
STATES OF JERSEY



RESIDENTIAL TENANCIES: CONDITION REPORTS, STANDARD TENANCY AGREEMENTS, STANDARD FORMS OF NOTICE AND OBLIGATORY TENANCY PROVISIONS – WHITE PAPER – SUMMARY OF RESPONSES

**Presented to the States on 26th June 2012
by the Minister for Housing**

STATES GREFFE

Summary of responses

**White Paper on Residential Tenancies:
Condition Reports, Standard Tenancy Agreements, Standard
Forms of Notice, and Obligatory Tenancy Provisions**

7th June 2012

SUMMARY OF CONSULTATION DETAILS

The Minister for Housing published, on 15th December 2011, a White Paper seeking responses from the public on proposals to introduce a number of obligatory standard forms for use by landlords and tenants involved in the rental of residential property.

The consultation followed the adoption by the States of the Residential Tenancy (Jersey) Law 2011 (the “RTL”) on 14th July 2009¹, which is intended to provide a modern legal framework to develop fair, transparent and well-regulated agreements between landlords and tenants.

It is expected that the RTL will be implemented in 2012. In the meantime, the views of the public were sought on a number of proposals to improve the way in which residential tenancy agreements are managed in order to benefit landlords and tenants.

The consultation closed on 9th March 2012 and the findings will enable the Minister to make informed decisions when introducing the RTL on matters that might further assist landlords and tenants. These matters include:

- (a) The possible introduction of a number of obligatory standard forms for use by landlords and tenants, as follows –
- **Condition Reports** for use at the beginning and end of a tenancy, which would be helpful when deciding upon the return of deposits by landlords to their tenants.
 - **Standard Forms of Tenancy Agreement** to give landlords and tenants assurance their agreements are in compliance with the new Law.
 - **Standard Forms of Notice** to be used when either a landlord or a tenant wishes to terminate a tenancy, or when a landlord notifies a tenant of a breach of a tenancy agreement, to ensure the validity of such notices under the RTL.

¹ The Law was subsequently sanctioned by Her Majesty in Privy Council on 16th November 2011 and registered in the Royal Court on 9th December 2011.

- (b) In addition, the consultation asked respondents whether they thought 3 new obligatory provisions should be included in residential tenancy agreements to establish minimal obligations with regard to –
- Repairs and maintenance
 - Insurance and sub-letting
 - Sub-letting and assignment.

The responses to these matters are referred to at the end of this Report.

OVERVIEW OF CONSULTATION RESPONSES

The Consultation Paper was placed on the States of Jersey website and circulated to all those on the Public Consultation Register. Copies of the Consultation Paper and requests for comment were also sent out to individuals and organisations who have been directly involved in this area of the law, namely the Housing Department, the Jersey Estate Agents' Association, the Housing Trusts, St. Thomas' Church, the States of Jersey Health and Social Services Department, and the Citizens Advice Bureau.

In total, the consultation received 19 responses (listed at the attached Appendix). Of these, 10 were from landlords, landlord organisations and social housing providers; 7 responses were received from professional organisations, including the Citizens Advice Bureau, the Chamber of Commerce, Jersey Electricity, and the Comité des Connétables. There was also one response from a tenant and one response from a letting agency.

Fifteen questionnaires were completed, while 4 respondents chose to send in written responses, in which they focused on specific areas of the consultation. In general, most written responses focused on whether standard forms should be compulsory or optional for landlords and tenants. These responses also suggested examples of additional obligatory tenancy provisions to be considered for inclusion in standard forms, as well as matters that should not fall within Standard Tenancy Agreements and Condition Reports.

The Minister for Housing welcomes the level of interest in these proposals, but any further comments will be considered.

MINISTER'S RESPONSE TO CONSULTATION

With the Residential Tenancy Law (RTL) due to be implemented in 2012, I am confident we have taken an important first step in establishing a modern legal framework that provides both landlords and tenants with greater clarity regarding their respective rights and responsibilities when renting residential accommodation.

