

**PUBLIC PETITIONS COMMITTEE CONSIDERATION OF PE1447  
QUESTIONS ARISING FROM COMMITTEE MEETINGS**

**Scottish Association of Landlords—**

- What is your view on what the petition seeks?

The issues raised by Gerry McLellan’s petition are regularly raised with us by our members. Indeed we believe that many private landlords and lettings agents operating throughout Scotland have encountered the problems highlighted by said petition. We do agree that in some respects the existing legal processes involved in repossession actions are not conducive to ensuring regular income stream for landlords or freeing up available lets to prospective tenants quickly. We do consider that these processes could be improved upon.

We and our members understand that in all cases, eviction should be a last resort. We also appreciate however, that in order to provide the essential service of meeting housing need, landlords and lettings agents must be able to rely on a fair and efficient legal procedure for removing tenants who are in serious and persistent breach of their tenancy. The sustainability of the private rented sector is dependent upon a regular rental income stream from tenants. However, the fact remains that it is commonplace for tenants not to pay their rent, and to in turn place a financial strain on the landlord, many of whom may have to continue to meet mortgage payments regardless of the lack of income.

We recognise that for Landlords or their agents to be excessively hindered by lengthy court procedure in making their properties available to prospective tenants who are able to abide by their legal obligation to pay rent, negatively impacts upon the private rented sector as a whole.

We maintain that the law should balance the rights, obligations and interests of both landlord and tenant as fairly as possible. Mr McLellan’s experience as described within the petition of being denied months of rental income, waiting weeks for a court date and ultimately acknowledging that unpaid rent shall remain so, is an experience many of our members have come to accept as an associated risk of being involved in the private rented sector. We do consider this to be an unfair risk incumbent on landlords and cause for concern that the court process, and more importantly its pedestrian pace, favours the tenant unable or reluctant to maintain their rental obligation. On average, and in the experience of our members, the “guaranteed” route to repossession available under Short Assured Tenancies (by far the most common type of tenancy) by serving a section 33 Notice under

the Housing (Scotland) Act 1988, requires the landlord to give the tenant two months notice to remove. Where they remain in the property, raising court action means a further 8 weeks wait for a court date (at least, or longer depending on the court). Thereafter, if the tenant still refuses to leave, it can be a further 5-6 weeks before the Landlord enforce the court order granted and forcibly evict. During this time, in the vast majority of cases the tenant will continue to pay no rent at all, placing further strain upon the landlord. We will always recommend to our members that the due legal process is followed where a tenant is failing to meet their rental obligations. However, when it is explained to a landlord as to the process of evicting a tenant and the court timescales involved, it is unsurprising that landlords are both shocked and frustrated at what they see as an unfair and burdensome process, during which their tenant can effectively remain in the property "rent-free".

From the experience of our members and of TC Young (a firm of solicitors who specialise in residential tenancy law and with whom we work closely), it appears that the current court procedure is both cumbersome and protracted, which has resulted in the vast majority of landlords being unwilling to risk entering into longer lets, lease properties to tenants in receipt of benefits or to economically disadvantaged groups. We would suggest that the existing system for repossession actions is potentially damaging to both landlord and tenant. Local Authorities will in the main refuse to re-house a tenant under threat of eviction until the landlord has been awarded a repossession decree. This results in a tenant sitting in a property for a prolonged period during this process, accruing yet further arrears due to their inability (or unwillingness) to pay rent, resulting ultimately in a payment decree granted by the court which will affect their credit rating. This is neither assisting the tenant nor the landlord.

The vast majority of property lets are owned by individuals with small portfolios. Indeed in 2009, 39% of private landlords owned just one property. Against the current economic backdrop, the added difficulty of being able to recover possession when a tenant refuses to leave despite being in rent arrears can create a very challenging landscape for private landlords who operate on a small scale and who rely on regular rental income. We would therefore agree that a speedier eviction process would be appropriate within a private rented sector, the majority of which is made up of individual landlords with a small number of lets.

Mr McClellan's point regarding the difficulty of recovering monies, whilst sometimes an unfortunate reality, is not something which we believe there would be a direct legal or otherwise solution to. The ability to retrieve money from tenants shall invariably remain a problem where the tenant is not in employment, has no assets and/or any means of being able to pay their rent. The Landlord can only seek to mitigate any such losses by carrying out a risk assessment before

letting, such as carrying out reference checks, inserting guarantor clauses into leases etc. Such cautionary measures would always be something we would advise our members to undertake. We do consider however that landlords and their agents would potentially be more willing to let to social and economically disadvantaged groups if concerns regarding the length taken to secure repossession of a property were addressed.

Prepared by the Scottish Association of Landlords

John Blackwood

Chief Executive

10 Jan 2013