

**EAST AYRSHIRE COUNCIL**

**GOVERNANCE AND SCRUTINY COMMITTEE**

**13 MARCH 2009**

**UPDATE ON PRIVATE SECTOR REGISTRATION IN EAST AYRSHIRE**

**Report by the Executive Director of Neighbourhood Services**

**1. PURPOSE OF REPORT**

- 1.1 To advise the Governance and Scrutiny Committee of the work undertaken by Housing Services in relation to the Private Sector, in particular to provide details of the registration process and rental structure that operate within this sector.

**2. BACKGROUND**

**2.1 Registration**

2.1.1 At a meeting of the Governance and Scrutiny Committee on Friday 13 February, it was agreed that a report should be submitted to provide details on Private Landlord Registration and Private Sector Rents in general.

2.1.2 The Registration of Private Landlords was introduced in April 2006, under the Antisocial Behaviour etc. (Scotland) Act 2004. All private landlords letting properties in Scotland must now have applied for registration in the Register of Landlords.

2.1.3 Registration was introduced to assist local authorities to deal with the worst performing landlords who, by their behaviour and attitude, mismanage their properties, or fail to act in respect of their anti-social tenants.

**2.2 Rental Structure**

2.2.1 Private Sector rent levels are determined by landlords and market forces. There are, however, legal requirements under Part II of the Housing (Scotland) Act 1988, which introduced new types of tenancy agreements which govern rents and rent increases. Most tenancies within the private sector are Short Assured Tenancies; however, there can also be Regulated Tenancies or Assured Tenancies.

2.2.2 The Welfare Reform Act 2007 introduced Local Housing Allowance nationally from 2008. This Act affects the payment and calculation of Housing Benefit in the private sector. However the full effect of this Act

will be felt gradually as the majority of claims are still based on the original Housing Benefit structure.

### **3. LOCAL CONTEXT**

#### **3.1 Registration**

3.1.1 The Private Sector Housing Unit within Housing Services is responsible for the registration process. To date 2362 landlords have been approved which equates to 3292 properties. Scottish Government Guidance states that without any negative information or legitimate concerns about an applicant, the application should be approved without further scrutiny i.e. "light touch". Resources should be concentrated on enforcement.

3.1.2 The overall percentage of applications approved across Scotland is 87%. This is a slight increase from December when the rate was 86%. 27 local authorities have approved over 80% of their applications and of these 14 local authorities have approved over 90%.

3.1.3 East Ayrshire Council have made good progress with the registration process to date and current approval rates stand at 96%.

#### **3.2 Enforcement**

3.2.1 The Private Sector Housing Unit has established enforcement policies and procedures and to date has received 485 review cases, 7% of registered properties. The issues raised can be of a serious and complex nature and involve contact with tenants, landlords, agents and other Council services where necessary.

3.2.2 The majority of landlords do co-operate with the Council and, to date, 361 cases have been dealt with. In most instances, an acceptable solution has been reached. In the event that landlords fail to comply they are requested to attend Council Scrutiny Panel comprising Housing Services Manager, Council Solicitor and the Private Sector Liaison Officer which will consider whether there are grounds for their registration to be revoked. Four landlords have reached this stage who, thereafter, complied with their obligation to the satisfaction of the Scrutiny Panel.

3.2.3 There are some applications which do merit further scrutiny and investigation and there are also still some landlords who are evading registration or not providing details of all the properties they let. So far the Private Sector Housing Unit has contacted over 400 potential 'non-registration' cases to make them aware of their obligation and to ensure compliance with the law. In most instances the landlord has complied and submits an application for registration. There are also instances where the property in question was not a private let or was

exempt from registration. To date 9 landlords have been issued with Rent Penalty Notices with one still currently active.

### **3.3 Fees**

3.3.1 The fee structure for landlord registration is laid out in the following regulations: The Private Landlord Registration (Information and Fee) (Scotland) Regulations 2005, The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulation 2006 and The Private Landlord Registration (Information and Fees) (Scotland) Amendment Regulations 2008.

3.3.2 The key elements of the fee structure are:

- The principal fee
- Additional fees for properties
- Agent fee (where applicable)
- Fixed discounts and fee exemptions

The principal fee is currently set at £55.00 and the property fee is £11.00.

