



Private Tenancies - The New Law

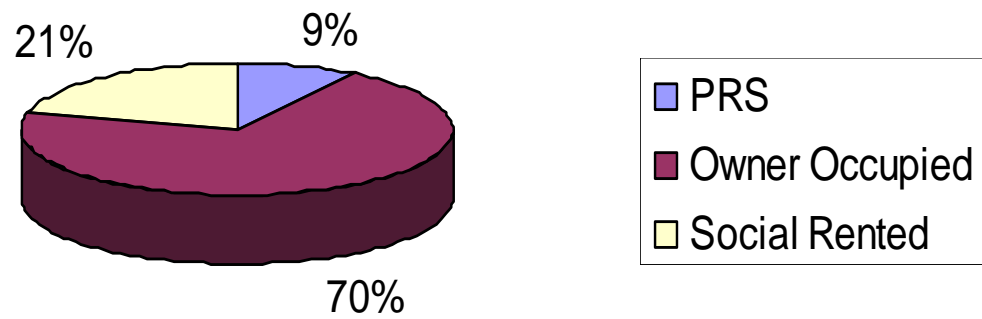
By
Charles O'Neill



Outline of lecture

- Overview of private rented sector
- The Private Tenancies (NI) Order 2006
- The Semple Review into Affordable Housing

The Extent of the Private Rented Sector





Private Tenancies Order 2006

- (1) Introductory
- (2) Obligations of landlords and tenants
- (3) Unfitness and disrepair
- (4) Certificates of fitness and rent control
- (5) Amendments of the Rent Order
- (6) Miscellaneous



Introductory- What is a Private Tenancy?

- Not a fee farm grant
- Not a tenancy for a term certain for more than 99 years
- Not a Tenancy from the Crown or govt department or NIHE or a registered housing association
- Not a holiday letting



Obligations of landlords and tenants

- Tenancy Terms
- Rent Book
- Repair and Maintenance
- Entry and Inspection of the Property
- Default Term of Tenancy
- Notice to Quit



Tenancy Terms

- If a private tenancy of a dwelling-house is created on or after 1 April 2007 landlord shall (free of charge) within 28 days of the grant of the tenancy give the tenant a notice containing certain prescribed information regarding the tenancy.



Variation of tenancy terms

- If a prescribed term of a tenancy is varied after 1 April 2007 (whether tenancy created before or after 1 April 2007) landlord must give notice to the tenant (free of charge) of the variation within 28 days of variation of the term.



Tenancy Terms

- Failure to give the tenancy notice or notice of variation constitutes an offence under the Private Tenancies (NI) Order 2006.



Rent Book

- Landlord must give a tenant a rent book (free of charge) within 28 days from the date on which the tenancy is granted.
- There are certain particulars which must be included in the rent book



Rent Book

- It is an offence not to supply a rent book
- It is an offence for any one who on behalf of the landlord demands or receives rent if there is no rent book but there is a defence if such a person can prove he neither knew nor had reason to believe that the tenant had not been given a rent book within the specified time.



Default repairing obligations

- This is the one area where it is possible to contract out of the provisions of the Private Tenancies Order.



Default landlord repairing obligations

Keep in repair

- structure and exterior (including exterior paintwork)
- interior (subject to tenant's obligations)
- Installations and appliances re use and supply of water, gas and electricity and sanitation
- heating
- Fixtures and fittings provided by the landlord
- If part of a building, the common parts which the tenant is entitled to use.



Landlords obligations

- Not obliged to carry out any works for which the tenant is responsible
- Not obliged to repair or maintain anything not constructed or provided by him or his predecessors
- Not obliged regarding anything tenant can remove from the dwelling-house
- Not obliged to reinstate in event of destruction by fire.
- Needs actual knowledge that the property needs the work to be carried out
- The standard has reference to the age character and prospective life of the premises



Tenant's obligations

- Take good care of property as a good tenant
- Make good any damage wilfully or negligently done or caused by the tenant/sub tenant or lawful visitor
- Keep interior in good repair and condition
- No alterations without consent of landlord such consent not to be unreasonably withheld.



Other obligations outside the Private Tenancies Order

- Upholstered furniture and beds and headboards
- Electrical equipment eg electric fires, cookers, fridges, washing machines, lamps
- Second hand electric gas or oil fires
- Gas safety installation regulations



Entry and inspection

Tenant is required to permit the landlord and persons reasonably authorised for that purpose to enter the property to

- Inspect the state of repair of the property and
- carry out works which landlord is under a duty to execute



Default tenancy term

- If a tenancy is granted which does not provide for a term certain the tenancy shall be for six months beginning on the date on which the tenant is entitled to take possession of the dwelling-house
- This does not apply to a statutory tenancy



Notice to quit

- A notice by a landlord or a tenant to quit a dwelling-house let under a private tenancy must be given in writing not less than four weeks before the date on which it is to take effect.