I therefore welcome the responses to the consultation on proposals to improve the way in which residential tenancy agreements are managed for the benefit of landlords and tenants.

It is not easy to balance the often competing and emotive views of landlords and tenants. However, I believe the responses to this consultation demonstrate recognition that compliance with the upcoming RTL must be straightforward, fair and transparent for all parties involved.

Having considered the responses, I am proposing to introduce a standard Condition Report that will be made obligatory at the beginning of a tenancy, so that the return of a deposit can be more easily managed at the end of a tenancy.

Moreover, I intend to introduce a standard form of tenancy agreement and standard forms of notice to provide better protection for landlords and tenants under the RTL. I recognise that compliance with the RTL must be as easy as possible, and believe that the provisions of these standard forms will help towards this.

It is also clear from the consultation that landlords and tenants support building additional provisions into all residential tenancy agreements, and I therefore wish to bring forward an amendment to the RTL in order to set out the responsibilities of both parties in respect of insurance, repairs and maintenance, sub-letting and assignment, and Parish rates and utility bills.

I am also concerned about the possibility that some landlords resell their tenants utilities such as electricity, gas and water above the retail price. I recognise that most landlords treat their tenants fairly, but this is a matter I wish to consider in more detail before I make a decision about whether additional provisions should be added to the Residential Tenancy Law.

When I addressed the States Assembly in 2011 on my nomination to become Minister for Housing, I promised that I would strive to build on and introduce housing policies that supported the whole of our community. To that end, I hope that my response to this consultation demonstrates a pragmatic stance, which acknowledges the rights of landlords and tenants, the social responsibilities that renting residential accommodation entails, and the need to keep compliance with the RTL concise and reasonable.

A detailed response to the consultation findings is set out below.

STANDARD FORM OF CONDITION REPORT

The Minister proposes to make it obligatory for a Condition Report to be completed when a tenant enters into a residential tenancy agreement. A standard compulsory form will be made available, and both landlords and tenants will be expected to complete the form as part of the letting procedures under the RTL.

The responses to the consultation show that both landlords and tenants find Condition Reports useful when recording the condition of a residential unit at the beginning of a tenancy, and many would welcome the introduction of a standard form.

It is already common practice for local landlords and letting agencies to prepare inventories when a tenant takes possession of a property, but it is not known how many are prepared in this way, and there is concern that these do not always

satisfactorily reflect the condition of a property, leading to disputes when a rental deposit is due for return.

By making Condition Reports compulsory, it will mean that the return of a deposit can be more easily managed, prevent disputes when a tenancy ends, and ensure fairness between landlords and tenants.

In order to make the use of Condition Reports effective, they will need to be simple to use while being comprehensive enough to make the process worthwhile. Condition Reports must, at a minimum, cover the general state of repair of each room in a residential unit and the condition of its fixtures and fittings. However, the Minister recognises that landlords and tenants do not wish to be unduly constrained by standard Condition Reports, and will therefore ensure they are designed in such a way as to be adaptable for use with all types of residential accommodation falling under the RTL.

The responses to the consultation also suggest that landlords and tenants find photographs useful when recording the condition of residential properties, and given the visual support they provide, these will be made compulsory as part of Condition Reports.

STANDARD FORM OF RESIDENTIAL TENANCY AGREEMENT

The Minister intends to take forward the proposal to introduce an optional standard form of residential tenancy agreement, which will be available for landlords and tenants to use.

The consultation responses show that many landlords already have experience of writing up their own tenancy agreements. The Minister is therefore of the view that a non-compulsory standard agreement would strike a stronger balance between not being too prescriptive on landlords and tenants, while ensuring that those who want assistance to comply with the RTL have the means to readily do so.

