



VOISIN LAW

The media is awash with stories of Rachman-esque landlords charging their tenants extortionate rents for substandard and even hazardous accommodation. In some instances, the moniker “rogue” landlord may be well-deserved. However, at the other end of the spectrum are the reasonable (and lesser reported) landlords who are simply seeking to generate an honest income. Unfortunately those landlords can find themselves encumbered with a “rogue” tenant, who, for instance, fails to pay the rent, damages the property, illegally sublets the property and/ or is a noisy nuisance.

Protection has been granted to tenants by way of the tenancy deposit scheme, launched under the Residential Tenancy (Jersey) Law 2011 (the “Law”) at the end of 2015. What protection, if any, is there for the landlord in the event that the tenant does not adhere to the lease?

Evictions are governed by the Law which applies to residential tenancy agreements made, varied or renewed after 1 May 2013. Disputes relating to residential tenancy agreements are heard by the Petty Debts Court.

In the event that a tenant breaches the lease, the landlord is not entitled to declare the lease terminated, notwithstanding the terms of the lease or the nature of the breach(es). The Law obliges the landlord to serve the tenant with notice to cease the conduct which constitutes the breach and/or take reasonable steps within 7 days to rectify the breach. Only if the tenant fails to comply with that notice can the landlord summons the tenant to appear before the Court. The landlord may seek orders for the termination of the lease and eviction of the tenant.

The Court has discretion to consider whether the breach is “sufficiently serious” to warrant the termination of the lease. The Court may order that the lease is terminated but stay an order for eviction until a condition has been satisfied or a period has passed. In this regard, the Law compels the Court to consider such matters as whether rent is outstanding, whether either party has breached the lease, whether the breach is continuing, whether reasonable steps have been taken to rectify the breach and, if a stay were ordered, where the balance of hardship would lie as between the parties.

The Court’s orders for eviction and ancillary orders such as for recovery of rent and/or costs are enforced by the Viscount’s Department. The manner in which the Viscount executes an order for eviction is determined on a case by case basis. The tenant may be allowed a short period to vacate, subject to his/her circumstances. Should the tenant fail to engage, the Viscount may forcibly enter the property (having given prior notice to the tenant).

The Law does not provide a “quick fix” to evicting a “rogue” tenant. Further, not only will the landlord incur legal costs to obtain an order for the termination of a lease, he/she may continue to suffer loss of rent if the eviction is stayed or if repairs are required before the property can be re-let. The Court may grant orders for the arrest and sale of the tenant’s personal property or for a wage arrest. However, the recovery rate may be slow.

What can a landlord do to protect himself/ herself?

- Prior vetting: obtain references from the tenant’s previous landlords. Social media can be a useful research tool. Consider the tenant’s employment history. Is the rent within their means? If the



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tenant will rely upon another party to afford the rent, ensure that both are parties to the lease.

Meet with the tenant at his/ her present property. What condition is it in?

- Credit checks and litigation searches: if you source the tenant through a letting agency, the agency will likely provide these services. Ensure that the agency checks against previous names.
- Insurance: against property damage.
- Guarantor: insist upon the tenant having a guarantor for costs arising from a breach of the lease.
- Monitoring: make provision in the lease for periodic checks on the property.
- Correspond in writing: this includes following up meetings and phone calls with a written note.
Should Court action become necessary, you can supply the Court with a clear record of the dispute.

A landlord seeking eviction of a “rogue” tenant may well be frustrated with the process set out in the Law. My advice is to carefully vet prospective tenants so that you have a good idea of who you are allowing into your property and appoint a lawyer to draft a comprehensive lease which protects you, as far as possible, should the tenant turn “rogue”.

For further information on this subject or any other enquiry regarding litigation please contact Frances Littler on 01534 500346 or email franceslittler@voisinlaw.com