



SHAM 'HOLIDAY LETS' **UNDERMINING SECURITY FOR SCOTLAND'S TENANTS**

ABOUT LIVING RENT

Living Rent is Scotland's tenants' union. We seek to unite and represent all tenants in Scotland whether they rent from the private or social sector. We are not affiliated to any political party and only answer to our members.

We campaign for better rights for tenants, protections against rent increases, evictions and poor-quality housing, and we represent and defend our members when they're having housing problems.

INTRODUCTION

Over the last decade, the Scottish Government has introduced a number of welcome changes in the Private Rented Sector (PRS); including requiring landlords to register, the introduction of mandatory tenancy deposit protection schemes, better protections from evictions, clarifying the illegality of premium fees, and the introduction of the First-Tier Tribunal to make the process by which tenants can raise disputes more accessible.

While more remains to be done, the PRS is undoubtedly a better place for tenants following these changes. However, a major oversight risks undermining these steps forward: regulations around short-term or holiday lets are subject to far less regulation.

Living Rent has been contacted by increasing numbers of tenants who have signed holiday lets that are nothing of the sort: some lasting for far in excess of 6 months. These holiday let leases afford tenants almost none of the protections tenants would be guaranteed under Short-Assured Tenancies or Scottish Private Residential Tenancies; neither landlords nor agencies operating on their behalf need to register; properties are exempt from HMO licensing; tenants aren't entitled to third-party protection of their deposits; the properties are not subject to the same standards in terms of fire safety and repairs; and it is significantly easier to evict someone from a holiday let.

There is reason to believe that some landlords are exploiting this lack of regulation in holiday lets to avoid their legal responsibilities as landlords - putting tenants and communities at risk. This paper outlines the situation, and finishes by proposing a way forward.

THE SCALE OF THE PROBLEM

Since Airbnb began operating in Scotland, there has been a dramatic increase in the number of whole-properties being let out as holiday lets - an increase that Shelter Scotland has described as “exacerbating the existing housing crisis.”

Recent statistics have suggested that more than 9,000 properties are listed on Airbnb in Edinburgh, an increase of more than 40% on the previous 12 months.¹

Statistics from 2017 showed that in some parts of Edinburgh, 1 in 11 properties were short-term lets - a figure that is likely to have increased significantly since then.²

Additionally, the concentration of Airbnb lettings in Edinburgh is amongst the highest in the world - with 53 residents to each Airbnb let, making it significantly higher than London, New York, Berlin and Barcelona.³ It is believed that there are now more holiday lets in central Edinburgh than normal private residential lets.⁴

The issue is particularly acute in Edinburgh, but it is by no means unique to Edinburgh. Glasgow has also seen an increase of more than 40%, while the number of listings in the Highlands has increased by more than 80%.⁵

However, as Airbnb lettings only make up a proportion of the properties being rented out as holiday lets, it is likely these statistics will only capture a fraction of the scale of holiday lets in Scotland.

1 <https://www.scotsman.com/news/politics/concerns-raised-over-huge-rise-in-airbnb-properties-across-scotland-1-4860158>

2 https://greens.scot/sites/default/files/AnalysisShortTermLetsDataforEdinburgh_AlasdairRae_PDF-FINAL_2.pdf

3 <https://www.commonspace.scot/articles/13434/concentration-edinburgh-airbnbs-4-times-greater-london-or-paris>

4 <https://www.edinburghnews.scotsman.com/news/politics/edinburgh-residents-at-heart-of-new-tourism-strategy-amid-airbnb-fears-1-4894501>

5 <https://www.scotsman.com/news/politics/concerns-raised-over-huge-rise-in-airbnb-properties-across-scotland-1-4860158>

WHAT DOES THE LEGISLATION SAY?

These types of lets are ill-defined in legislation. Schedule one (6) of the Private Housing (Tenancies) (Scotland) Act 2016 excludes holiday lets from the provisions of the Act: “A tenancy cannot be a private residential tenancy if the purpose of it is to confer on the tenant the right to occupy the let property for a holiday.”⁶ What constitutes a ‘holiday’, however, is not defined anywhere in the legislation.

We have been shown leases in which landlords require tenants to sign clauses stating “[y]ou confirm in acceptance the property is not your sole or main residence and are not entering an assured tenancy.”

However, there is some precedent on this issue. Sections 267 (4) and (6) of The Corporation Tax Act 2009 state:

(4)For the purposes of the letting condition, **a letting of accommodation for a period of longer-term occupation** (see subsection (6)) **is not a letting of it as holiday accommodation.**

(6)For the purposes of this section a “period of longer-term occupation” is **a continuous period of more than 31 days during which the accommodation is in the same occupation** otherwise than because of circumstances that are not normal.

This definition is the one applied by HMRC under the qualifying conditions for a property to be considered a Furnished Holiday Letting for tax purposes, and we would suggest that it is a suitable definition for the purposes of the Private Housing (Tenancies) (Scotland) Act 2016 as well.

There are, additionally, examples of cases in which the Scottish Courts have rejected landlords’ claims that a lease is a “Holiday Let” even where both parties have signed documents explicitly stating so.⁷

All of the above suggests a clear basis for restricting holiday lets to a maximum period of 31 days.

⁶ <http://www.legislation.gov.uk/asp/2016/19/schedule/1/enacted>

⁷ TC Young: When is a “holiday let” not a “holiday let”?:
<https://www.tcyoung.co.uk/blog/2017/private-landlord/when-is-a-holiday-let-not-a-holiday-let>

CASE STUDIES

All names have been changed to protect the anonymity of the tenants.