The intention of the RTL is to introduce a minimum of bureaucracy into the framework of responsibilities to be placed on landlords and tenants, and landlords will still be able to decide what form their residential tenancy agreement takes. However, should a landlord choose not use a standard form of residential tenancy agreement, he or she will need to ensure that the agreement is consistent with the provisions of the RTL.

ADDITIONAL OBLIGATORY PROVISIONS

The consultation findings show wide support for including a number of additional obligatory provisions in residential tenancy agreements to establish minimal obligations with regard to –

- Responsibility for repairs and maintenance of a residential unit
- Responsibility for the insurance of a residential unit
- The requirement for a tenant to obtain a landlord's consent to sub-let or assign a residential unit, and for that consent to not be unreasonably withheld
- Responsibility for Parish rates and utility bills.

The Minister proposes to bring forward an amendment to Schedule 1 of the RTL in order to set out the responsibilities of landlords and tenants in relation to these matters.

It is acknowledged that the consultation findings suggest that many respondents do not wish to give tenants the ability to assign or sub-let residential units. However, the Minister does not consider it unreasonable that tenants should be able to sub-let or assign their tenancy agreements provided they have permission from the landlord. The RTL already affords sufficient opportunities for landlords to protect their interests and, given that a residential tenancy is a commercial agreement, a landlord should not be able to withhold his or her consent *unreasonably* to any request to sub-let or assign by a tenant by virtue of paragraph 3 of Schedule 2 of the RTL.

Finally, the Minister is concerned with the comments of the Citizens Advice Bureau and Jersey Electricity regarding the maximum resale price of gas, electricity and water. While it is recognised that the problem is not widespread, the Minister wishes to give the matter further consideration. Accordingly, the Minister intends to review the issue of tenants being charged above the retail price for utilities, and consider whether or not it would be desirable to bring about measures to prevent the practice.

STANDARD FORMS OF NOTICE

Based on the responses to the consultation, the Minister wishes to introduce the following standard forms to give notice of –

- the termination of a tenancy agreement by a landlord or tenant;
- a breach of a tenancy agreement.

The RTL makes it compulsory for a landlord and tenant to be responsible for the service of notice on the other as appropriate. Currently the Law is flexible about the wording of the notices but, given the importance of such forms if disputes arise, the Minister proposes to introduce a standard form of notice to assist landlords and tenants. However, these forms will not be made compulsory and both parties will still have the ability to prepare their own forms of notice.

SUMMARY OF RESPONSES

Question 1: Have you ever been involved in a tenancy dispute over –

- (a) **The return of a rental deposit? YES – 11 NO – 3**
 (b) **Any other tenancy issue? YES – 13 NO – 1**

Question 2: Have you ever used a Condition Report? YES – 10 NO – 5

Question 3: If you answered Yes to Q2:

- (a) **Did you write up your own Condition Report? YES – 10 NO – 2**
 (b) **If “Yes”, how easy or difficult did you find this to do?**

Very easy	4	Quite easy	4	Very difficult	0	Quite difficult	1
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- (c) **Was the Condition Report helpful at the end of the tenancy when the return of the tenant’s deposit was discussed?**

Very helpful	5	Quite helpful	2	Not very helpful	0	Not very helpful at all	2
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- (d) **If not helpful, why not?**

Examples were cited by 2 respondents of tenants who had abandoned their properties or left personal contents and belongings when moving out. It was noted that in these circumstances it sometimes became difficult for landlords to arrange for cleaning and repairs to take place or belongings to be removed because former tenants either refused to co-operate, provided no forwarding address or were incapacitated (e.g. death or illness).

In these instances the responsibility to arrange repairs, cleaning or the removal of belongings fell to the landlord. Condition Reports were therefore of little use because they had no bearing over whether the tenant complied or not and usually meant additional costs for a landlord.

It was finally queried by one respondent whether there would be any provision within a standard Condition Report to accommodate tenants who were prepared to make improvements to a property at their own expense.

- (e) **Would you prefer to use a standard Condition Report form if one existed? YES – 14 NO – 4**

Question 4: How useful do you think a Condition Report would be?

