

ABERDEEN CITY COUNCIL

COMMITTEE	Housing & Environment
DATE	14 January 2014
DIRECTOR	Pete Leonard
TITLE OF REPORT	Enforcement of Landlord Registration & HMO Licensing
REPORT NUMBER:	H&E/14/013

1. PURPOSE OF REPORT

The Housing & Environment Committee, at its meeting on 27 August 2013, considered the H & E Business Performance Plans & Actions report on key performance measures as it related to Landlord Registration (LR) and Licensing of Houses in Multiple Occupation (HMO), and resolved to instruct officers to report on the number of unregistered landlords and unlicensed HMOs which had been referred to the Procurator Fiscal during the last 12 months. This report answers this particular question and provides an overview of enforcement of these 2 activities.

2. RECOMMENDATION(S)

That the Committee notes the content of the report.

3. FINANCIAL IMPLICATIONS

Effective enforcement will increase the number of Landlord Registration and HMO licence applications, together with the appropriate application fees being submitted to the Council. These fees fully fund the work of the Private Sector Housing Unit in administering these activities.

4. OTHER IMPLICATIONS

None.

5. BACKGROUND/MAIN ISSUES

5.1 **Landlord Registration**

5.1.1 The 2 aspects of Landlord Registration (LR) are 1) processing online and paper applications for Registration, and 2) enforcing against unregistered landlords.

5.1.2 The latest Scottish Government statistic shows that, as at 30 November 2013, a total of 16,004 landlords together with their 18,773 rental properties, were registered with Aberdeen City Council.

The Scottish Government statistics vary from month to month as new Registrations are approved and existing Registrations expire, as a result of private rental properties coming and going from the market on a daily basis.

Whilst we pursue landlords whose Registrations have expired to establish whether they are still operating, unfortunately it is impossible to establish the exact amount of landlords of rental properties in the Aberdeen City Council area who have never registered. Reference is however made to the 2011 Census, and the following extract for privately rented housing in the Aberdeen City Council area:

Private rented houses & flats	17,582
– Private rented: Private landlord or letting agency	15,630
– Private rented: Employer of a household member	210
– Private rented: Relative or friend of a household member	1,548 *
– Private rented: Other	194

(*It should be noted that the Landlord Registration legislation exempts certain categories from registration, including lets to family members. The above Census figure of 1,548 is in respect of lets to relatives, ie. family members, or friends, therefore the 1,548 figure may be reduced when lets to relatives are ignored.)

The conclusion is that the 2011 Census figures (17,582), albeit 2 years out of date, are fairly similar to the current Scottish Government LR statistics (18,773), which suggests that most landlords in the Aberdeen City Council area are registered with the Council.

5.1.3 The Landlord Registration legislation provides local authorities with a range of enforcement ‘tools’. Where we have advised a landlord of the requirement to register, and the landlord continues to operate unregistered, we can:

1) apply a Late Registration Fee of £110, to be paid in addition to the relevant Registration fee,

- 2) serve a Rent Penalty Notice, the effect of which is to stop the landlord from receiving rent from the tenant/s, and
- 3) report the case to the Procurator Fiscal.

Each of the 32 local authorities in Scotland supplies monthly LR enforcement statistics to the Scottish Government, detailing how many 1) Late Registration Fees have been applied, 2) Rent Penalty Notices have been served, and 3) referrals to the Procurator Fiscal have been made. The SG collate these statistics and issue a '6-month enforcement' spreadsheet to the local authorities for information, but they do not publish the statistics.

The most recent spreadsheet is for the period January 2013 – June 2013, during which time:

- 1) 24 local authorities applied a total of 2,730 Late Registration Fees. 8 local authorities did not apply any.
- 2) 17 local authorities served a total of 865 Rent Penalty Notices (of which 224 took effect). 15 local authorities did not serve any.
- 3) No local authority referred any case to the Procurator Fiscal.

Aberdeen City Council applied a total of 14 Late Application Fees over the 6 month period, but did not serve any Rent Penalty Notices, nor referred any cases to the Procurator Fiscal. In fact, to date, we have never referred any unregistered landlords to the Procurator Fiscal, although we retain the right to do so.

- 5.1.4 The Committee will be aware Landlord Registrations have a life of 3 years, following which time, landlords must renew their registrations if they are continuing to operate. We advised the Committee in October 2012 that as at 31 August 2012, a total of 4,093 registrations had expired and had not been renewed. We began an exercise to investigate whether or not these landlords were continuing to operate, or had sold their properties or were no longer operating as landlords. The latest Scottish Government statistic shows that, as at 30 November 2013, a total of 197 registrations remain expired and not renewed, although this figure includes ALL expired registrations, ie. Just expired in the last few days, to expired for years.

In addition to these 'expired' registrations, we are currently investigating 48 complaints of unregistered landlords, some of whom have submitted a Registration application but not completed it, and the remainder have not applied.