ELLIE

One tenant, Ellie, was staying in a holiday let property for 8 months on rolling monthly leases. She let the property through Edinburgh Holiday and Party Lets, a company linked to landlord Mark Fortune who was banned from renting properties in 2013. Mark Fortune reportedly owns approximately 70 properties which are let to tenants on monthly deals without formal tenancies agreements. It has been reported that Fortune was refused entry to the landlord register after he had been convicted of offences related to his property letting business. In March 2011, he was fined £1000 for renting out an unlicensed property and in September of that year he was fined a further £650 for threatening tenants⁸. Because landlords of holiday and party lets are exempt from the landlord register, Fortune has continued to rent properties, potentially endangering more tenants. Ellie was made to sign a lease with the following clause:

“[y]ou confirm in acceptance the property is not your sole or main residence and are not entering an assured tenancy. The license holder agrees and acknowledges that this agreement is an excluded agreement for the purpose of the Protection from Eviction Act 1977.”

The property was uninhabitable (Figure 1). Properties let as holiday lets are not subject to the same regulations as permanent residencies. Landlords can therefore exploit this, renting out potentially dangerous properties for tenants.



Figure 1: Edinburgh Holiday & Party Lets



HOUSING [SCOTLAND] ACT 1988
Schedule 4: Paragraph 8

-:ACCOMMODATION:-

RE:-

On receipt of £360 for the offer of Accommodation at the above property.

The licence period is [redacted] and you confirm in acceptance the property is not your sole or main residence and you are not entering an assured tenancy. The licence holder agrees and acknowledges that this agreement is an excluded agreement for the purpose of the Protection from Eviction Act 1977.

Any questions should be emailed to info@4mgroup.net

With thanks

Please note due to Fire Regulations smoking is NOT permitted in the flat. Said regulations state you may only smoke on the ground floor of the building at the front or rear door & not on the stair.

1 months notice required

Registered in Scotland: SC577943

Figure 2: An anonymised version of the lease

MIKE

Mike and their flatmates took a property they had seen on Gumtree. When they were given the lease to sign, it was to be a holiday let - but this had not been advertised in advance.

There were a number of severe issues during the course of the 4-month lease. The flat's shower did not work for the majority of the tenancy, and when it was finally fixed it took over 2 weeks, during which time the flat was left in complete disrepair, without a working toilet.

The landlord failed to put the deposit in one of the Government-approved tenancy deposit schemes, meaning the tenants did not have any protection at the end of the tenancy from the landlord's claims on it.

The lease contained a similar clause, demanding the tenants "acknowledge" the property as a holiday let:

2.7. The Guest acknowledges and agrees that the Premises are let as holiday accommodation within the meaning of Schedule 1, paragraph 9 of the Housing Act 1998 (or where the Premises are in Scotland, within the meaning of Schedule 4, Paragraph 8 of the Housing (Scotland) Act 1988) and that the Guest has no security of tenure.

2.8. The Guest agrees and acknowledges that as a Holiday Let, this Agreement is an excluded Agreement for the purpose of the Protection from Eviction Act 1977.

"Living in this flat was a continuous nightmare, from the very first contact with the landlord until now, while we're still waiting for our deposit. At no point was it mentioned that the contract would be a holiday let until after we had been pressured by the landlord to pay the deposit to secure the tenancy. We were informed 2 days before our moving in date that the shower was broken and unusable and it took 3 months to get it fixed. Because of the nature of the let as holiday let, we felt like we had no rights as tenants and there was nothing we could do to hold the landlord accountable."

KIERAN

Kieran and his partner were given holiday let for a total of 297 days - from October to June. There were a number of issues with the property and the lease, and when the tenants gave notice to leave, their landlord attempted to charge the tenants a £600 "cancellation fee" to do so. After threatening to take the landlord to tribunal, this fee was dropped, but it did require the threat of legal action for that to happen.

This lease also included a clause describing it as a holiday let:

The property is let for the purposes of a holiday let to which section 12 (2) and paragraph 8 of Schedule 4 of the Housing (Scotland) Act 1988 apply. The booking agreement confers the right to occupy the accommodation for the agreed period only.

COMMENCEMENT & DURATION:

The holiday let will commence on: ("The start Date") **07 October 2018**
and will end on: ("The end Date") **30 July 2019**

Figure 3: An excerpt from the lease

"Facing the prospect of losing a large sum of money for having signed an illegitimate contract was extremely distressing, and it was especially frustrating knowing we were in the right but not knowing whether or not it was possible to do anything about it. It is worrisome how easily we can be manipulated into complying with others' threats almost without question after they refer to having your signature on a piece of paper."

THE WAY FORWARD

It is clear that the lack of regulation on holiday lets both risks undermining positive steps forward on tenants' rights and puts the safety of tenants in jeopardy. We believe some simple steps would go a long way towards resolving the issue, and urge the Scottish Government to make a priority of bringing them into effect.

1. Limit the length of Holiday Lets

Any tenancy longer than 31 days should be classed as a Scottish Private Residential Tenancy. This should also cover situations where tenants sign multiple consecutive tenancies totalling more than 31 days in the same property.

2. Limit how long a property can be let through Holiday Lets

No whole-property should be allowed to be rented out through holiday lets for more than 60 days of the year. Similar regulations are in place in cities such as London and Amsterdam, and it is clear that Scotland would benefit from them as well.

3. Holiday let landlord registration

Landlords renting out their property through holiday lets should be required to register with the council and be subject to the same vetting and standards as landlords renting their properties out in the rest of the PRS. This registration would also allow policy makers to know accurate numbers of holiday lets in any given area - something which is currently near impossible.

4. Third-party management registration

Companies managing holiday lets - such as Airbnb or the above mentioned Edinburgh Party Lets - should be subject to the same regulation, vetting and standards as letting agents in the rest of the PRS.