also had meetings with the Minister for Planning and Environment with regard to being able to retrospectively change units of accommodation under planning law that we know to be not fit for purpose, and that is something that the Minister for Planning and Environment is considering, but there are units of accommodation out on this Island -

both in the qualified sector and in the unqualified sector - that in my opinion are not fit for purpose.

2.2.5 Deputy M. Tadier:

If I can add then, I think it is exactly because people do not complain because they do not necessarily have the choice, that is a reason why we should have inspections. Does the Minister agree that the same principle should apply, for example, to those that might apply to hotels, guest houses, but you cannot rent a room out until it has been inspected until you have a licence to let that room or to let that property out so that we know it is fit for purpose?

Deputy S. Power:

I apologise to the Deputy. We do inspections in both the (a) to (h) sector and in the unqualified sector. We recently have prosecuted some people for having premises and units of accommodation that were unfit for purpose. We do have an inspector out there that does about 20 to 25 hours a week. It is up to the Minister for Planning and Environment then to change the standard of accommodation that we report, but I am unhappy. We do inspect and the ones that we find to be unfit we do what we can to them.

2.2.6 Senator S.C. Ferguson:

I have noticed a considerable number of properties to let in estate agents' windows and in the *J.E.P. (Jersey Evening Post)*. What recent work has been done by the department looking at the rental market?

Deputy S. Power:

The Minister for Housing has certain powers but he does not have the powers to interfere in the market to set rent controls or to set, say for instance, the valuation of a premises. That was withdrawn from the Minister by the Assembly some years ago. There is a very buoyant rental market out there both in the qualified sector and in the unqualified sector and people have bought to rent, people have converted to rent, and as to whether it is a good thing or a bad thing I do not have the information to hand, so my answer to the Senator is it is something I am aware of. I have not had sufficient data come to the department that says that it is a problem more than a market condition, but on studying the rest of the rental market at the moment, I hope to have a better idea as to what is going on in the next 3 months.

Senator S.C. Ferguson:

So what the Minister is saying presumably is that you have not got a piece of work, the evidence, on the state of the rental market really to be able to talk in an informed manner on the overall rental market?

Deputy S. Power:

Yes, that is correct.

2.2.7 Deputy D.J. De Sousa of St. Helier:

The Minister mentioned in a previous supplementary question about affordable housing and the lack of. Does the Minister not consider that the Island is a small Island, 9 miles by 5 miles, we cannot continuously build? Does he not consider that the buy-to-let market is part of the issue and the fact that most properties, i.e. Castle Quay, when they are being started they go off-Island and people can purchase from elsewhere and charge extortionate rents?

[15:00]

Deputy S. Power:

The Minister is addressing 2 issues there -those are people from outside the Island who purchase and the buy-to-let market. My understanding at the moment on affordable housing which is the first part of the Deputy's question, on the first scheme we did on Home-Buy the eligibility in gateway was between £40,000 and £60,000, which gave a mean figure of £250,000 on which to get a mortgage, and that is why the success and delivery of La Providence was successful. We would like to have more of that but we would also like to widen the gateway. Instead of it being just available to a couple with 2.4 children, it would be available to couples without children and to various variations in the eligibility. Unfortunately, as I said earlier, we do not live in an ideal world. I have absolutely no information on Castle Quay. I am not in a position to understand the marketing of that development. I have answered this question previously when it came up on the Spectrum development where I was asked whether there were landlords from outside the Island who were buying. I believe there is a limited number of that on the Island, but my information is that it is not disproportionate to the local activity in the local market place.

2.2.8 Senator F. du H. Le Gresley:

I would just like to ask the Minister if he appreciates the concern that I am trying to express about this excessive rise in private sector rent during the 3-year period. The figures which I have quoted earlier have been confirmed by the Statistics Office and also that the recent *Jersey House Price Index* second quarter report confirms that rents have risen by a further 3 per cent in the first 6 months of this calendar year, so I really feel that the Minister needs to address these issues and I am not quite satisfied with his response today.

The Deputy Bailiff:

Is there a question? You must ask a question.

Senator F. du H. Le Gresley:

Would he respond to those comments, thank you?

Deputy S. Power:

I am very happy to respond to Senator Le Gresley. He quotes accumulative inflationary rent increase of 24 per cent in the private sector and 8 per cent in the public sector. The difference is about 16 per cent. I will give the Senator an undertaking and I will instruct the Population Office, who is responsible for this area, to have a look at it. I remind Members that the Population Office is part of the Chief Minister's office but the Minister for Housing is still responsible for housing law. I thank the Senator for his question.