3.3.3 In total the Registration process has collected £129,533 in registration fees since 2006/07 with a further £117,703 received in grant funding from Scottish Government.

3.3.4 Landlords who submit late application are due a late application fee of £110.00 in addition to the principal fee of £55.00. The Private Sector Housing Unit has applied the late application fee to 8 applicants since the introduction of registration in 2006.

### **3.4 Renewal Process**

3.4.1 Registration is valid for three years from the point that an application is approved. When an application is approved an expiry date is set automatically. When the expiry date is reached, a landlord must have submitted a new application for registration if they are still letting or managing property. If they do not do this then the registration will expire.

3.4.2 If a landlord continues to let property without having a valid registration or without having submitting a valid application for registration then they are failing to comply with legislation and enforcement action will be undertaken by the Private Sector Housing Unit.

3.4.3 East Ayrshire Council's first renewal is due in April 2010, thereafter, during 2010, 1100 applications are due to be renewed and 1100 during 2011.

3.4.4 The late application fee will be strictly applied as landlords are now fully aware of their obligation to be registered.

## **4. PRIVATE RENTED SECTOR RENTS**

### **4.1 Private Sector Rental Structure**

4.1.1 The cost of private renting varies between individual properties and also depends on the property being furnished or unfurnished. There is no restriction on the rent a landlord negotiates at the beginning of a tenancy; however, it will now only attract Housing Benefit based on the Local Housing Allowance levels.

4.1.2 Rent can be paid weekly, fortnightly, monthly, annually or for some other period as stated in the tenancy agreement. If the rent is paid weekly the tenant is legally entitled to a rent book to be supplied by the landlord. It should include-

- The landlords name and address
- The amount of rent to be paid
- A summary of basic rights that a tenant has under the Housing (Scotland) Act 1988

4.1.3 Tenants will normally be required to pay a deposit as well as the first months rent in advance. A deposit should never be more than one sixth of the annual rent. However, it normally tends to be the same amount as one months rent.

### **4.2 Rental Agreements and Increases**

4.2.1 The type of tenancy agreement in place determines certain rules that the landlord must follow.

4.2.2 The rent level can be increased at any time if the tenant agrees; otherwise the landlord can only increase the rent at certain times. Depending on the lease agreement there may be a limit to how often a landlord can increase the rent.

4.2.3 In general if the tenancy is for a fixed period of time, such as six months or a year, the landlord cannot increase the rent until that fixed period ends. The only exception to this are if the tenant agrees to the increase or there is a clause in the lease agreement saying that the rent will be increased.

4.2.4 A landlord must give a tenant notice of any rent increase; usually this should be at least one month in advance.

4.2.5 There is a limit to the amount that some rents can be increased by. This depends on the type of tenancy in place.

### **4.3 Assured and Short Assured Agreements**

4.3.1 Landlords of assured and short assured tenancies charge 'market rents'. Market rents are affected by the availability and cost of other similar accommodation in the area and vary according to the size, standard and location of the property. The new Energy Performance Certificates may in time influence the market rent charged.

4.3.2 For Assured Tenancy agreements the rent cannot be increased during the fixed term unless the tenant agrees to it or the tenancy agreement says it will be increased. After any fixed term expires the rent can be increased if:

- The tenancy agreement contains a procedure for rent increases which the landlord follows;
- The landlord gives a written notice of the proposed increase on a prescribed form (this can only be done once a year)
- The landlord has given written notice to change the terms of the tenancy, including the rent charged, on a prescribed form.

4.3.3 For Short Assured tenancy agreements the landlord can increase the rent when they renew the tenancy agreement at the end of the fixed term of let. However, they cannot increase the rent during the fixed term.

4.3.4 It can be difficult for tenants to challenge any rent increase, however, the Private Sector Housing Unit offers advice and assistance to any enquiries regarding rent charges and increases. If the landlord has acted illegally they will be informed of this and if they do not comply with their obligations this may jeopardise their registration status.

### **4.4 Regulated Rents**

4.4.1 Landlords of regulated tenancies charge 'fair rents'. There is a limit on how much these rents can be increased by.

