

Tenancy relations: what it means now

In this article Gerry Glyde looks at the provision of tenancy relations services in English local authorities.

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Tenancy relations has for a long time meant enforcing the Protection from Eviction Act 1977 (PFEA) and taking other steps to prevent and deter unlawful eviction and harassment in the private rented sector (PRS). However, today, tenancy relations is also concerned with promoting good relations between PRS landlords and their tenants, and encouraging good practice whilst ensuring that properties are managed within proper legal frameworks.

Given the combination of the expanded PRS, a greater number of inexperienced landlords in the sector (partly as a result of the right to buy), the increasing number of vulnerable tenants and families renting privately, and the risk to the health and welfare of occupiers posed by harassment and illegal eviction, a coherent tenancy relations strategy must be an increased priority for local authorities.

The scope of tenancy relations

Tenancy relations work includes the 'traditional' functions of:

- giving advice on lawful eviction procedures, including advice on 'retaliatory eviction' and 'right to rent'
- intervention in illegal eviction
- issuing warnings about harassment, and
- taking prosecutions under the PFEA.

Less familiar aspects of tenancy relations work can include:

- investigating rent book offences,¹ and situations where a landlord has not provided a name and address or notified that there has been a change of landlord²
- looking into leaseholder service charges offences³
- arranging the reconnection of utilities following an unlawful disconnection⁴
- advising on tenancy deposit protection and assisting tenants whose landlords have not complied with the rules⁵
- joint working with the Health and Safety Executive where gas safety or energy performance regulations are breached.

Tenancy relations - job titles

Whilst some local authorities have dedicated tenancy relations officers (TROs), others may have different staff dealing with PRS tenancy disputes, including:

- environmental health officers
- housing options officers
- housing advisers
- homelessness prevention officers
- legal and policy officers.

Contacting a TRO

Some local authorities publish telephone and email details to allow direct contact with the tenancy relations service, but others filter callers through their call centre or other staff. Contact methods depend on:

- the structure of a local authority's private housing services
- whether the authority provides direct access to the service
- at what stage an authority considers it necessary to get involved in an issue, particularly if the tenant is not seeking to be re-housed.

It may take persistence to persuade a call centre operator that an illegal eviction is within the authority's remit, and that if there is no dedicated TRO in post, the relevant person may be based elsewhere, for example, Private Housing, Environmental Health or Homelessness Services. The Association of Tenancy Relations Officers (ATRO)⁶ can advise on whether there is a tenancy relations service in a particular area if an adviser is having a problem getting hold of a TRO.

Variations in service

There is no conformity of tenancy relations service from one area to another as the range of jobs covering tenancy relations work indicates. The variation is worryingly wide.

Authorities with dedicated TROs are likely to be able to provide a more comprehensive tenancy dispute service than those for whom illegal eviction and harassment roles are additional to other duties.

Examples of service variation

One authority might become involved in an initial dispute about access by a landlord to a tenant's home without consent, or an alleged unlawful increase in rent, while another authority won't.

A TRO located within the environmental health department may be more willing to get involved if a landlord fails to issue a gas safety certificate than a TRO located elsewhere. Or, where a landlord wrongly tells their tenant that they have no rights because they owe rent, a dedicated TRO will quickly ensure that landlord and tenant are correctly informed, whereas a housing options officer may only advise that tenant to consult a solicitor or advice agency.⁷

Proactive authorities often assist tenants whilst an illegal eviction is happening, but others may advise that an illegal eviction is a matter for the police. Unfortunately, some police still advise that illegal eviction is a civil matter, or even (unwittingly) assist the landlord in an illegal eviction.⁸ Some authorities will only consider a complaint after an illegal eviction has happened.

To prosecute or not to prosecute?

There is considerable variation in local authorities' approaches to prosecuting landlords who are in breach of the PFEA: some authorities never prosecute whilst others have robust policies that ensure landlords are aware that they risk prosecution if they illegally evict a tenant.⁹

A successful prosecution depends largely on the evidence, so of prime importance is the willingness of the tenant and witnesses to appear in court, often months after the incident. Many are not willing, perhaps because they feel afraid after their landlord broke a door down in the early hours of the morning or their children returned from school to find their possessions strewn in the garden and new locks on the doors.