Very useful	8	Fairly useful	2	Not very useful	2	Not very useful at all	2
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Question 5: Do you think Condition Reports should have photographs of the accommodation attached? YES – 11 NO – 3 (one suggested it should be optional)

Question 6: do you think the use of Condition Report should be compulsory at the beginning and end of a tenancy? YES – 14 NO – 5

Question 7:**(a) What do you think of the example Condition Reports included in Appendix B?**

A number of issues were raised by respondents about the example Condition Reports. Four responses highlighted the following concerns about the reports:

- they are overly complicated and too detailed – photos are normally satisfactory
- the reports appear to be time-consuming
- there is no guarantee that a tenant would accept a landlord's comments about the condition of their property at the end of a tenancy.

Conversely, another 4 respondents suggested the examples were not detailed enough. The Citizens Advice Bureau, for example, expressed its concern that there was no provision in the Condition Reports to take into account subsequent changes that could occur during a tenancy. In such instances, it was noted, an Appendix should be considered to annotate any changes.

Likewise, 2 responses indicated that more space was needed to record additional comments, damage and defects in a property.

The 3 responses in favour of the example Condition Reports, however, suggested they were satisfactory, comprehensive and written in good easy to use formats.

Four of the respondents indicated their preference of one example report over the other. It was suggested that:

- The New Zealand example was simple to use. It only stated whether the condition was acceptable or not – it did not grade the condition like the British Columbian example.
- The Canadian example was more comprehensive and adaptable.
- The New Zealand form would be useful for furnished lets but would not be practical for unfurnished properties.

(b) Any other comments?

While a number of responses indicated that implementing statutory Condition Reports would be beneficial for both parties involved in a Tenancy Agreement, there was some concern.

In a similar manner to previous comments, one response indicated that Condition Reports would not prevent uncooperative tenants from failing to abide by a Tenancy Agreement despite the use of a Condition Report. It was noted that in practice it would make more business sense for a landlord to minimise losses and not rely on enforcing agreements, save suffering high legal costs and other expenses.

There was also general concern about the costs to landlords of introducing Conditions Reports. It was suggested, for instance, that completing the reports would necessitate a large amount of the landlord's time. Furthermore, it was questioned who would pay for the costs associated with translating a report into another language should this be required by a tenant.

Other comments included:

- Reports must state what happens in the event of damage exceeding a tenant's deposit
- What would happen in the event of defects not being recorded in photographic form – would these be deemed to be in good order?
- Landlords should have the option to use their own forms
- If a defect became apparent during a tenancy (e.g. disposition to mould) how would this be accounted for in a Condition Report?

Question 8: Have you ever used the Standard Form of Written Contract issued under the Rent Control Legislation? YES – 9 NO – 6

Question 9: If you answered Yes to Q8 – did you find the Standard Written Form of Contract:

- (a) **Included all the points you needed? YES – 1 NO – 7**
 (b) **Included additional points that were not relevant to you? YES – 4 NO – 4**
 (c) **Did you wish to add in extra provisions? YES – 7 NO – 1**

Question 10: Have you ever drawn up your own tenancy agreement?

YES – 12 NO – 3

Question 11: Do you think that all landlords and tenants should be required to use the same standard form of tenancy agreement (with the ability to add extra clauses if necessary)?

YES – 9 NO – 6

Question 12: If a standard agreement was provided, but not compulsory, do you think it would be helpful to have an optional agreement available? YES – 15 NO – 0

Question 13: Are there any other matters that you think should not be included in a compulsory standard agreement, i.e. matters that should be left to the parties?

A number of responses suggested that it would be difficult to introduce a compulsory standard form of residential tenancy agreement because there was a large variance, out of necessity, in the provisions that a landlord might wish to include in an agreement.