4.4.2 Details of what constitutes Assured, Short Assured and Regulated Tenancies, and the rights provided under each of these, can be found at Appendix 1 to this report.

### **4.5 Deposit Guarantee Scheme (DiGS)**

4.5.1 East Ayrshire Council established a Deposit Guarantee Scheme (DiGS) in June 2004. DiGS offers the 'guarantee' of a deposit, in the form of a bond, payable to Landlords at the end of a tenancy, where required. It enables those on a low income, unable to raise a deposit, the opportunity to access quality private rented accommodation. It also

provides additional housing options for those who are in housing need or have experienced homelessness.

4.5.2 DiGS is managed by the Community Housing Advocacy Project (CHAP) and is funded by East Ayrshire Council and monitored by the Private Sector Housing Unit.

4.5.3 This scheme has assisted 183 people to gain access to private sector housing to date.

## **5. LOCAL HOUSING ALLOWANCE**

### **5.1 Background**

5.1.1 On April 7th 2008 Housing Benefit was replaced by Local Housing Allowance (LHA) for tenants in the Private Rented Sector (PRS). According to the Department for Work and Pensions, the aim of the reform was to empower claimants and allow them a greater degree of choice when looking for a rental home.

5.1.2 The amount of LHA paid is based on:

- the size of the household
- the family composition
- location of the property

5.1.3 It will only affect new tenants, tenants who change address and where there is a break in the housing benefit claim. Tenants will no longer be able to choose to have payment made to the landlord and all payment must be made to the tenant. However, direct payment to the landlord can be considered if the applicant (tenant) meets certain criteria as detailed in the 'Safeguard Policy' which was passed by Council on the 21<sup>st</sup> May 2008.

### **5.2 Safeguard Policy**

5.2.1 There are no set conditions that must be satisfied in order to apply the safeguards. However the overriding condition is that it must be in the best interests of the tenant.

5.2.2 The following broad categories may indicate that a tenant could have difficulties in paying their rent (however, this is not an exhaustive list):

- has severe debt problems
- has had a recent Summary Warrant and enforcement action against them
- is an undischarged bankrupt
- is unable to open a bank or building society account

- has some of their Income Support or Jobseeker's Allowance paid direct to the gas, electricity or water company by the Department of Works & Pensions
- is getting Supporting People help
- is getting help from a homeless charity
- has learning difficulties
- has an illness that stops them managing on a day-to-day basis
- cannot read English
- cannot speak English
- is addicted to drugs, alcohol or gambling
- is homeless.

5.2.3 Where there are rent arrears of 8 weeks or more and it is in the overriding interest of the tenant then payments should be made directly to the landlord. Landlords will be encouraged not to wait the 8 weeks before contacting East Ayrshire Council in order to give time to investigate the situation.

5.2.4 In addition, as soon as East Ayrshire Council receive written notification from a landlord regarding arrears the Revenues and Benefits Section will suspend payment until the circumstances are investigated.

5.2.5 If the tenant does not provide proof of payment, payment will be made directly to the landlord. The Revenues and Benefits Section will not wait for the 8 weeks to pass before changing payment which is why they ask landlords to advise of problems as soon as possible.

5.2.6 Also the first cheque is made payable to the landlord but sent to the tenant, if the cheque is for 4 weeks rent or more.

### 5.3 **Calculating Local Housing Allowance**

5.3.1 The maximum amount of Local Housing Allowance a tenant can receive is set in advance by the Rent Officer – this figure is not dependent on the amount of rent charged.

5.3.2 The maximum amount of benefit a tenant can receive is the same for every same size household in the area in which they live regardless of the differences in the actual rents charged.

5.3.3 The number of rooms that a tenant requires is based on Local Housing Allowance rules. With the exception of single claimants aged under 25, one bedroom is counted for:

- every adult couple
- any other adult aged 16 or over
- any 2 children of the same sex until they are 16

- any 2 children regardless of sex, aged under 10
- any other child

#### **5.4 Single Claimants aged under 25**

5.4.1 Single claimants aged under 25 years who live on their own are entitled to the standard rate for a room in shared accommodation.

