



Middleton Buildings
10-12 High Street
BELFAST
BT1 2BA
www.housingrights.org.uk

Briefing to the Committee for Finance & Personnel on the Review of Rates Liability for the Landlord Sector

5th June 2013

Presented by:

Nicola McCrudden: Policy & Communications Manager

Peter O'Neill: Policy & Participation Officer

Jan Branch: Individual representative/NI Private Tenants' Forum

Summary

1. Housing Rights Service (HRS) welcomes the Department for Finance & Personnel (DFP) consultation on liability for rates payments in the private rented sector.
2. HRS is supportive of the policy intention to simplify the rules governing rate liability in this sector. However we do not believe the proposals as presented will provide any significant clarification.
3. HRS recommends that a further stage to the consultation process is introduced. Given the complex nature of rating legislation, and in particular its interface with contract law, we believe a better outcome could be achieved by DFP engaging with key stakeholders collectively.
4. HRS recommends that the group should consider the following options:
 - a. Making all private rented property with a capital value of £150,000 or under subject to compulsory landlord liability;
 - b. Making owners and landlords responsible for the collection and payment of rates for properties with a capital value above £150,000;
 - c. Maintaining the current provisions of Articles 20 & 21 of the Rates (NI) Order 1977, and
 - d. Ensuring, where landlords default on their arrangements to pay rates as set out in tenancy agreements, that tenants are not prosecuted for rates liability where they can prove the payment of rates.

Background

5. Liability for rates in Northern Ireland is governed by the Rates (NI) Order 1977. Article 18 of that Order provides that the occupier of any rateable property which appears on the valuation list shall be chargeable for rates. While the occupier will usually be liable to rates in the domestic sector, this principle is subject to the provisions of Articles 20 and 21 of the 1977 Order, which deal with owner/landlord liability.
6. Under Articles 20 and 21 owners /landlords of certain properties let out to tenants are liable for rates instead of the occupier. Article 20 creates mandatory liability for landlords/owners, whereas Article 21 provides for voluntary liability by agreement between a landlord and the Department.

7. Consideration, however, must also be given to Schedule 8 to the 1977 Order. Even if the landlord/owner is liable to pay rates under the criteria in Article 20, they may not have to do so if there is a term in a contract/tenancy agreement which states that the rates will be paid instead by a 'specified person' i.e. normally the tenant. A landlord can therefore transfer liability to a tenant/s via the rent collected under the tenancy agreement.
8. The picture is further complicated by the provisions of Article 23 (Liability of occupier for rates unpaid by owner) and Article 24 (Recovery of rates from tenants and lodgers) where the occupier/tenant becomes responsible for the payment of rates if the owner or landlord fails to make this payment or is in arrears.
9. The proposals in the consultation paper only go a small way to simplify these complex arrangements i.e. they remove the criterion relating to the frequency of rent payments.
10. If the proposals are adopted, rates collection will remain expensive and difficult to administer and, in our view, confusion will still exist in regard to liability.

HRS experience

11. Rates issues are becoming more of a priority for our clients. Currently around 10% of our advice enquiries have a rates element to the query. In addition, one third of our total enquires relate to the private rented sector. Our experience tells us the following:
 - Most tenants presume that rates are included in the usual monthly rental demand and indeed this position is confirmed in official guidance.¹
 - Most tenants believe if a tenancy agreement is agreed with a landlord then this will govern liability for rates payments not the 1977 Order.
 - Confusion can exist regarding the facility under Schedule 8 of the 1977 Order where a landlord can transfer liability to a tenant or tenants via the rent collected under the tenancy agreement. This can obscure whether liability for rates is determined by rating legislation or contract law.

¹ See DSD advice http://www.dsdni.gov.uk/prs_newsletter_issue_1.pdf

"Generally, the landlord is responsible for paying the rates and needs to collect an amount from the tenant as part of the rent to cover rates. This should be detailed in the tenancy agreement and rent book." Pg 4

- Most ratepayers do not understand the basis of determining the capital value of a property and this value is generally not readily available to prospective tenants when searching for properties or provided to current tenants by landlords or LPS.
- Most tenants do not receive rent books from their landlords which are meant to contain information on rates liability and costs even though this is a legal requirement placed on landlords. In practice this obligation is not enforced.²
- Most landlords include an amount towards rates in each monthly rental payment and specify this in the tenancy agreement. However, if the landlord fails to pass these payments on to LPS and arrears accrue on the rates bill, LPS will under these proposals still have to pursue the tenant for the money it has not received. The tenant's main form of redress is to sue the landlord for the return of the money paid to her/him.

Conclusion

12. It is argued by DFP that current rules have proved to be complicated to administer and difficult for landlords/owners and tenants /occupiers to understand who is legally liable for rates on rented property. We agree. Unfortunately this position is likely to continue under the current proposals in the consultation paper.

For further information contact:

Nicola McCrudden – Policy & Communications Manager

Tel: 028 90267919 (direct); Email nicola@housingrights.org.uk

² NIHE research shows that three-quarters (73%) of tenants were not provided with a rent book, which landlords are legally required to provide free of charge to their tenants, and over a third (38%) didn't have a tenancy agreement. Source: Private rented sector in Northern Ireland - Report 4: Living in the private rented sector. NIHE (2009)