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Mr Paul McLennan, Minister for Housing
Scottish Government
Email - ministerhousing@gov.scot

3rd August 2023 – sent by e-mail

Dear Mr McLennan

Registered Social Landlords – Rent Increase Notification Process for Tenants

I write on behalf of Pineview Housing Association to bring a matter to your attention as Minister for Housing, and to request assistance.

This correspondence refers to the above and previous correspondence raised with Scottish Government officials, the Scottish Housing Regulator, the SFHA, and sector specialist solicitors. To clarify, this correspondence relates to social rented housing and not the private rented sector.

When the Scottish Government expired the rent increase restrictions for the social rented sector earlier this year it highlighted an anomaly with how rent increase notices were being advised to tenants.

Previously the vast majority of social landlords had advised tenants of rent increases by sending rent increase notices by standard post. However, because of the date of the expiry of the restrictions it raised issues of how increase notices could be raised on time, and this in turn highlighted that the previous practice was in conflict with the legislation, namely the Housing (Scotland) Act 2001, section 40 on Notices.

On reviewing the position with social rented sector specialist solicitors (Kelly & Co; TC Young, Brodies) we were advised that rent increase notices can only be served in accordance with Sec 40(1) of the act:
https://www.legislation.gov.uk/asp/2001/10/section/40

> (1) A notice or other document authorised or required by this Chapter to be given to a person (however expressed) may be given—
>
> (a) by delivering it to that person,
>
> (b) by leaving it at that person's proper address, or
>
> (c) by sending it by recorded delivery letter to that person at that address.

The Solicitors all advised that same, that is, that this means the following:

a = serving it by hand to the person, anywhere.
b = hand delivering it to the person's address. or
c = recorded delivery.

We queried if it could be argued that normal post met the requirement of "(b)by leaving it at that person's proper address, " but we were advised that a court would not accept this due to the fact that the Act stipulates recorded delivery, which would mean it would be interpreted that normal post is not acceptable. Apparently there has been a similar case recently in the Glasgow Sheriff Court regarding serving a notice (not about rent).

Even if we ignore the cost, recorded delivery creates numerous issues including tenants not signing for, or collecting, recorded delivery mail. If this were the case then the notice would be returned to the landlord as issuer. This would mean that the tenant had not received the notice. It would also additionally mean that the landlord would not be able to meet the requirement within the Scottish Secure Tenancy to "tell" tenants about the change in their rent charge, as per extract below:

We will consult you about any proposed increase in rent or service charge and have regard to your opinions before we make our decision. We are entitled to change the amount of rent and any service charge, as long as we tell you in writing at least four weeks before the beginning of the rental period when the change is to start. We will not normally change the rent or service charge more than once every twelve months**.** You have a right to a statement of our rent and service charge policy. See paragraph 8.3 for more details.

The argument here being that if the person has not signed for the notice and therefore not received, then they cannot have been told. So a landlord would then need to follow up with a normal notice letter but may then have an issue about timescales being met.

We were advised by representative bodies that Scottish Government officials advised that this was never the intention of the 2001 Act, and that delivery by standard post was what had been intended. However, this is not what the 2001 Act stipulates and Solicitors advise that the Courts would not interpret in line with Scottish Government officials views. At the end of this communication is an extract of advice received from Solicitor, which has previously been shared with bodies referred to earlier.

As a result of this, Pineview hand delivered all our rent notification letters to ensure our tenants were appropriately advised and our risk was negated. Hand delivery is a large waste of resource in staff time and cost, all of which means that income from tenants rents, to cover this cost, is not being spent on something more beneficial to tenants.

While, like the vast majority of the social rented sector, we served rent notices by standard post previously, this was in ignorance of the above – we are of the view that once we were made aware of this requirement we could no longer continue in the previous practice. Tenants rightly expect social landlords to comply with housing legislation and resolve anomalies when we identify them, otherwise they would quite rightly question what other legislation we may choose to ignore.

As this is something that affects the whole social rented housing sector, we made the relevant bodies (as referred to earlier) aware of this and asked that they request that the Scottish Government amend this anomaly, and clarify that standard post (and indeed e-mail) is permitted (and can be defended in Court), through the housing legislation due later this year – this would be the ideal opportunity for the Scottish Government to resolve this matter as legislation is pending anyway, and would ensure that the matter was clarified and tenants could have confidence in how notices were being served by social rented landlords.

We have unfortunately been unsuccessful in getting this matter considered.

As such, we write to you as our newly appointed Minister for Housing to request that you consider this matter and consider with officials the best means to resolve this anomaly so that rent notices are served in accordance with legislation (either the 2001 Act or upcoming legislation), in a way that Courts will accept as valid if challenged, and so that tenants can have confidence in how their landlord deals with such matters.

As we have referred to correspondence with other relevant sector bodies (SHR and SFHA), we have copied them in on this correspondence so they are aware that we have raised this matter with you.

We thank you in advance for considering this matter and look forward to hearing from you.

Yours sincerely

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c.c. Scottish Housing Regulator, SFHA

Extract of Solicitor Advice:

The technical legal answer is that standard Royal Mail post has never been appropriate.

The Housing (Scotland) Act 2001 allows an association to increase rent by "giving notice" of the increase " not less than four weeks" before it takes effect (section 25)
That Act also has a specific "interpretation" section which sets out how notices required by any section on SSTs are to be given. Section 40 says that wherever a notice is required to be given to a person in connection with a SST.. (e.g. NOP/rent increase/ abandonment notice) it may be given by one of three methods

The three specified methods are ;

(a) by delivering it to that person,
(b) by leaving it at that person's proper address, or
(c) by sending it by recorded delivery letter to that person at that address.

The 2001 Act does not allow any formal notice to be given by standard post (nor by email) . There is nothing in the Act which says you can "contract out" of it
….. the only certain method for the RSLs who have 28th March as their increase date is to do personal delivery on 27 or 28 February (can explain further but it's to do with assumptions about when things posted are received if RD is used)
I suppose the question here is one of "risk". How many of your tenants are going to have the detailed knowledge contained above and claim your notice is invalid and ineffective and refuse to pay ? The likelihood of that risk may appear low. However, given the current political climate perhaps that risk is higher than has been the case previously.
To answer your questions

- Is XXX of the view that the Act allows for standard postal delivery, i.e. no recorded or hand delivery?...**it does not for reasons set out above**
- If the legitimacy of an increase notification was challenged in Court (for example, during the course of a rent arrears case), how confident are XXX that justification of postal delivery could be made and there would be no decision of the Court that the notice was ineffective and the increased rent did not therefore apply?..we could not possibly argue that **you have served a valid notice for the reason set out above…if challenged then it would appear almost certain that the court would take the view that your notice was invalid and that the rent increase did not apply (if you are asking whether previous notices could still be challenged then that is really not a can of worms that I want to open at this stage!!...I would like to take the view that if a tenant has received a notice and has been paying the increase for a year or more then they have accepted it and are now und by it (based on a legal concept called "homologation")**
- What could the potential consequences be? .. **increase would not be enforceable /recoverable until a valid notice is served**