#### **5.5 Local Housing Allowance Duration**

5.5.1 Once Local Housing Allowance has been used to establish a claimant's maximum rent it will apply from the date of claim and will continue for one year. It will then be reassessed using the Local Housing Allowance rates at the time of reassessment. If there is an increase to a tenant's rent during that year East Ayrshire Council will not reassess Housing Benefit entitlement and the tenant will be responsible for paying the increased amount. East Ayrshire Council will however reassess a claimant's maximum rent if the claimant has a change to the number of people who live with them.

5.5.2 If the rent being charged to a claimant is less than the Local Housing Allowance rate, the claimant will receive the difference between the rent charge and the Local Housing Allowance rate up to a maximum of £15.00 each week.

#### **5.6 Local Housing Allowance Payment**

5.6.1 Local Housing Allowance is almost always paid direct to the claimant either every 2 or 4 weeks by crossed cheque depending on whether rent is charged on a weekly or monthly basis.

5.6.2 It is advisable for tenants who do not already hold a bank or building society account to open one (cheques cannot be paid into Post Office accounts). Basic bank accounts are available from most banks and building societies.

#### **5.7 The Broad Rental Market Area**

5.7.1 Under The Welfare Reform Act which received Royal Assent on 3 May 2007 the Rent Registration Service reviewed all localities in Scotland and determined 19 Broad Rental Market Areas (BRMAs) to be used for the administration of Local Housing Allowance (LHA) from April 2008. Ayrshire is one broad rental market area.

5.7.2 There have been concerns raised by some local authorities that the Broad Rental Market Area have been drawn so widely that they have brought together higher rents from areas of higher amenity value/higher demand with lower rents from areas of lower amenity value/lower demand. The result has been that the Local Housing Allowance levels, which are set using the median of these figures,

invariably leaves a shortfall for those claimants living in the higher demand areas.

5.7.3 The Rent Registration Service proposes to review all existing Broad Rental Market Areas by the end of September 2009. The review will be carried out in accordance with the provisions of The Rent Officer (Housing Benefit Functions) Amendment (No2) Order 2008. The first meeting with East Ayrshire Council Officers is due to take place on the 3 March 2009.

## **5.8 Appeals**

5.8.1 In general there is no right to appeal against the Local Housing Allowance rate or the Broad Rental Market Areas that are set by the Rent Service. However, if an administrative error is made by the Rent Service then a substitute determination may be made which would affect all relevant claimants.

## **6. CONCLUSIONS**

- 6.1 The Private Sector Housing Unit has established very positive links with private sector landlords through the creation of mechanisms which facilitate joint working with private sector landlords.
- 6.2 Quarterly forums have been established which have on average 50 regular attendees. Presentations have been given on subjects that assist landlords in meeting their legal obligation, provide information on best practice and provide landlords with the opportunity to discuss any issues they may have.
- 6.3 Newsletters are sent to all registered private landlords on a quarterly basis providing information on legislative changes, issues of interest and practical advice.
- 6.4 A landlord's guide has been produced and is sent to existing landlords who wish to know more about the requirements which are necessary to become a landlord. The guide provides details on how to set up a tenancy and good practice in the area of private renting and is also intended to assist new landlords to get it right from the outset of a tenancy. This will improve the quality of the tenancy and provide a firm foundation for the duration of the tenancy and avoid unnecessary conflict.
- 6.5 In an attempt to raise standards in the private sector training sessions were carried out providing a comprehensive programme covering landlords roles and responsibilities. The evaluations taken from this training were very positive.
- 6.6 East Ayrshire Council is one of the few authorities in Scotland to have established a Registration Procedure Document which incorporates set procedures to be followed for the enforcement of Registration and associated landlord duties.

- 6.7 Registration has assisted the Private Sector Housing Unit to establish joint working mechanisms with private landlords and has provided the Council with an accurate source of information on where private properties are and who private landlords are. This not only assists the Council presently but will also assist with future plans, as the sector continues to grow.
- 6.8 The Private Sector Housing Unit has submitted a proposal to partner the newly established National Landlord Accreditation Scheme. This will again help landlords improve standards within the private sector and encourage all private landlords to raise standards.
- 6.9 There are concerns, however, surrounding the concentration of private lets in low demand areas, which may have a detrimental effect on an area as a whole. There are also concerns raised by private landlords regarding the introduction of Local Housing Allowance.

