

STATES OF JERSEY



TENANCY NOTICE PERIOD

**Lodged au Greffe on 7th January 2022
by Senator S.Y. Mézec
Earliest date for debate: 8th February 2022**

STATES GREFFE

PROPOSITION

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

to request the Minister for Housing and Communities to make an Order under Article 6(3)(e) of the Residential Tenancy (Jersey) Law 2011 to introduce increased minimum notice periods for periodic tenancies where the tenant has lived in their home for a long time.

SENATOR S.Y. MÉZEC

REPORT

Summary

Currently, for periodic tenancies, landlords are only required to give their tenants 3 months' notice to quit, irrespective of how long the tenant has made their home in that property.

If approved, this proposition would require the Minister for Housing and Communities to use his powers to provide increased security of tenure for tenants who have lived in their homes for a substantial amount of time, by requiring longer notice periods which reflect the length of time a tenant has lived in that home.

It should be noted that it is not intended to place an undue burden on Landlords – the proposition does not ask for excessive notice periods to be imposed. Indeed, obligatory notice periods could be capped by the Minister within the Order. The residential notice periods applied within the Irish Residential Tenancies Act 2004 are included in Appendix A as an example.

What is a Periodic Tenancy?

A periodic tenancy is a tenancy agreement without a specified end. The “period” is the recurring length of time between rental payments. In most instances, this is a month.

This differs to a fixed-term tenancy, where the term of the tenancy is specified in writing and must be expressly renewed at its end for another fixed term to apply.

Periodic tenancies often arise at the technical conclusion of a fixed-term tenancy, but where the landlord and tenant do not expressly sign up to another fixed term, but simply continue on with their relationship as they had been previously, with the same terms implied.

Periodic tenancies can arise out of the convenience for both parties of not having to go through a formal process of constantly renewing a tenancy agreement, however the consequence of this is that the tenant loses certainty on the minimum length of time they can remain in their home, with the potential for the rug to be pulled out from beneath their feet at any moment, with just 3 months' notice given.

Why provide for enhanced security of tenure?

Under the current rules, a family can live in a home for decades, build up their entire community network, work/ life balance and provisions for their children based on what that home and location offers, only to have it taken all away from them on the whim of a landlord who can end the tenancy with just three months' notice and without any reason given for this whatsoever.

For tenants who frequently move between homes or are younger and still finding their way in life, this may be less of an issue. But for older tenants with caring responsibilities or children in their local school, being forced out of their home can have devastating consequences for them, which cannot be surmounted in just three months.

On top of this, when this is done by an institutional landlord divesting from the market (as appears to be the case now with Spencer Close) this can also cause a sudden jump in demand for the Affordable Housing Gateway which our social housing providers may not be able to accommodate quickly, which then leads to vulnerable tenants facing homelessness as they are not guaranteed to be able to find a home which they can afford in such a short length of time.

This is recognised as being an issue which must be addressed in Jersey.

Both the [Housing Policy Development Board report](#) (R.63/2021) and the [“Creating Better Homes” plan](#) (R.98/2021) made improving security of tenure for tenants a priority. The HPDB report recommends updating and improving legislation to provide for this. The CBH plan said that proposals to do this would be published by the end of 2021 as part of a [‘Fair Rents Plan’](#). This plan was published on 4th January 2022 but does not contain the promised detail on providing for enhanced security of tenure.

The Housing Policy Development Board (which contained a wide cross section of States Members and engaged with major stakeholders) examined the protections which exist for tenants in Jersey and found them to be severely lacking when compared to other jurisdictions. The result of this being that tenants lack security of tenure and face difficulties in building lives for themselves without the foundation of a secure home.

The Board recommended introducing open-ended tenancies (as is commonplace in many parts of Europe) as a first option or increasing the notice requirements for landlords¹.

The Board summed up the two main benefits of this policy in the following terms:

- It improves the rental experience for tenants, and ensures affordability is not driven at the cost of rental insecurity or low-quality rental experience
- It contains provisions which provide greater certainty to landlords on rental income, and thereby potentially reduces voids

By providing for enhanced notice periods, based on how long a tenant has lived in their home, tenants will have greater security and a lived experience closer in comparability to home ownership.

By tying it to the length of time a tenant has lived in their home, this will not put an onerous burden on landlords who have tenants who have not lived in their homes for very long.

