

POLICY PROPOSAL DOCUMENT

EMPOWERING TENANTS

EXECUTIVE SUMMARY

- Excessive bureaucracy is a drag on economic growth and the Island's prosperity.
- Policy proposals should be subjected to rigorous cost-benefit analysis to identify the best (or least bad) combination of outcome and interference/cost.
- The proposed landlord licensing scheme is expensive, intrusive and is based on questionable assumptions.
- Tenants have considerable protections and rights under the law.
- Educating and supporting tenants is the best and most cost-effective way to promote good standards in the rental sector.

THE PROPOSED LICENSING SCHEME

Most people recognise that there are times that the government must step in to ensure good outcomes, or at least to avoid bad ones. At the same time, few would argue that big government is the best way to promote long-term economic prosperity. The challenge for government is therefore to find an approach that delivers the best, or least bad outcome for the lowest cost and with the lowest possible levels of intrusion.

The promotion of good standards in the rental sector is essential. However, the licensing scheme, with its emphasis on inspections, is not the best way to achieve that goal. It is generally accepted by people on both sides of the debate that the problem of sub-standard accommodation is relatively small, and that most landlords offer a good product. In 2018, housing-related issues was the biggest type of enquiry received by the Citizen's Advice Bureau but of these only 128 were about sub-standard accommodation. That figure is under 1% of the total stock of rental accommodation and significantly less than 1% if Andium is included. Even if we accept that this figure is understated by a factor of five due to tenants' reluctance to complain, that still means that good or acceptable accommodation outnumbers bad accommodation by a ratio of twenty or even forty to one.

Environmental Health (EH) wants to promote good standards by inspecting thousands of rental units to find the few bad ones. Putting to one side the fact that these inspections will be disruptive to both landlords and tenants, that is not a good use of taxpayers' money, particularly given that there is a perfectly workable alternative.

But before we examine that alternative, let us first consider EH's argument for doing it their way. In short, they would have us believe that tenants lack the wherewithal or are too scared to enforce their many rights and protections. The policy proposal document, published in connection with the licensing scheme, specifically talks about the way in which fear of 'revenge eviction' causes tenants to not complain. But is that really the case?

Given that this is one of the key arguments for the licensing scheme, it is notable that no evidence has been presented that 'revenge evictions' are a real thing. Indeed, it begs the question as to why a tenant would wish to remain in a badly maintained property under the auspices of a bad landlord. The truth is that they would only choose to do so if they could not afford to move elsewhere, or if there are no available alternatives. The solution to these problems is population control and/or more home building rather than inspections, but that is an entirely different conversation.

EDUCATING AND SUPPORTING TENANTS

Rather than inspecting thousands of properties, most of which will be perfectly adequate, surely it is better to help and encourage tenants to enforce their rights. Tenants are effectively onsite inspectors that are perfectly capable on determining whether their accommodation is safe and fit for purpose.

To that end, there are things that could be done to help tenants to complain:

1. Protection from eviction

Let us assume for one moment that 'revenge evictions' are a real thing. The Residential Tenancies (Jersey) Law 2011 already provides very substantial protection from eviction by landlords and that the courts are required to examine the surrounding circumstances before ordering an eviction. The court is specifically required to take into consideration "the pattern of evictions in other residential units let by the landlord". In addition, the court can order a stay of eviction indefinitely. If protection is not enough, more could be given in the form of a six- or twelve-month ban on eviction where a tenant's complaints are upheld.

2. Better leases

Leases should be drafted in such a way that tenants are completely clear about their rights and the telephone numbers of the bodies that are there to give advice and support (e.g. CAB, JLA and EH). Leases should also make clear that the property is fully compliant with regulations pertaining to electrical checks, smoke detectors etc.

3. The formation of a tenants' association

Landlords already enjoy the support of the JLA and perhaps the time has come for a tenants' equivalent.

CONCLUSION

Getting the balance right in policy making is never easy, but the licensing scheme is a clear example of taking a 'sledgehammer to crack a nut'. Its proponents claim the costs are small in relation to rents, but that is not the point. If something is unnecessary, the price is too high whatever the cost. Plus, landlords cannot help but feel that once accepted, the initial charging structure will be the thin end of the wedge.

And even if the cost of the scheme is borne by landlords alone, other islanders should not kid themselves that it will not affect them. Money spent on unnecessary red tape, means less money for investment and other expenditures, which will have knock-on effects elsewhere.

There is a widely held view that landlords are not valued by the current administration and that margins are under constant attack from creeping regulation. The introduction of the licensing scheme would harden those beliefs to the point that some might be persuaded to leave the sector, thereby worsening the existing shortage of rental units.

It is quite right that we should all do what we can to promote good standards in the rental sector, but supporting tenants is the best and cheapest way to achieve that objective.