In particular their concerns were:-

- Landlords are not being given any information from the Revenues & Benefits Section if the claimant is on Local Housing Allowance, even if a mandate is in place;
  - Arrears accruing frequently as the tenant is spending their rent money on other priorities;
  - Choice has been taken away from the tenant and they can no longer choose for the monies to be sent direct to the landlord.
- 6.10 These issues were discussed with landlord representatives at a meeting on the 9<sup>th</sup> October 2008 at which time landlords were encouraged to utilise the 'Safeguard Policy' if they considered that non-payment of rent may be an issue.
- 6.11 Landlords were given the reassurance that our standard practice will be that the first rent cheque issued will be sent to the tenant in the name of the landlord or the landlord's agent. The tenant will be unable to cash this cheque, and this should ensure that the landlord is, therefore, aware that Local Housing Allowance is in payment and that they should receive regular payments thereafter.
- 6.12 It was also agreed that if a signed mandate has been received by the Revenues & Benefits Section from the tenant that staff will be able to provide the landlord with information on the particular claim.
- 6.13 This information has been issued to all landlords registered within East Ayrshire Council.
- 6.14 The impact of Local Housing Allowance has resulted in a Letting Agent based in Cumnock stating that they will no longer let property to individuals who qualify for Local Housing Allowance as they have concerns over non-

payment. This Letting Agent has 61 properties registered with East Ayrshire Council.

## **7. FINANCIAL**

7.1 The cost of the activities of the Private Sector Housing Unit is met through a combination of Registration Fees, Government Grant funding and Private Sector Housing Grant.

7.2 The Government Grant for 2009/10 for Registration is £41,120.

## **8. POLICY/ LEGAL IMPLICATIONS**

8.1 There are no legal implications arising directly from this report.

## **9. COMMUNITY PLANNING IMPLICATIONS**

9.1 The Registration of Private Landlords was introduced under the Antisocial Behaviour (Scotland Etc) Act 2004, and link's to the Councils Community Planning themes of Community Safety and Community Regeneration. The main focus of Registration is to concentrate efforts on enforcement and to improve standards in the private rented sector.

## **10. RISK MANAGEMENT IMPLICATIONS**

10.1 The Registration process has brought private sector landlords into a regulatory system which forces compliance with legislative requirements.

10.2 Registration provides a means to assist tenants to receive a service from their landlord and the right to a decent home.

10.3 Local Housing Allowance poses a risk to the provision of a suitable number of private sector accommodation and may lead to an increase in Homelessness levels.

## **11. RECOMMENDATIONS**

11.1 Members are asked to:

- (i) Consider progress made by the Private Sector Housing Unit with the administration of the Registration system and the enforcement action undertaken.
- (ii) Note the arrangements in place for private sector rents and benefits system.
- (iii) Agree that this report be placed on the Members Information Portal in order that the information contained herein is available to all Members.
- (iv) Otherwise note the content of the report.

**Chris McAleavey**

**Head of Housing**

**26 February 2009**

CMCA/KW/LA

**LIST OF BACKGROUND PAPER**

Local Housing Allowance Safeguard Policy, Report to Executive Head of Finance & Asset Management.

**IMPLEMENTATION OFFICER:**

Anyone wishing further information should contact: Chris McAleavey, Head of Housing. Telephone 01563 576651 email: [chris.mcaleavey@east-ayrshire.gov.uk](mailto:chris.mcaleavey@east-ayrshire.gov.uk)

## Definition of an Assured Tenancy

A tenancy is considered to be an assured tenancy if:

- the tenancy started after 2 January 1989,
- before the tenancy commenced, the tenant was not given a notice (an Assured Tenancy Form, known as an AT5 form) stating that it was to be a short assured tenancy,
- the property is rented as a home, and
- it is the tenants only or main home.

The tenant does not have to rent the whole property, they may just rent a room or part of the property. However, if the tenant is sharing the accommodation with the landlord, it will not be an assured tenancy.

