

Report to Cabinet

Subject: Retaliatory Eviction and the Deregulation Act 2015

Date: 17 December 2015

Author: Food, Health, and Housing Manager

Wards Affected

Borough wide

Purpose

To brief Cabinet on new legislation to protect private rented tenants against “retaliatory eviction” where they have a legitimate complaint about the condition of their property. The legislation also brings in some additional housing related requirements for landlords which are detailed in this report.

Key Decision

This is not a key decision.

Background

Retaliatory eviction (introduced by the Deregulations Act 2015) is where a tenant makes a legitimate complaint to their landlord about the condition of their property and, in response, instead of making the repair their landlord retaliates by serving them with an eviction notice.

The Department of Communities and Local Government guidance identifies retaliatory eviction (see background paper 1 of this report) as unacceptable practice and states that no tenant should fear becoming homeless because they have asked for a necessary repair.

A tenancy is an agreement between landlord and a tenant. It is a contract that allows each of them certain rights, and also requires them to fulfil certain responsibilities. The majority of tenancies in private rented accommodation are known as assured shorthold tenancies. These usually last for 6 or 12 months, although if the landlord and tenant agree, they can be for longer.

The Deregulation Act 2015 applies to all new assured shorthold tenancies that start on or after 1st October 2015. In practice, this means that they will apply to

almost all tenancies entered into with a private landlord on or after this date.

The new provisions apply where a tenant makes a genuine complaint about the condition of their property that has not been addressed by their landlord, their complaint has been verified by a local authority inspection, and the local authority has served either an improvement notice or a notice of emergency remedial action. Once the Authority has served one of these notices a landlord cannot evict that tenant for 6 months using the no-fault section 21 procedure. The landlord is also required to ensure that the repairs are completed.

The Department for Communities and Local Government guidance advises that tenants should always report any disrepair or poor conditions that may arise to the landlord as soon as possible. They should put their complaint in writing. This is consistent with the Council's housing disrepair complaints procedure. In order to rely on the protection against retaliatory eviction a tenant must approach the landlord in the first instance.

If, after 14 days from the tenant making the complaint, the landlord does not reply, or they do but that reply is inadequate, or they respond by issuing a section 21 eviction notice, the tenant should approach the local authority and ask them to inspect the property and verify the need for a repair.

Officers from the Food, Health and Housing Team will arrange to inspect the property in accordance with the Housing Act 2004. If the inspection verifies the tenant's complaint, we will take appropriate action. There are a number of possible enforcement options including improvement notices and notices of emergency remedial action. The guidance and the Council's enforcement policy both encourage the Council to always engage with the landlord first, in order to try and resolve the problem informally. If the Council serves an Improvement Notice or a Notice of Emergency Remedial Action, the landlord cannot evict the tenant for 6 months using the no-fault section 21 eviction procedure.

Additional requirements for a new tenancy that begins on or after 1st October 2015

Together with the retaliatory eviction protection the Government has introduced some additional requirements for landlords. At the start of a new tenancy, the landlord should provide a tenant with certain documents, these include the following:

- A valid Energy Performance Certificate. An Energy Performance Certificate (EPC) contains information about how much it will cost to heat the property. It also offers recommendations about how to reduce energy costs and save money.
- A valid annual Gas Safety Certificate (where they have a relevant gas

appliance). A Gas Safety Certificate is proof that the gas appliance has been checked by Gas Safe registered engineer. Each appliance must be checked and certified each year.

- A copy of the Government's Department for Communities and Local Government, "How to rent: the checklist for renting in England" guide. This can be in electronic pdf format if the tenant has supplied an email address, otherwise the tenant should be supplied with a paper copy. The guide gives tenants key details about their rights, and what they should expect from private renting. It also gives information about what to do if there is a problem during the tenancy. The guide is free from the Department for Communities and Local Government website.

If the landlord does not supply these documents at the start of each new tenancy from 1st October 2015, they should be supplied as soon as possible thereafter. If these documents have not been supplied, the landlord cannot serve a section 21 notice.

The changes introduced by the Deregulation Act 2015 also make it more straightforward for landlords to evict a tenant where they are allowed to do so. The Department of Communities and Local Government have produced a new form that landlords must use when they want to evict a tenant where the tenant has not breached their tenancy agreement (referred to as a 'no fault' or 'section 21' eviction)

Proposal

It is requested that Members note the new provisions to prevent retaliatory eviction introduced by the Deregulation Act 2015.

Alternative Options

This report is to brief Members on new powers there are no alternative options proposed.

Financial Implications

The legislation does not directly impose any requirements on the Council but Officers may come under increased pressure to exercise enforcement against landlords in order to protect tenants from eviction.

The Government's guidance and Council's enforcement policy both propose informal action in the first instance where complaints are received followed by enforcement where conditions are not improved – this does not differ from the current approach adopted by officers.

It is anticipated that any additional demand on the Council will be delivered within existing resources.

Appendices

None.

Background Papers

1. Retaliatory Eviction and the Deregulation Act 2015 – A guidance note on the changes coming into force on 1 October 2015 - issued by the Department for Communities and Local Government.
2. Department for Communities and Local Government, “How to rent: the checklist for renting in England” guide

Recommendation

That Members note the new provisions introduced by the Retaliatory Eviction and the Deregulation Act 2015.

Reasons for Recommendations

To make Members aware of the new provisions.