

STATES OF JERSEY



DRAFT RESIDENTIAL TENANCY (JERSEY) LAW 200- (P.74/2009): AMENDMENT (P.74/2009 AMD.) – COMMENTS

**Presented to the States on 13th July 2009
by the Minister for Housing**

STATES GREFFE

COMMENTS

It is a matter for the States to decide whether they wish to support this proposition, but, on balance, the Housing Minister believes it should be rejected.

The principle hinges around whether it is acceptable that a landlord should have the right to unreasonably refuse consent to a tenant who wishes to make any structural changes to the landlord's property.

Schedule 2, Paragraph 2 of the Residential Tenancy Law establishes the principle that:

“to the extent that the residential tenancy agreement (or another agreement between the landlord and tenant) requires the tenant to obtain the landlord's consent before the tenant does something in respect of the residential unit, that consent shall not be unreasonably withheld or delayed by the landlord.”

The issue of consent is one that first needs to be addressed by the parties, by including a clause dealing with consent in the tenancy agreement, if the Schedule 2 provision is to apply.

Schedule 2, Paragraph 2 does not mean that the tenant can do anything he likes to the property *if* consent is a requirement in the residential tenancy agreement. It simply requires the landlord to act reasonably, even in so far as structural changes are concerned, if consent is required and requested, and if the agreement does not preclude structural changes when referring to a requirement for consent. In such a case, the tenant has a right to expect reasonable responses from the landlord.

If this amendment is accepted, it would be clear that Schedule 2, Paragraph 2 did not apply to structural changes so consent could be withheld without any reasonableness test being capable of being applied. However, the reasonableness provision would apply to all other issues requiring consent under the agreement, and consent could not be unreasonably withheld.

Under the Law as presently drafted however, landlords remain free to stipulate in the residential tenancy agreement, i.e. at the outset, that structural changes are not permitted.

Examples as to how the Law as drafted would operate:

If a tenant asks to make a structural alteration, such as knocking down an interior wall to make a room larger, or making doorways wider to accommodate a wheelchair, or some other change that could be construed as structural, whether to suit lifestyle, tastes, or need, **and**

- (i) a consent clause is included, but does not specifically refer to structural change, and the landlord refuses his consent, it would be a matter for the Court to decide whether the latter was being unreasonable in the circumstances if the tenant were to contest the landlord's decision;
- (ii) if a clause was included that specifically stated that structural changes were not permitted then the landlord could withhold consent either

reasonably or unreasonably. Schedule 2, Paragraph 2 would not be applicable.

Conclusion

Arguably, a property owner should be able to do whatsoever they wish with their property, especially in regard to structural matters.

However, they are entering into commercial relationships and providing a home to another resident, perhaps for prolonged periods of time. The Law, as proposed, would appear to afford sufficient opportunities to the landlord to specifically protect his interests, including the ability to rule out structural changes in the agreement at the outset, and indeed the ability to give notice.

On the grounds that sufficient opportunities are retained for landlords, and that tenants have the right to expect reasonable responses when dealing with their landlords, the Housing Minister does not support this request.