## Rights Under An Assured Tenancy

Under an assured tenancy a tenant has the right to a written tenancy agreement. It should:

- state the length of time the property is being let for
- state the amount of rent due and when it should be paid
- tell the tenant if the rent can be increased and how it will be calculated
- say who is responsible for decoration and repairs to the inside and outside of the property
- state if there are any conditions or restrictions to the use of the property, for example, no pets, no smokers
- state that the tenant has the right to have their rent determined by the private rented housing panel.

Where there is a statutory assured tenancy and the landlord serves a notice proposing to increase the rent, (form AT2) the tenant may refer the notice to the Private Rented Housing Panel and ask a Committee to fix an open market rent. The Private Rented Housing Panel also deals with appeals by landlords or tenants where the other party has proposed a review of the terms of the tenancy.

## Definition of a Short Assured Tenancy

A tenancy is considered as a Short Assured Tenancy if:

- the tenancy started after 2 January 1989,
- the property is rented as a home,
- it is the tenants only or main home,
- the tenant received a special notice (an AT5 form) before the tenancy started telling the tenant that it is a short assured tenancy, and
- the tenancy is for at least six months.

The tenant does not have to rent the whole property, they may just rent a room or part of the property. However, if the tenant is sharing the accommodation with the landlord it will not be a short assured tenancy.

If the tenant has not received an AT5 notice stating that they have a short assured tenancy or the tenancy is for less than six months, the tenant will probably have an assured tenancy.

### **Assured Tenancy 5 Notice (AT5)**

An Assured Tenancy 5 is the notice that a landlord must give the tenant if they want the tenancy to be short assured rather than assured. A tenant must be given an Assured Tenancy 5 Notice before they move into the property or it will not be a short assured tenancy.

If there is more than one tenant on the tenancy agreement, each tenant must receive a copy of the Assured Tenancy Notice 5.

### **Rights Under a Short Assured Tenancy**

The tenant has the right to a written tenancy agreement. It should:

- state the length of time the property is being let for
- state the amount of rent due and when it should be paid
- tell the tenant if the rent can be increased and how it will be calculated
- detail who is responsible for decoration and repairs to the inside and outside of the property
- state if there are any conditions or restrictions to the use of the property
- state that the tenant has the right to have a market rent determined by the private rented housing panel.

A tenant under a short assured tenancy can ask the Private Rented Housing Committee to decide what the rent should be under section 34 of the 1988 Housing (Scotland) Act.

### **Definition of a Regulated Tenancy**

A Regulated Tenancies was the most commonly used tenancies for people renting privately before 1989. There are very few people who have regulated tenancies now.

A tenancy can only be regulated if:

- it began before 2 January 1989,
- there is an agreement between the tenant and the landlord about how much rent will be paid,

- there is an agreement between the tenant and the landlord about the length of time the tenancy is for (there may be the option to extend this),
- the property includes somewhere for the tenant to live - it may also have a business use,
- the tenant lives in the property,
- the landlord does not give the tenant meals or provide services such as laundry or cleaning, and
- the tenant does not share the accommodation with the landlord.

If the tenant moved into their home before 1989 and have since moved but kept the same landlord, the tenant should still have a regulated tenancy. Regulated tenants have the strongest rights of any private tenants.

A tenant with a regulated tenancy under the Rent (Scotland) Act 1984, can apply to the Rent Officer to have a 'fair rent' fixed. Ordinarily, 'fair rents' only apply to tenancies established before 1989.

If the tenant or the landlord is dissatisfied with the rent fixed by the Rent Officer, then they can apply to the Private Rented Housing Panel to have the 'fair rent' determined by a Private Rented Housing Committee. The Private Rented Housing Panel can deal with applications under Part VII of the Rent (Scotland) Act 1984. The Private Rented Housing Panel can also hear appeals brought under the Housing (Scotland) Act 1988.

### **Private Rented Housing Panel**

The Private Rented Housing Panel has been set up by the Scottish Government to ensure that private tenants are treated fairly. The panel is responsible for:

- setting reasonable rents for properties
- giving tenants a means of enforcing the repairing standard.

Certain types of tenants can appeal to the private rented housing panel (PRHP) if they disagree with a rent increase. The PRHP takes the place of the Rent Assessment Panel, and works in the same way.