

PE1743/D

Petitioner submission of 21 December 2019 updated on 8 March 2020

Having consulted members of Central Govan Tenants and Residents Association about the three responses, we remain strongly of the opinion that our petition on the rights of appeal of pre-1989 Scottish Secure Tenants remains valid and hence wish to continue with our request that the Scottish Parliament amend the Housing (Scotland) Act 1984 as specified.

We contend that none of the submissions addresses the issues raised.

- a) The response from the Judicial Office for Scotland simply states the sources of information on current decisions and appeals.
- b) The response from the Scottish Government does not directly address the issue. It says that the First Tier Tribunal, which hears rent appeals, is independent. For this reason they say they cannot comment. They also note that the Scottish Housing Regulator expects Registered Social Landlords to consult tenants on rent levels but cannot itself intervene. It notes that there are less than a thousand pre-1989 Scottish Special Tenants still living.

This, we contend, evades the issue. This is that the wording of the current legislation technically allowed a determination of rent by officers of the First Tier Tribunal that was found in Court of Session to be out of line with the spirit of the act and erroneous in law. It permitted a disproportionate increase that aligned social housing rents with the private rented sector and set a precedent that has since forced up rents of other pre-1989 tenants in housing association properties locally by up to 80 per cent.

- c) The response from COSLA says that COSLA and ALACHO, the professional body of heads of housing in local government share our concerns 'about rent rises in the social sector' but that the process of setting these rents is not within their sphere of responsibility but that of Registered Social Landlords.

This again evades the issue. We do not ask that Councils intervene in the setting of rents by Registered Social Landlords – it is anyway the appeal process to the First Tier Tribunal that is in question. Councils were asked to express support for an amendment to the 1984 Act in their capacity as strategic housing authorities. The recent interpretation by officers of the First Tier Tribunal has severely disadvantaged pre-1989 tenants for whom, as strategic housing authorities, they have overall responsibility.

The issue raised by the tenants from Central Govan is that:

First, the First Tier Tribunal officers set rents on appeal in 2016-17 that were disproportionately high in a way that caused severe economic distress to tenants (increases of between 50 and 90 per cent over three years) and that they did so by using as comparators rents in the private commercial sector elsewhere in the City.

Second, that on appeal in one case the Inner House of the Court of Session found the assumptions used on this occasion by the First Tier Tribunal 'erroneous in law' and 'fatally flawed'.

Third, that after this ruling the First Tier Tribunal refused to reconsider other determinations made using the same methodology – although in the specific case of the rent under appeal to the Court of Session the rent was reassessed and reduced. Fourth, that these disproportionately increased rents have themselves since been used as 'comparators' to increase other rents in the same disproportionate way (in one case by 95 per cent).

The Glasgow City Council, as Strategic Housing Authority through its head of Housing and Regeneration Services, earlier recognised its responsibility to raise these issues, writing a letter to the First Tier Tribunal. This intervention has not, however, secured any change in policy.

The issue therefore remains unresolved. Although it only affects a thousand or so tenants, the current practice of the First Tier Tribunal effectively deprives tenants of their legal right of appeal as laid down in statute. The situation has already forced at least one tenant to surrender their tenancy and move away from the community in which they were born.

Our concern therefore remains. Unless the legislation is changed, this situation will continue. The actual amendment we propose is very limited and simply stipulates, as is also suggested by Glasgow City Council, that the comparators be in the social housing sector and be local.

We believe that the Scottish Parliament has a principled responsibility to ensure that the legislation that stands in its name should not, through imprecise wording, give rise to unjust decisions and thereby effectively deprive tenants of their intended legal right to appeal.