

STATES OF JERSEY



TENANCY NOTICE PERIOD (P.2/2022): AMENDMENT

Lodged au Greffe on 1st February 2022
by the Minister for Housing and Communities
Earliest date for debate: 8th February 2022

STATES GREFFE

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For the words “to make an Order under Article 6(3)(e)” substitute the words “as part of his current modernisation review” and for the words “to introduce increased minimum notice periods for periodic tenancies” substitute the words “to bring forward proposals to improve security of tenure protection”.

MINISTER FOR HOUSING AND COMMUNITIES

Note: After this amendment, the proposition would read as follows –

THE STATES are asked to decide whether they are of opinion –

to request the Minister for Housing and Communities, as part of his current modernisation review of the Residential Tenancy (Jersey) Law 2011, to bring forward proposals to improve security of tenure protection.

REPORT

A knee-jerk reaction to a bad situation rarely results in a good long-term solution.

Senator Mezec's proposal to increase notice periods for long-serving tenants in isolation of other changes to tenant protection is unlikely to result in improved security of tenure. Indeed, it runs the risk of landlords creating more short-term fixed-term tenancies, actually reducing security for tenants.

I ask Members to support my amendment, which acknowledges the significant work that is already under way, will deliver a better outcome for tenants and avoids the risk of making things worse for tenants.

As Minister for Housing and Communities, I quickly identified the need to improve the Residential Tenancy Law and this was included in my Creating Better Homes Plan published in May 2021. Since then detailed work has been undertaken on the improvements needed to the Law and I am signing a Ministerial Decision for law drafting to commence. This work will not be complete before the election, but I urge the next minister responsible for housing to continue with the important work on updating this law.

The proposed amendment identifies that improving the rights of long-standing tenants is an important element of the overall project but this should be undertaken as part of the comprehensive overhaul of the law.

Senator Mezec's proposition does not specify a date by which the Minister should take action. Work has already started on improving the current law and while the exact timing will lie in the hands of the next Minister, I anticipate that the updated draft Law will be ready for full public consultation by the end of 2022.

Current legal framework

A periodic tenancy does not have a fixed end date and the Residential Tenancy Law sets out minimum notice periods for landlords and tenants where a periodic tenancy is in place. Under the Law, the landlord must give at least three months' notice to end the tenancy and the tenant must give at least one month's notice if they wish to end the tenancy.

Leases with fixed start and end dates are also permissible under the current Law. In this situation the lease finishes on a specified date. Fixed-term leases can last for up to nine years under this law.

In the last resort, in the event that a landlord serves notice on a tenant who fails to leave the property at the end of a tenancy, the landlord can seek an eviction notice from the Court. Articles 14 and 15 of the Law set out the role of the Court in this matter. The Court can grant a stay of eviction in a range of circumstances. Before an eviction notice is made, the Court must take account of (amongst other factors):

- 15(1)(d) if a stay were ordered, where the balance of hardship would fall as between the landlord and the tenant;

- 15(2)(b) whether other accommodation is available to the tenant;
- 15(2)(k) the pattern of evictions in other residential units let by the landlord;
- 15(2)(o) such other matters as the Court considers relevant.

Last year, the Court considered 34 requests for eviction and granted permission in 23 cases. Often landlords and tenants are able to reach a private agreement so that the eviction does not need to proceed. In those cases that do result in an eviction, the judge will weigh evidence from both the tenant and the landlord. In some cases the Court will extend the period in which the tenant must vacate the premises by a number of months. In this way the Court regularly uses its powers to protect tenants under eviction notices to ensure that they have suitable accommodation to move to before the eviction is allowed.

Impact of an increase in Landlord's notice period for tenants with longstanding periodic tenancies.

Under the current Law, the landlord is subject to a three-month notice period in respect of any periodic tenancy, with the tenant able to serve notice of one month. There is reasonable flexibility on both sides and tenancies may last for many years without interruption.

Increasing notice periods in respect of the landlord could mean:

- Landlords may give notice on periodic tenancies whilst they are still subject to the shorter notice period to avoid reaching the point at which a longer notice period is required.
- Landlords may convert periodic tenancies into fixed term tenancies, requiring the tenant to renegotiate the tenancy every one or two years.

It should also be noted that the current Residential Tenancy Law does not apply to tenancies that started before May 2013 and so long-standing tenancies would not be covered by the proposed Ministerial Order.

Senator Mezec's report refers to the advantages of introducing open-ended tenancies as the main form of residential tenancy. In reality, approval of his proposition is likely to lead to a reduction in the number of open-ended (periodic) tenancies currently in use, to the detriment of those tenants.

Amendments to the Residential Tenancy Law

Following a detailed examination of the policy and operation of the existing Residential Tenancy Law, comprehensive instructions have been drawn up to update the Law to provide increased protection for both tenants and landlords. Areas identified for action include:

- extend the coverage of the Law to more tenants.
- enhance the mechanisms for enforcement.

- offer benefits to landlords as well as tenants.
- provide more clarity.

The Law sets the balance of rights and responsibilities between landlords and tenants. A fair and well-functioning rental market needs to be based on a fair balance of these rights and responsibilities between landlord and tenant. For example, requiring a six-month notice period from a landlord while the tenant can give just one month's notice does not appear to support that balanced approach.

A new draft law will be prepared during 2022 and will then be subject to thorough public consultation prior to seeking States approval for the proposals.

The development of the new draft law will include a full review of notice periods for both landlords and tenants. It will also consider the possibility of requiring open-ended tenancies in some situations.

Conclusion

Members are urged to support the amendment to the proposition which will allow the planned work to update the whole of the Residential Tenancy Law to proceed without delay. This will include a thorough review of the way in which tenancies are established and can be broken for both landlords and tenants, with the aim of providing increased security of tenure for long-standing tenants.

To sum up, taken in isolation P.2/2022 is flawed and would likely have negative impacts on tenants' rights. Work is already well under way on a full update of the Law to ensure that the proposed changes work together in removing loopholes and avoiding unreasonable restrictions on tenants and landlords. The new Law will balance greater protection within tenancies against the need for break clause provisions that will allow tenants and landlords to bring tenancies to an end on legitimate grounds.

The original proposition, if approved, is likely to lead to tenants being offered fixed-term tenancies with reduced rights compared to the current position. It would also divert resources from the planned work which is aimed at improving tenants' rights across all areas.

Financial and manpower implications

There are no additional financial or manpower considerations arising from this amendment.