Regulating revenge evictions—what can we do now?

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Property analysis: Following the recent publication of data suggesting that only 5% of tenants in England are protected from revenge evictions, Matthew Hill, partner and head of dispute resolution at Raworths LLP, looks into the lack of protection and provides insight into the government's actions to improve the situation.

What do you make of the findings that tenants are not being protected from revenge evictions, particularly in the context of a recent crackdown on rogue landlords? Is the finding surprising?

The role of the local authority is key to a tenant being able to protect him or herself from revenge evictions and in these times of huge cuts to local authority budgets it is not surprising that sufficient funding has not been forthcoming for what are essentially new responsibilities for councils. More money will help but given the reported scale of the problem it may only scratch the surface.

How does the current legislation allow for revenge evictions and are there any further plans to legislate in favour of the tenants? Should there be?

The Deregulation Act 2015 (DA 2015) introduced new rules in relation to the way in which assured shorthold tenancies in England can be granted and terminated (the relevant provisions in that regard came into force on 1 October 2015). This legislation gave tenants protection, for the first time, against landlords seeking to evict them because they have made a legitimate complaint about the physical condition of the rented property. Such evictions are generally referred to as revenge evictions. Since 1 October 2018, this legislation applies to all assured shorthold tenancies irrespective of when they were granted.

There has however been strong criticism from tenants, and bodies which represent them, of the current rules. It is a widely held view that the current rules do not go far enough in offering any significant protection for tenants in these circumstances and that revenge evictions are still in fact widespread.

In April 2019, in response to growing political pressure in respect of the rights of residential tenants more generally, the government announced a consultation on abolishing the 'no fault' section 21 procedure which allows a landlord to evict a tenant at the end of a tenancy without a reason. These changes could amount to a much more radical and far reaching reform which could supersede the relevant provisions of DA 2015. It is fair to say that this proposal has been met with concern by many landlords. However, at present, the government appears to see introducing a new regime as a way of preventing unfair evictions.

If the consultation results in changes to the law in this area, it currently looks like landlords would only be able to recover possession of their property in much more limited circumstances, using the current section 8 'fault notice' procedure, and therefore generally only if the tenant is in breach of the lease, for example by not paying the rent. This process is likely to result in the current section 8 'fault notice' procedure being amended.

What can a tenant do currently if they believe they are a victim of revenge eviction? What powers and protections do tenants currently have and why aren't these enough?

DA 2015 provides that a landlord is likely to commit a revenge eviction if, in response to a tenant's letter complaining about the condition of the property, instead of providing an adequate response within 14 days and/or remedying the issue, he or she serves a section 21 notice on the tenant.

If the landlord serves a section 21 notice after a written request for repairs has been made, the tenant should contact the local council immediately and notify them that they believe they are a victim of a revenge eviction following a legitimate request for repairs having been made. The tenant should ask the council for an Environment Health Officer to inspect the property to review the condition of the property and to serve an improvement notice on the landlord.

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If the local authority does serve an improvement notice on the landlord, the section 21 notice is rendered invalid and possession proceedings should not be commenced based on that notice. If the landlord still proceeds to court, the tenant must set out the background of the matter to the judge in order to seek a declaration as to the status of the section 21 Notice. If the system works correctly the judge would order the section 21 notice invalid and that the landlord has no right to a possession order.

The onus is very much on the tenant to know their rights in respect of the revenge eviction rules and to make sure that they follow the correct procedure. The protection of the tenant in these circumstances is also totally dependent on the local authority understanding properly and carrying out its role. In addition, the tenant is only able to enforce their rights at the court hearing at which a possession order would usually be granted. This is very late in the process and by this point the tenant may already have given in due to the stress and anxiety which can inevitably come as part of such a process. If, for whatever reason, the tenant is not able to attend the hearing, it is likely that the court would grant a possession order as the judge would have no knowledge of any issues concerning the physical condition of the property or the complaints which the tenant may have made about it. Once the court grants a possession order, there are no steps that a local authority can take to retrospectively enforce the regulation.

What are the recent developments on the crackdown on rogue landlords and why has the situation of revenge evictions not improved? What further action do you think the government should consider?

In November 2018, the housing minister Heather Wheeler announced that local authorities across the country will share £2m of extra funding in order to allow a crackdown on rogue landlords. Councils were encouraged to bid for funding to allow them to step up enforcement action against irresponsible landlords. The purpose behind the fund was to strengthen councils' powers to tackle rogue landlords and ensure that poor-quality homes are improved.

Realistically it is too early to tell if this extra funding will make a significant difference to the protection of tenants in these circumstances, but given the scarcity of resources within local authorities, any money which goes into raising awareness with tenants of their rights and frontline enforcement can only be beneficial. Critics will question whether this relatively small amount of money will have a noticeable impact on what is, evidently, a significant nationwide problem.

It is, however, likely that the much more wide-ranging reforms through the abolition of the section 21 procedure, assuming that becomes law, would have a much greater impact on the problem than this additional funding. Indeed, the impact of DA 2015 may pale into insignificance when looked at alongside the changes which appear to be in the pipeline.

Can any lessons be learned from other markets, for example some European countries who have a more regulated private residential market?

In August 2018, the Centre for Human Rights in Practice at Warwick University produced a very interesting report comparing the rights of private sector tenants in England with those in other jurisdictions. It is widely regarded that currently tenants in England, in many important respects, are less well protected than in other comparable countries.

If the government legislates in the manner set out in the recently announced consultation in the banning or significant restriction of no-fault evictions, this would amount to a very significant increase in regulation of the private rented sector and would move us to a model much more aligned with many continental systems. Such changes would herald a major reset in the landlord and tenant relationship. Whether you think this is a good or a bad development is likely to depend entirely upon whether you are a landlord or a tenant.

Interviewed by Thomas Jeffery.

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