

10.05.16

(9427) Deputy M. Tadier of St. Brelade of the Minister for Housing regarding the potential existence of arrangements to circumvent the Tenants' Deposit Scheme:

What assessment has the Minister made of the potential existence of arrangements to circumvent the Tenants' Deposit Scheme without contravening current legislation on this matter; and what steps, if any, does she plan to take in response to the existence of any such arrangements?

Deputy A.E. Pryke of Trinity (The Minister for Housing):

The legislation does not allow landlords to circumvent the Tenancy Deposit Scheme. The Residential Tenancy Law is clear - that a deposit is a payment of money which a landlord may hold as security against a tenant's performance of their obligation for the discharge of any liability. So if this payment can be returned to the tenant it is a deposit and should be protected in the Tenancy Deposit Scheme. If there is evidence to suggest that landlords are deliberately avoiding the Tenancy Deposit Scheme then we will take action and we continue to monitor the scheme to ensure they comply with the scheme.

3.1.1 Deputy M. Tadier:

I thank the Minister for that initial response. The Minister, like me, will be aware that there is an individual who purports to be a spokesperson for what is called the Landlords Association, and boasts that he has found a way to subvert the scheme by charging 2 months' deposit in advance therefore not having to pay that money into the scheme. Could the Minister put it on record today, but also consider putting out a press release, that this is not a legitimate way to try and circumvent the scheme, which has been set up for the benefit of both tenants and landlords, and which is paid for by the tenant, and that such practices should not ... are not only illegal but they should be discouraged publicly.

The Deputy of Trinity:

Yes, I am very happy to do that. Just to correct the Deputy, he said that 2 months' deposit in advance, I think he was thinking about 2 months' rent in advance, but anyhow. If it is a deposit it is simple, it needs to be deposited in a Tenancy Deposit Scheme. If landlords take rent 2 or 3 months in advance that is rent and it should be actioned so, shown in the lease. We continue to monitor it and publications, and we talk to the Citizens Advice Bureau, the Community Bank and other organisations to try and make that very clear. But I am happy to promote more. Taking rent in advance is legal but it is rent. If it is a deposit for rental accommodation then that should be deposited in the scheme.

3.1.2 Deputy A.D. Lewis of St. Helier:

This new scheme was greeted with a lot of acclaim and criticism when it was launched. Can the Minister advise as to when the first review of the scheme is likely to occur? How enforceable is the S.L.A. (service level agreement) with the service provider should they fail to provide the service that the Minister is expecting?

The Deputy of Trinity:

We have a monthly update of how many deposits are put into the scheme. There is an annual report, which will be published at the end of November, being the end of the first full year. My Deposits come over regularly and continue to do workshops with landlords and also with the Community Bank which they are partnered with. Just to say absolutely at the end of the first 6 months, 1,200 deposits have been protected, which represents £1.5 million.

3.1.3 Deputy G.P. Southern:

I am somewhat confused by the answer. The Minister appears to be saying that if it is a deposit it is a deposit and if it is 2 months' advance rent it is 2 months' advance rent and seems to be indicating that this is a mechanism to get rid of the deposit.

[9:45]

Can she possibly pick another form of words so I might understand her?

The Deputy of Trinity:

If a landlord wishes to take it as rent then it is rent, so therefore ... and it needs to be shown in the lease that they have taken one, 2, 3 months' rent or whatever. But if it is a deposit it is a deposit and therefore at the end of the lease, providing the accommodation is left in good condition or there is an agreement as to how much deposit is taken back, then their deposit will be refunded back to them. It is clear, rent is rent but then if a landlord takes rent in advance the landlord, if there are problems with the accommodation, the way the tenant has left the accommodation, he has no recourse.

3.1.4 Deputy M.R. Higgins of St. Helier:

I think the Minister almost answered the question. Just to clarify: if 2 months' rent is taken and at the end of the tenancy the rent ... it is not used as rent but the actual landlord was trying to withhold it in case of any damage, would you prosecute the landlord, who is trying to misuse the scheme?

The Bailiff:

It is not a matter for the Minister to prosecute.

Deputy M.R. Higgins:

Would she try and make sure her officers deal with the people concerned in other ways?

The Deputy of Trinity:

Indeed, I would, because it is - trying to make it clear - rent is rent, deposit is deposit, and should be safeguarded. If anybody has any evidence to show that it is not the case then, yes, we will refer to the Strategic Housing Unit and we will take action, as we have done.

3.1.5 Deputy D. Johnson of St. Mary:

Sorry to revert to the basic question but I am still confused. My understanding from what Deputy Tadier asked is that landlords are trying to circumvent the deposit arrangements by a scheme, not for deposit at all but for 2 months' rent, and therefore there is no deposit to return at the end. Would the Minister please clarify whether if a landlord does not seek a deposit and asks for 2 months' rent in advance there is no breach of the regulations?

The Deputy of Trinity:

No, taking rent in advance is legal as long as it shows in the lease that they have taken 2 months' rent or whatever period of time.

3.1.6 The Deputy of St. Mary:

Again, going back to Deputy Tadier's question, my understanding is that the scheme which he alluded to does work: that the landlord requires 2 months' rent in advance, no deposit and therefore avoids the regulations, is that not the case?

The Deputy of Trinity:

If it is rent then the last 2 months, or whatever time that the person has, is rent so they do not need to pay the last 2 months, but the landlords are not protected. If the tenants leave the accommodation in bad condition the landlords have no recourse to come back to the tenant and say: "I will hold some of that rent money." If they do, then that needs to be referred to the Strategic Housing Unit because they cannot use the rent as a deposit.

3.1.7 Deputy M. Tadier:

It is just as well we are not debating shutting down tax avoidance loopholes here today, although it feels like it sometimes. It seems to me that the Minister is saying that I could pay 2 months upfront in January, that would cover my January and February rent, and as a renter I would simply not pay anything until March. Then by the end of the year the landlord would have no deposit and the rent would be up to date or simply when it comes to 2 months before the end of my tenancy I stop paying rent and then it is up to the landlord to pursue me if there is any damage to the property, which does not help landlords. I think that is a dangerous message to send out to both the tenant and to landlords. Does the Minister agree with me that the problem with this scheme is that it is reactive and it is not proactive? It requires action on the part of the tenants, often whom do not have the wherewithal to know the law, who may not be fully conversant in the English language, and that we need a scheme, which is proactive, which puts an upfront requirement on what is expected both of tenants and of landlords. That requires the creation of a landlord register and that we should know in advance both what the rents are for properties and whether deposits are being taken and whether those deposits have been paid into the scheme; is that not the simplest way to go about this for everybody involved?

The Deputy of Trinity:

There are a lot of issues in that question, and I repeat, taking rent in advance - 2 months' rent - is legal but they can only use it as rent. If they take a deposit ... but also, a tenant needs to think: "Well, why is the landlord asking for all those months in advance?" That is a question that they need to ask too. Publicity is out with the Community Savings Bank, Citizens Advice, the other church organisations, and we will continue to publicise the scheme as much as possible.