'Public interest' test

A local authority has to apply the public interest test before proceeding with a prosecution. In the vast majority of cases an illegal eviction will meet the test, which requires the victim to have suffered the loss of their home or part of it, or to have been put in genuine fear of suffering such a loss.¹⁰ Even where a tenant has been reinstated and a landlord has expressed contrition, the presence of any of the following factors should serve as triggers to prosecute:¹¹

- actual or threatened violence
- pre-meditated offence/ongoing harassment, eg where the landlord has previously received a warning
- the victim is vulnerable or was put in considerable fear
- racial, sexual or disability discrimination
- relevant previous convictions
- offence likely to be repeated, and
- prosecution gives strong deterrent message to other landlords.

Alternatives to prosecution

Mediation is sometimes attempted as a solution to a threatened offence but is not always appropriate, eg where a tenant is at direct risk. It may be necessary instead to issue a warning to prevent unlawful behaviour. In one of my cases where a landlord became aggressive after being told to make a mutually agreed appointment to enter her tenant's home to carry out an inspection, and then threatened to evict the tenant immediately because the rent was seven days late, a formal warning deterred her from going ahead with an illegal eviction.

An authority may consider that, despite strong evidence of an offence, where the tenant has been reinstated quickly, or where an attempted illegal eviction has failed, a caution (with or without conditions attached) or a very clearly worded written warning may prevent a future occurrence. This approach might also be taken where the offence is not of illegal eviction but of deterring the tenant from pursuing 'a right or remedy', such as requesting repairs, which is also an offence under the PFEA.¹²

Local authority policy

Between 2010 and 2013 there was an average of 23 convictions under the PFEA per year. This figure does not reflect the true incidence of illegal eviction,¹³ nor of the thousands of interventions by TROs that either prevented an offence being committed, or were early enough for immediate reinstatement of the tenant.

Landlords are more likely to negotiate with their tenant if they are in no doubt that illegal eviction is not an option. Local authorities need clear, consistent and robust policies on the use of their enforcement powers for preventative interventions to be successful, and for mediation or negotiation to be credible alternatives to prosecution that do not disadvantage the tenant.

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Footnotes

¹ s.5 Landlord and Tenant Act 1985.

² ss.1 to 3 Landlord and Tenant Act 1985; s.7 Protection from Eviction Act 1977.

³ Under Landlord and Tenant Act 1985 – eg provision of service charge information, notice of rights and obligations of leaseholder and freeholder; under s.42A Landlord and Tenant Act 1987 – the duty to hold service charges in a designated account.

⁴ s.33 Local Government (Miscellaneous Provisions) Act 1976.

⁵ ss.213 and 214 Housing Act 2004 as amended.

⁶ ATRO represents TROs and other officers working in local authorities in England and Wales - see tinyurl.com/ATROonline

⁷ eg Worcester CC refers tenants suffering harassment from their landlord to Shelter and Citizens Advice information, and does not advise that it can take action - tinyurl.com/worcester-advice

⁸ *Kazadi v Martin Brookes Lettings Estate Agents Limited & Faparusi*, Edmonton County Court 14 May 2015, reported in Legal Action magazine of September 2015 and Nearly Legal at tinyurl.com/Kaz-Brook

⁹ See Sheffield CC Private Sector Housing Services: Intervention and Enforcement Policy, ch.5 at tinyurl.com/SheffieldPFEA

¹⁰ See guidance for TROs on the investigating a PFEA offence on the ATRO website at tinyurl.com/ATRO-PFEA

¹¹ A similar list can be found in Appendix 1 of Rossendale BC's Illegal Eviction and Harassment Policy, 17 March 2011 - see tinyurl.com/RossendalePFEA

¹² s.1(3)(b) Protection from Eviction Act 1977.

¹³ Citizens Advice press release 8 July 2016 - see tinyurl.com/CitAPFEA