

STATES OF JERSEY



RENT CONTROL: REMOVAL OF EXEMPTIONS

Lodged au Greffe on 8th October 2010
by Senator F. du H. Le Gresley

STATES GREFFE

PROPOSITION

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

- (a) to agree that the current provisions that allow landlords to exclude certain tenancies from rent control if the tenancies relate to premises let for a term of less than 9 years and are undertaken on the basis of a written contract which conforms to a standard form of written contract as prescribed by the Dwelling-Houses (Rent Control) (Standard Tenancy Agreement) (Jersey) Regulations 1993 should be repealed;
- (b) to request the Minister for Housing to bring forward for approval the necessary legislation to give effect to this decision so that the new requirements can apply to all contracts entered into after the coming into force of the revised legislation.

SENATOR F. du H. LE GRESLEY

REPORT

There are currently 509 people on the Waiting List for States rental accommodation and a further 386 people on the Transfer List. The Minister for Housing is advocating that more social housing is constructed in order to meet this demand.

In the early nineties, the then President of the Housing Committee was also concerned about a growing waiting list. He persuaded the States that the way to resolve the shortfall in social housing was to encourage more private sector landlords to offer their properties for rental rather than committing the States to vast capital expenditure.

Landlords, however, were wary because the States had historically used rent control as a method of controlling housing costs for private sector tenants. Under Article 4(2) of the Dwelling-Houses (Rent Control) (Jersey) Law 1946, the Rent Control Tribunal has considerable powers “to approve the rent payable under the contract or reduce or increase it to such a sum as the Tribunal may, in all the circumstances think reasonable.”

In 1993, in order to allay the fears of potential new landlords, the Housing Committee obtained the approval of the States to the Dwelling-Houses (Rent Control) (Standard Tenancy Agreement) (Jersey) Regulations 1993. These Regulations gave exemption from rent control for any tenancy agreement drawn up in accordance with the Standard Form of Written Contract, which was included as a Schedule to the Regulations. However, there was an expectation that “any increase in the rent shall not exceed the increase (if any) in the Jersey Retail Price Index since the date of the Agreement”.

In my experience, the wording of the Standard Form of Written Contract for exemption from Rent Control is used extensively today in rental agreements used by private sector landlords and their agents. A tenant who is faced with an above-cost-of-living rent increase has no legal recourse to the Rent Control Tribunal if there is a clause in their lease which states that the Dwelling Houses (Rent Control) (Jersey) Law 1946 “shall not apply to the premises”.

On 13th September 2010 I questioned in the States Assembly the Minister for Housing about high rents charged in the private sector –

“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.

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.

(Source – Hansard)

Members will note that the Minister considers **“that there is a lack of affordable housing... and that the provision for social rented housing... will have to be increased”**. I am of the opinion that the Waiting List for social rented housing is growing rapidly not because there is a shortage of private sector rental accommodation but because rents, on average, are too high in this sector. This is a typical comment on a website –

“I am due to get my housing quals very soon so have started looking for a 3 bed home to rent and the prices for quals properties if you can find them are far too high, one landlord £1700 – £1800 a month. I commented that this was a lot higher than the fair rent. The house was actually for the A-J market which most houses seem to be. Solution is to stop these greedy landlords charging such high rents and then there will not be such a demand for social housing.”

I do not see any evidence that there is currently a shortage of rental units (on 4th October 2010 there were 48 rental properties advertised on the Jersey Evening Post website, some of which were also available to non-qualified residents), but there

is clearly an issue about affordability. I quote as follows from the latest Jersey House Price Index (12th August 2010) produced by the Statistics Unit –

“Average rents in the private sector, as measured by the Jersey Private Sector Rental Index, increased by about 4% between 2002 and 2003. Rents were then essentially stable between 2003 and 2006 before rising in 2007 [up by 8% on an annual basis] and in 2008 [up by 10%]. 2009 recorded a lower rate of increase of 6%. In the first half of 2010 average rents [from new consents] were 3% higher than the average for all of the calendar year 2009.”

This means that during the 3-year period from January 2007 to December 2009, average rents in the private sector increased by 24.6%, while rents in the public sector increased by 8.7%, and yet during that same period the Retail Price Index (RPI) only increased by 7.44%. Clearly, if the Dwelling-Houses (Rent Control) (Jersey) Law 1946 and the Regulations were more effective, average rents would not have increased by more than 17% in excess of the RPI over the last 3 years.

At a time of low inflation and poor returns on bank deposits, private landlords would appear to be receiving a very high return on their capital investment. Meanwhile, many Jersey tenants have found that their housing costs have risen significantly in the last 3 years, yet their wages have been increased by less than the cost of living, or not at all in some cases. It is no wonder then, that tenants who meet the criteria for social housing are beating a path to the Minister for Housing’s door.

This proposition requests the Minister for Housing to remove the ability for landlords to claim exemption from rent control in any tenancy agreements created after the date that any change in the Law and Regulations comes into force. It may only be a small step towards making rental housing in Jersey more affordable, but at least it will send out a message from the States that we are not prepared to tolerate exploitation of tenants. Landlords who charge fair market rents have nothing to fear from this proposed change in the legislation.

Financial and manpower implications

Law Drafting time will have to be allocated; and the Officer to the Rent Control Tribunal can expect to be much busier than he/she has been, particularly as the Tribunal has not sat in the last 3 years.

Any reduction in the Waiting List for States accommodation would ultimately be a saving, as there is a “hidden subsidy” for States tenants. There may also be a reduction in capital expenditure if there is less urgent pressure for new social housing units to be built.