

Renting Homes (Fees etc.) (Wales) Bill

Written evidence from the National Landlords Association

26 June 2018

About the NLA

1. The National Landlords Association (NLA) is the UK's leading organisation for private residential landlords, with 40,000 landlord members – ranging from full time landlords with large property portfolios to those with just a single letting.
2. NLA membership helps landlords make a success of their lettings business by providing a wide range of information, advice and services.
3. We campaign for the legitimate interests of landlords by seeking to influence decision-makers at all levels of government and by making landlords' collective voice heard in the media. We seek to raise standards in the private rented sector while aiming to ensure that landlords are aware of their statutory rights and responsibilities.

Summary

4. We welcome the opportunity to comment on the draft Renting Homes (Fees etc.) Wales Bill and look forward to providing further oral evidence to the Committee on 5 July 2018.
5. We recognise the impact of additional fees on both landlords and tenants, however we note that the Welsh Government's analysis shows that the majority of landlords do not overcharge their tenants on deposits or on payments in default (*Explanatory Memorandum*, paragraphs 3.27-3.28).
6. It remains our position that it is reasonable for tenants to be asked to contribute to the cost of limited services of which they are beneficiaries. We believe this should include relevant referencing checks and the cost of providing a professional inventory.
7. We are concerned that increasing the non-recoverable cost of such services to landlords and letting agents may result in a deterioration of quality – affecting outcomes for both landlords and tenants.
8. However, we welcome the flexibility embedded in the draft Bill around security deposits and payments in default, and the recognition in the explanatory memorandum that the majority of landlords are not currently charging excessive deposits or default payments.

The relationship between agents and landlords, and agents and tenants

9. Traditionally, property agents treat landlords as 'clients' and as such the law of agency applies. Increasingly, applicants and tenants take on status as secondary clients, as chargeable services are provided to them. We have been concerned for some time that this represents a potential conflict of interest should the agent need to negotiate on the behalf of the tenant.
10. Removing the agent's ability to charge tenants may provide greater clarity for landlords in this respect, albeit at the expense of increasing costs. However, it may leave applicants and tenants with few avenues for support, short of instructing solicitors or contracting advisers to work on their sole behalf. This would potentially add significant costs to the process of accessing rented housing.

Managing risks

11. For some tenants, perceived as higher risk by landlords, reducing the ability to make specific payments may decrease the likelihood of landlords being willing to consider renting to them. Such payments are occasionally used as a means of mitigating the risk presented by an applicant with an unusual background or enhanced needs.
12. For example, an individual with an atypical renting or employment history may appear too high-risk for a landlord or agent to reference if they expect to bear all of the costs. However, were such an applicant able to split the referencing cost with the landlord, they may be perceived more positively and subsequently be more likely to be offered a tenancy.

Holding and security deposits

13. We welcome the flexibility which the draft Bill provides with regard to security deposits. A cap on security deposits would present challenges for prospective tenants who are seen as more risky, for example those with pets. Landlords would reasonably seek to increase the security deposit to mitigate the increased risk of damage to the property by pets. With a cap on security deposits, landlords may be discouraged from renting to tenants with pets at all, reducing accessibility of the market.
14. The Welsh Government's explanatory memorandum outlines that there is little evidence to suggest that landlords or agents are overcharging tenants for security deposits, with the majority of landlords charging one month's rent, and agents one month plus one or two weeks (*Explanatory Memorandum*, paragraphs 3.22-3.24). We would agree with this analysis and urge the Committee to maintain the flexibility in the Bill as drafted.

Enforcement

15. We would also impress on the Committee the importance of enforcement in order to ensure that the regulations are complied with across the sector. The vast majority of landlords will no doubt ensure they are operating within the law. However, it is the minority of rogue landlords and agents who may feel the risk is worth taking, if the deterrent is not sufficient or if they do not believe they are likely to be caught. Those who contravene the law will often be renting to the most vulnerable of tenants, who will be less able to challenge illegal practice.
16. Therefore, robust enforcement is vital to protect tenants as well as all landlords and agents who follow the regulations.

Default payments

17. The draft Bill allows for payments in default, in respect of the standard occupation contract. We welcome this inclusion but would caution that any supporting guidance around default payments be considered carefully, given the risk that explanatory guidance is interpreted as de facto regulatory standards..
18. The Bill as drafted remains open to default payments being specified in the tenancy contract. This is proportionate and reasonable, and ensures that tenants are clear about their responsibilities.

Impact on the agency market

19. Letting agents estimate that as much as 20 per cent of their income currently comes from fees paid by tenants, equivalent to approximately £0.7 billion annually.¹ With almost two-thirds of letting agencies categorised as 'small' with one to three offices, fee limits will be challenging for agents to absorb. Where costs cannot be passed on and margins recovered elsewhere, we anticipate a contraction in the letting agent market.
20. It is also possible that reduced budgets could decrease service standards, leading to poor customer experience and deteriorating professional standards.

¹ J Chaloner et al, *Letting the Market Down*, Capital Economics, 2017, p36 (<http://www.arla.co.uk/media/1045728/letting-the-market-down-assessing-the-economic-impacts-of-the-proposed-ban-on-letting-agents-fees.pdf>). Last accessed 26 June 2018.