Part III

Unfitness and Disrepair

- Notice of Unfitness (Article 18)
- Notice of Disrepair (Article 19)



Notice of unfitness

- If a council considers that a dwelling-house let under a private tenancy is unfit for human habitation (or if a flat, that a common part is unfit for human habitation)

it may issue a notice of unfitness on the owner of the dwelling-house



Notice of unfitness

- Requires the landlord to carry out the work within a reasonable time which will be specified.
- Council will use the standard in article 46 of the Housing (NI) Order 1981.
- Council will consult with NIHE re powers etc.



Notice of disrepair

- If a council considers that a dwelling house let under a private tenancy (or if a flat a common part) is in a state of disrepair such that while it is fit for human habitation substantial repairs are needed to bring it up to a reasonable standard having regard to its age character and locality or
 - Its condition materially interferes with the personal comfort of the occupying tenant
- The Council can issue a notice of disrepair on the owner of the dwelling-house.



Notice of disrepair

- This will give the person on whom it is served a specified time within which to carry out the required works and will give reasons for the issue of the notice.



Appeals against notice of unfitness and notice of disrepair

- A person aggrieved by a notice of unfitness or a notice of disrepair can appeal to the County Court within 21 days from the date of service of the notice.
- On appeal the court can confirm, quash or vary the notice.



Failure to comply with notice of unfitness or notice of disrepair

- A criminal offence under the Order
- Council may do the works itself and charge the landlord for doing this.



Part IV

- Certificate of fitness and rent control



Certificate of Fitness

- Which properties need one?
- Who can apply for one?
- How is application made?
- How long does a certificate of fitness last?



Which need a certificate of fitness?

- Those built or converted before 6 November 1956 or provided by conversion of a building constructed before then
- Those not prescribed by regulation
- Those which do not already have a certificate of fitness.



Which are prescribed and so do not need a certificate of fitness?

- Dwelling-house constructed after 1 January 1945 and before 6 November 1956
- Renovation grant issued by NIHE paid within last 10 years
- HMO grant paid within the past 10 years
- Registered with NIHE as HMO
- Formerly let under a protected or statutory tenancy and a regulated rent certificate has been issued within past 10 years



Who can apply for a certificate of fitness?

- On or after 1 April 2007 landlord may apply at any time if he is considering granting a tenancy
- If tenancy created after 1 April 2007 landlord must apply within 28 days from the tenancy was granted
- Landlord can apply at any time whether or not the dwelling-house is let at 1 April 2007
- Tenant can apply at any time if there is a certificate of fitness in effect in relation to it.



Application

- Application is made to local council
- Fee is £50 for inspection and £100 for re-inspection fee



Decision of the council

- If the council decides that the dwelling-house is fit for human habitation a certificate of fitness will issue
- If not a notice of refusal will issue stating the works needed to make the dwelling-house fit.



Appeal

- Against refusal of certificate of fitness (or if a tenant) against the grant of a certificate of fitness is to the County Court
- Appeal must be within 21 days of service of the copy of the notice



How long will a certificate of fitness last?

It only ceases if

- Notice of unfitness has issued under article 18
- Notice of refusal of certificate of fitness has issued
- Repair notice under article 41 of the Housing (NI) Order 1981 has issued



Tenancies subject to rent control

- Protected or statutory tenancies
- Private tenancies after 1 April 2007 if built before 6 November 1956 and is not a prescribed dwelling-house nor has it a certificate of fitness
- Rent Officer and determination of rent



Amendments of the Rent Order

- No new protected tenancies
- No new protected shorthold tenancies
- Protected tenancies can only be assigned in certain circumstances



Protection from harassment and illegal eviction

- Amendments to the Rent (NI) Order 1978



Miscellaneous Provisions

- Guidance to be issued by DSD
- DSD and NIHE to obtain information
- Notices can be served on agents of the landlord
- Service of notices



Semple Review into Affordable Housing recommendations

- (1) Registration of landlords
- (2) Registration scheme to incorporate an arbitration scheme
- (3) Guidance issued by the DSD and Rent Officer should be widely disseminated
- (4) DSD and Councils should ensure that all landlords comply with Private Tenancies (NI) Order 2006



Semple Review into Affordable Housing recommendations (continued)

- (1) Consideration to longer periods of notice and tenancies as in Republic of Ireland
- (2) Possible voluntary rental support scheme
- (3) Deposit guarantee scheme should be considered
- (4) DSD and NIHE should evaluate implementation of the Private Rented Strategy and prepare an action plan.
- (5) More resources to facilitate policy development in this area