

Renting Homes (Fees etc.) (Wales) Bill

Written evidence to the Equality, Local Government and Communities Committee, submitted by Generation Rent

Generation Rent represents the UK's private renters and campaigns for secure, safe and fair private rented homes. We have campaigned for a ban on letting fees since we were established in 2014.

Summary

Generation Rent supports the purpose of the Renting Homes (Fees etc.) (Wales) Bill, which it believes will cut costs for tenants, give them greater bargaining power, and create a more efficient market. It will also bring Wales in line with other parts of the UK, as Scotland banned letting agent fees in 2012 and the Tenant Fees Bill, which will ban letting agent fees in England, is currently proceeding through Parliament.

- We are concerned that default fees open a loophole which some landlords and letting agents may exploit to continue to charge unfair fees to tenants. We recommend that default payments are defined in regulations to reduce this risk.
- We are concerned that a security deposit cap of six weeks risks deposits rising to the cap level and reducing affordability. We believe that the wider system of deposits needs review.
- It is welcome that holding deposits are covered by the Bill, and tenants would benefit from the process being more formalised. We recommend amendments to prevent agents from wasting tenants' time by taking more than one holding deposit for a property at a time, to require the landlord or letting agent to provide the proposed tenancy agreement as soon as they take the holding deposit, and to ensure that tenants who fail a right to rent check as a result of a Home Office error are entitled to the return of their holding deposit.
- We welcome the provision of a route for tenants to claim back prohibited payments directly through the courts, as we are concerned that local authorities may lack the resources to enforce the legislation. However we believe that tenants should be entitled to an element of compensation on top of getting a prohibited payment repaid, and there should be a mechanism for reporting breaches to the licensing authority. In addition, we believe that a £500 fine for operators charging a prohibited payment is low and will not be sufficient deterrent in some cases.
- We are concerned that the Bill does not prevent the serving of a Section 21 eviction notice on the tenant if action is taken by either the local authority of the tenant directly regarding the prohibited fee, and recommend that a clause is inserted to prevent retaliatory evictions.

Benefits of the Bill

More than one in three renters in Wales have been charged over £200 in admin fees at the start of their tenancy and some have been charged admin fees as high as one month's rent plus VAT, on top of paying a security deposit and a month's rent in advance.¹ This represents a huge cost at the beginning of a new tenancy and is a barrier to moving home for many renters, two thirds of whom have no savings.²

By banning the routine charging of fees to tenants, the Bill will reduce the upfront cost of moving home and put tenants in a stronger negotiating position with their landlord or letting agent as the threat to moving out is more credible. A landlord is more likely to fix disrepair and less likely to raise the rent stronger if there is a higher risk of a void period.

The market will work more efficiently because landlords will bear the full cost of the agent, who they appoint and who works on their behalf. Renters will benefit from transparent pricing in the rental market, which will allow them to better manage the cost of moving home.

Because landlords will have more incentive to shop around to get the best value for money from their letting agent, we do not expect fees to rise significantly for landlords. Because the market sets the rent that the tenant pays, rather than the costs of the landlord, we do not expect rent levels to rise considerably.

Default fees

We are concerned that permitting charges for defaults will be abused by some agents and landlords. If the circumstances under which default fees can be charged is not clear, then some landlords and agents may write unfair clauses in tenancy agreements which are difficult for the tenant to comply with and result in default fees being charged to the tenant. They may also make claims that exaggerate the amount of time spent dealing with a default, or the value of their time. Letting agents in England have explicitly said that they would increase the use and cost of fees for any breach of the tenancy agreement to recoup the loss of admin fees resulting from the Tenant Fees Bill.³

This lack of clarity around what constitutes a default will mean tenants won't have confidence to challenge fees they believe are prohibited. We believe that guidance will not have the weight needed to ensure that disputes are handled consistently by authorities and courts.

We asked our supporters for their experiences of disputes with landlords and agents and attempts to claim deductions on spurious grounds are common, such as excessively prescriptive cleaning requirements and for damage that has been caused by the landlord's neglect.