In line with the above responses, 2 individuals indicated that if a standard agreement were to be introduced then it should be flexible enough for a landlord to vary the basic form so that it would be applicable to the specific circumstances of a property and a tenancy.

Other matters that some respondents did not believe should be built-in to standard agreements included:

- Periods of notice
- Amount of deposit
- Continuation of a tenancy after the expiration of a fixed term
- Removing provision for tenants to have the automatic right to sub-let.

It was generally considered that these matters should be agreed between the parties involved.

Question 14: Are there any matters that you think should be included in a compulsory standard agreement?

The responses received indicated a number of provisions that might also be considered for inclusion in a compulsory standard Residential Tenancy Agreement.

One of the main concerns was that standard agreements should make clear whether a tenant or a landlord is responsible for paying utilities and Parish rates. This was a view expressed, in particular, by the Comité des Connétables, which stated that agreements should specify all the charges or amounts payable by a tenant and whether some utility costs are covered in the rent.

Other respondents suggested that agreements should also include provisions to clarify who is responsible for insurance, maintenance, repairs and the service of fixed installations.

Moreover, the Comité des Connétables suggested that when amounts are to be recharged to a tenant by a landlord, there should be protection in a standard agreement to ensure that the amounts payable cannot exceed the charges levied. This was a view reiterated by both the Citizens Advice Bureau and Jersey Electricity, who agreed there should be greater protection for tenants in terms of the maximum resale prices for gas, electricity and water.

It was noted that tenants in the UK were afforded similar statutory protection in 2003, but in Jersey there were still instances where landlords sold on these services to tenants at inflated prices from their own supply.

Furthermore, both Jersey Electricity and the Citizens Advice Bureau suggested that landlords should be made to comply with minimum energy efficiency standards. It was recalled that the UK Energy Act 2011 required private landlords to bring their properties up to Energy Performance Certificate standard by 2018. Both respondents suggested that there was also an opportunity to require such provisions in Jersey, which would serve to save tenants costs on wasted energy.

Other matters suggested for addition into agreements included:

- Clarification on what a tenant's deposit represents
- Notice periods for landlords and tenants
- Landlords should be able to impose penalties or charges on late rent payments
- Ensuring neighbouring properties do not suffer from a tenant's disturbance
- Provision for fair "wear and tear"
- Provision to ensure that a tenant's lifestyle does not cause deterioration to a property – e.g. failing to use the heating system or not ventilating properly.

While there was general support for additional provisions in standard agreements, it was emphasized in some responses that these agreements should not be too onerous on landlords and tenants, and should only do what was necessary to comply with the provisions of the new Residential Tenancy Law. Likewise, one response explained that a standard agreement would make little practical difference to a bad tenant unless the landlord was prepared to take the matter to court to recover the costs, which would not make economic sense in many instances. Conversely, it would make little difference to a good tenant other than to inconvenience them.

Question 15: Do you think a standard form for use by landlords or tenants when giving notice to terminate a tenancy agreement would be helpful? YES – 12 NO – 2
(2 suggested it should be for landlords only)

Question 16: Do you think a standard form for use by landlords when giving notice that a breach of the tenancy agreement had occurred would be helpful? YES – 13 NO – 1

Question 17: If you answered “Yes” to Question 15 and 16, do you think that use of these standard forms of notice should be compulsory? YES – 7 NO – 7

Question 18: Do you think additional provisions relating to the matters referred to below should be made compulsory in all residential tenancy agreements?

(a) General expectations regarding repairs and maintenance YES – 12 NO – 3

(b) Insurance YES – 12 NO – 3

(c) Sub-letting and assignment YES – 11 NO – 3

Question 19: Do you think there are any other provisions that should be included as compulsory obligations in a residential tenancy agreement? YES – 7 NO – 7

If you have answered “Yes” to Question 19, please give examples:

Many of the points raised in this section were also dealt with in Question 14. It was, however, suggested by the Citizens Advice Bureau that consideration should be given to implementing a timescale for the refund of deposits.