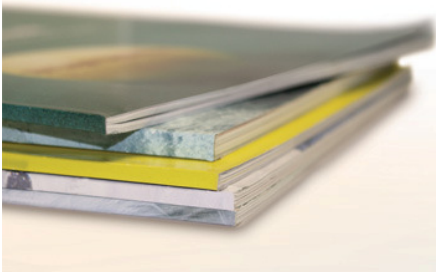


New Residential Tenancies Law



BY GEORGINA COOK

Over one-third of Jersey's population lives in rental accommodation.¹ It is therefore surprising that there is little law relating to residential tenancies. What statutes dates back to 1919 and 1946, are written in French and is not easily digestible to the non-lawyer.

In July 2009, the States of Jersey sought to redress the lack of clarity and public understanding surrounding the rights and obligations of landlords and tenants, by approving the Residential Tenancy (Jersey) Law 2009 ("the Law"). The law which is designed to encourage the development of fair, transparent and well-regulated agreements between landlord and tenant will come in to force once it has been approved by the Privy Council. Everyone involved in renting property, whether as landlord or tenant, should familiarise themselves with the terms of the Law as failure to comply may constitute the committing of an offence.

Who does the Law apply to?

The Law will apply to all residential tenancy agreements (being agreements for the occupation of self-contained dwellings) for the exclusive occupation of a residential unit for value (i.e. for consideration or payment) and for a period of nine years or less, or for no specified term. For an agreement to constitute a residential tenancy agreement, the exclusive occupation must be by one or more natural persons who are party to the agreement. The Law would not therefore relate to leases for occupation by "J-Category" (essentially-employed) staff, which are usually entered into by

the employee's employer, without the employee being party to the lease agreement.

A unit is only a 'self-contained dwelling' if it offers exclusive use to the occupier of a shower or bath; a washbasin; a kitchen; a sleeping space and a lavatory. Certain units within a residential home or premises registered under the Tourism Law may, on the face of it, satisfy this definition. However, the Law prescribes various exclusions, including the two aforementioned types of accommodation, together with holiday lets lasting less than three months and agreements under which the occupier is a boarder, lodger or other licensee. Licences to occupy non-qualified accommodation are not therefore subject to the Law.

The Law applies to all agreements made after the Law's implementation and include those which were made before such date that have been varied or renewed after the Law has come in to force. Whilst the Law requires residential tenancy agreements to be in writing, an agreement is still deemed to be subject to the Law if it is partly or wholly implied, or partly or wholly oral.

What must a tenancy agreement contain?

Residential tenancy agreements (and any variations or renewals) must be in writing and signed by, or on behalf of, the parties to the agreement. The tenant must be given at least one working day to read the agreement before having to sign it. A copy of the agreement must be given to the tenant as soon as reasonably practicable after it has been signed by the

¹ Jersey in Figures, 2007 p.33, States Statistics Unit

parties. The Law then provides that all residential tenancy agreements must contain the following:

- A description sufficient to identify the residential unit that is the subject of the agreement;
- The date that the tenancy commences;
- The date (if any) when the tenancy will come to an end, or the term (if any) at the end of which the tenancy comes to an end, or the condition (if any) on the fulfilment of which the tenancy comes to an end;
- Name of the landlord;
- If there is a managing agent involved, his name and business address, or if there is no such agent, the business address of the landlord;
- The rent payable and its frequency of payment;
- The name of to whom the rent is to be paid;
- How the rent is to be paid;
- The amount of any deposit or guarantee payable and how and when any such money is to be repaid;
- When the rent is to be reviewed (if at all) and the basis of review;
- An inventory of the landlord's movables situated in the accommodation.

Residential tenancy agreements must also contain provisions which:

- Allow for a tenant to remove his own fixtures subject to making good any damage caused in so doing;
- Allow for the landlord's consent not to be unreasonably withheld in circumstances where it is required;
- State that the tenant is not to be required to purchase any fixtures or fittings or pay any premium or key money in respect of the residential unit.

Even if these matters are not written in to the tenancy agreement, they shall be deemed to form part thereof. Furthermore, it is an offence to purport to include any provision which seeks to make void any contractual provisions which are inconsistent with the Law, or which seek to contract out of the

Law's requirements.

What if the dwelling becomes uninhabitable?

If a dwelling which is the subject of a residential tenancy agreement becomes uninhabitable (other than through the malicious act of the tenant) rent and other payments due under the agreement shall cease to be payable whilst the dwelling remains uninhabitable. Furthermore, a landlord cannot, without lawful reason, prevent the tenant from occupying and enjoying the dwelling or any part thereof.

Terminating a tenancy agreement

The Law replaces the provisions of the 1919 statute mentioned above with respect to the termination of periodic tenancies. A periodic tenancy is one which is for an indefinite period but can be terminated by a period of notice. Under the Law, such a tenancy may be terminated by the landlord on giving no less than three months' written notice of termination and by the tenant on giving no less than one month's written notice.

If a tenant breaches the terms of the residential tenancy agreement, under the Law, the landlord must serve notice of the breach on the tenant requiring the cessation within seven days of the offending conduct and/or the taking of reasonable measures to rectify the breach. If the tenant fails to comply with the notice, the landlord may apply to the Court (being the Petty Debts Court) for an order terminating the agreement and evicting the tenant.

The Law clarifies the procedure for the eviction of tenants by the Viscount (a court officer). The above-mentioned 1946 statute gives the Court power to grant stays of execution of eviction orders. The Law expands this and sets out matters that the Court must consider, being:

- Whether any rent is outstanding;
- Whether either party has breached the tenancy agreement;
- Whether the party who committed the breach continued or repeated it, or took reasonable steps to remedy it; and
- If a stay were ordered, where the balance of

hardship would lie between the landlord and tenant.

The Court may also consider various factors relating to the history of the tenancy and the parties' circumstances, including the availability of other accommodation for the tenant.

It is hoped that, once coming into force, the Law will encourage landlords and tenants to focus on the

terms of their residential tenancy agreement so that each party has a good understanding of their rights and obligations thereunder. If successful, the standard of such agreements should rise, thus reducing the uncertainty and dispute which both landlords and tenants can face under the existing regime.

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