Compatibility with the ‘Fair Rents Plan’

On 4th January 2022, the government published the ‘Fair Rents Plan’. The plan proposes the re-establishment of a Rent Control Tribunal but does not contain the detail which was promised on reforms to the Residential Tenancy Law to provide for enhanced security of tenure. It states that amendments to the RTL will be made by the end of 2022, which is half a year **after** they propose re-establishing the Rent Control Tribunal.

There is a serious risk that a newly constituted Rent Control Tribunal will simply be ignored by tenants if it does not come alongside enhanced protections over their security

¹ Page 57 of the Housing Policy Development Board report <https://statesassembly.gov.je/assemblyreports/2021/r.63-2021.pdf>

of tenure. If a tenant faces unjustifiable rent increases, but knows their landlord still has the power to end their tenancy with three months' notice without having to provide any justification for this and without any real ability to appeal it, then they will be reluctant to use this service.

Whilst we await the final detail on what exactly will be proposed to be changed in the RTL, the option does already exist for the Minister to use the powers given to him in existing legislation to issue a Ministerial Order to stipulate new minimum requirements for notice periods. The legislation also clearly states that these notice periods can vary between different classes of cases. Therefore, this particular policy intervention is not reliant on other work being completed before being able to be taken.

This proposition therefore proposes that action is taken **immediately** to secure enhancements to security of tenure, so that tenants are less likely to face the situation that many have faced in Spencer Close and other places, where their lives are turned upside down with very little notice. This can be taken as a steppingstone towards other measures to reform the law more generally, and does not detract from that work, but could be seen as enhancing it by making the Rent Control Tribunal seen as more viable.

The Minister will have to quickly determine which option is most suitable, but this can be along the lines of increasing the obligatory notice period by a stated amount for every year that the tenant(s) have lived in that home, with an upper cap on the maximum length that can be.

Children's Rights Impact Assessment

Article 27 of the United Nations Convention on the Rights of the Child promotes the "right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development".

Article 27(3) of the United Nations Convention on the Rights of the Child places an obligation on States Parties to assist those responsible for children to implement this right, including by providing material assistance to access support, including housing.

It is clearly fundamental to children's wellbeing that they are able to grow up in a stable home environment where their needs can be met, and they have the foundations to thrive. This is clearly more difficult to provide if their family is faced with constant upheaval by being required to leave their home when they have become settled.

By providing enhanced security of tenure, those tenants with children will have more confidence that their home is worth investing in and providing an environment their children can develop in.

Financial and Manpower Implications

There are no financial and manpower implications beyond the officer time that would have to be dedicated to researching and proposing options for the Housing Minister's consideration for adoption.

Appendix A

Irish Residential Tenancies Act 2004 (Revised)

<https://revisedacts.lawreform.ie/eli/2004/act/27/revised/en/pdf?annotations=false> –
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F129[**TABLE 1**
F130[**Termination by Landlord**

Duration of Tenancy (1)	Notice Period (2)
Less than 6 months	28 days
Not less than 6 months but less than one year	90 days
Not less than one year but less than 3 years	120 days
Not less than 3 years but less than 7 years	180 days
Not less than 7 years but less than 8 years	196 days
Not less than 8 years	224 days]]

Appendix B

Excerpt from the Residential Tenancy (Jersey) Law 2011

6 Periodic tenancy: requirement by landlord to quit

- (1) This Article applies to a residential tenancy under which the tenant occupies a residential unit on the basis of a recurrent period, either in a case where any specified term of the tenancy has expired or in a case where there is no specified term.
- (2) A landlord shall not, except by a requirement that is in accordance with this Article, require a tenant to quit the residential unit that the tenant has occupied under a residential tenancy to which they are both parties and to which this Article applies.
- (3) A requirement is in accordance with this Article if it is –
 - (a) in writing;
 - (b) signed by or on behalf of the landlord;
 - (c) in the case where the Minister has by Order prescribed a form for such a requirement, in such form;
 - (d) served on the tenant; and
 - (e) so served at least 3 months (or, where Minister has by Order prescribed some other period, being a period of not less than one month, that other period instead) before it is to take effect.
- (4) A residential tenancy to which this Article applies shall terminate when a requirement that is in accordance with this Article takes effect.

(5) For the avoidance of doubt, it is hereby declared that a period prescribed for the purposes of paragraph (3)(e) may be so prescribed generally or in relation to particular classes of cases (including differently in relation to different classes of cases).