Many respondents had succeeded in having fees and deductions waived but felt that less confident tenants would not be as tenacious in challenging them. Others had relented in their deposit disputes because they needed the reduced sum of money as soon as possible rather than wait longer for the

¹ <https://sheltercymru.org.uk/lettingfees/>

² Mintel, 2014, [Two thirds of UK renters have no savings or investments](#)

³ Commons Housing Committee, March 2018, [Pre-Legislative scrutiny of the draft Tenant Fees Bill](#), para 62

full amount. This behaviour, from a minority of landlords and agents, suggests that there will be attempts to exploit loopholes in the Bill.

We question whether there is a need for default fees to be included within the Bill at all. If default fees are to remain a permitted payment, we recommend that the Committee amend the Bill to require subordinate legislation to define default fees and limits on these. This would provide a clearer, legal definition of default fees, which would prevent abuse and protect tenants against continuing to be charged unfair fees.

Holding Deposits

Holding deposits serve a purpose but would ideally not exist if the referencing process was more efficient and decisions could be made immediately. However, assuming that there will be always be some cases where a landlord will need to take a refundable holding deposit, we welcome the Bill's aims to formalise the process and prevent abuse.

We recommend that the Committee amends the Bill to provide clarity on what the tenant should expect when they hand over their deposit. Problems we have heard from supporters are:

- Only getting the tenancy agreement the day before or the day of moving in, at which point it is very difficult to object to unfair terms. The tenancy agreement should therefore be provided upon payment of the holding deposit.
- Being declined for a tenancy because the agent took holding deposits from several prospective tenants then selecting one. Doing this means that the prospective tenants must put their househunting on hold because they cannot afford to put any more holding deposits down. Even though the Bill would entitle them to a refund, they will have wasted up to 15 days when they could have been finding a new place to live. The Bill should prohibit landlords and agents from taking a holding deposit when they already hold one for the same property.

We are also concerned that a potential tenant who fails a right to rent check as a result of a Home Office error will not be entitled to the return of their holding deposit, despite failing the check through no fault of their own. We recommend that the Committee amends the Bill to ensure that the tenant is entitled to their holding deposit back in this situation.

Security Deposits

Most security deposits are four weeks rent although there may occasionally be valid reasons for a higher security deposit, for example letting to tenants with pets. We are concerned that capping security deposits at six weeks risks deposits rising to the cap level and increasing upfront costs for tenants when moving home. It is welcome that the Bill gives Welsh Ministers the power to lower the cap if security deposits do rise as an unintended consequence of the legislation.

Given the need to find a new deposit well before the current tenancy ends and the existing deposit is refunded, we support calls to develop a system of passporting deposits between tenancies, and a

wider review of the deposit protection system. We have made proposals on this subject in a report of March 2018.⁴

Enforcement

We are concerned that local authorities may not have enough resources to fully enforce the ban, and that a fine of £500 for a breach will not be sufficient deterrent. The Tenant Fees Bill in England makes prohibited payments an offence for which the local authority may issue a fine up to £5000, and we would like to see the fine increased to a similar level in Wales.

It is welcome that, if a landlord or letting agent is convicted of a breach, local housing authorities will be required to notify the licensing authority. However the licensing authority will not hear of cases where landlords and letting agents have breached the ban if the local authority lacks the capacity to enforce the legislation.

We welcome the creation of a right for tenants to apply directly to the court to recover prohibited payments. To strengthen this channel as a deterrent and to motivate tenants to apply to county court if their local authority is unwilling or unable to enforce the legislation, we recommend that tenants should be able to receive compensation at up to three times the amount of the prohibited payment, and inform the licensing authority directly of the breach. Compensation at this level is in line with tenancy deposit protection legislation, and would give tenants more of a reason to enforce their rights as well as something in return for the inconvenience of applying to the tribunal.

Protection from retaliatory evictions

We note that the Bill does not prevent the serving of a Section 21 eviction notice on the tenant if action is taken by either the local authority of the tenant directly regarding the prohibited fee. We strongly recommend that the Bill is amended to protect tenants from retaliatory evictions in this scenario.

⁴ Generation Rent, 2018, [Rethinking Tenancy Deposits](#)