We will be serving Rent Penalty Notices on these 'expired' landlords, who we believe are continuing to operate, and on those landlords who have never registered and who are refusing to co-operate with us.

5.2 Licensing of Houses in Multiple Occupation (HMO)

- 5.2.1 Similar to Landlord Registration, the 2 aspects of HMO licensing are 1)

processing HMO licence applications, and 2) enforcing against landlords of unlicensed HMOs.

5.2.2 Other than an annual 'end of financial year' return to the Scottish Government on HMO licensing, the Government does not collect statistics in the same way that it does for Landlord Registration. All HMO activity in Aberdeen City Council is recorded using the Civica APP database which shows that, at the date of this report, a total of 991 HMO licences are in force.

Similar to Landlord Registration, it is impossible to establish the amount of unlicensed HMOs in the Aberdeen City Council area. The 2011 Census data does not identify private rental properties where 3 or more unrelated persons are resident, which is the definition of an HMO. It is likely that there are many unlicensed HMOs, given the student population in Aberdeen, but this helps us inasmuch as students can claim Council Tax exemption, and we can obtain and investigate the specific addresses of the students who do so.

The HMO legislation provides local authorities with a range of enforcement 'tools'. Where a landlord is found to be operating unlicensed HMO, we can

- 1) make a Rent Suspension Order, the effect of which is to stop the landlord from receiving rent from the tenants,
- 2) serve an HMO Amenity Notice, the effect of which is to make the HMO fit for occupation by the tenants,
- 3) report the case to the Procurator Fiscal.

In practice, we investigate complaints of unlicensed HMOs by firstly identifying the landlords, then contacting them to request an inspection of their properties. The inspection will establish whether or not the property is an unlicensed HMO, and if it is, the landlord will be advised to either apply for an HMO licence or take steps to reduce occupancy such that an HMO licence is not required. We work closely with the Scottish Fire & Rescue Service, and can call in their Officers who have powers to immediately close properties by service of Prohibition Notices under their Fire (Scotland) Act legislation.

During 2013, we received 40 complaints about alleged unlicensed HMOs. 27 of these complaints were investigated and either found to be false/malicious, or resulted in a licence application being submitted. 13 complaints are still under investigation.

To date, we have not reported any landlord of an unlicensed HMO to the Procurator Fiscal, although we retain the right to do so.

5.3 **Reports to the Procurator Fiscal**

5.3.1 The Scottish Government statistic above shows that no local authority reported any unregistered landlord to the Procurator Fiscal (PF) during the first 6 months of 2013. On the face of it, this might seem surprising, however anecdotal evidence from other local authorities who have reported cases to the PF since Landlord Registration was introduced

suggests that it is not a very effective sanction for the following reasons:

- 1) Gathering all the necessary evidence for submission to the PF in the prescribed manner is extremely time-consuming.
- 2) Only the PF decides which cases will go forward to Court.
- 3) Those cases which go to Court often fail for the reason that a witness (usually the private tenant) is unwilling or refuses to attend Court and give evidence against his/her landlord.
- 4) If a landlord is found guilty, the fine tends to be a relatively small amount in comparison to the landlord's rental income.

5.4 Awareness of Landlord Registration and HMO licensing

5.4.1 As mentioned above, all landlords operating in Scotland are obliged by law to register with their local authority, and landlords who wish to operate HMOs must by law obtain an HMO licence from their local authority. We take the view that landlords are 'running' a business and should therefore be aware of the 'rules' affecting their business, although we are very aware that the vast majority of landlords have only one rental property, and many of these landlords are referred to as 'accidental landlords', ie. They never had any intention of becoming landlords but have been forced to do so because they cannot sell their properties, their job takes them elsewhere, etc. These 'accidental landlords' tend to require a lot more help and support to understand their obligations, especially if they are operating without a letting agent.

5.4.2 During 2013, we ran a campaign consisting of radio adverts on Northsound 1 & 2, posters on local buses and advertising in the property pages of the Press & Journal and Evening Express. The campaign highlighted the requirement for landlords to register and obtain HMO licences, and was largely targeted at private tenants, especially the student population who are the main users of HMO accommodation.

5.4.3 The Private Sector Housing Unit provides advice and assistance to private landlords, and private tenants, in terms of Landlord Registration and HMO licensing requirements. Such advice is provided in person, over the phone, by e-mail and internet, by home visits, etc.

6. IMPACT

Corporate – None arising from this report.

Public - This report may be of interest to private landlords and private tenants in Aberdeen, but especially of interest to unregistered landlords and landlords of unlicensed HMOs, given the subject matter.

7. MANAGEMENT OF RISK

None arising from this report.

8. BACKGROUND PAPERS

Scottish Government Landlord Registration statistics

2011 Census information

9. REPORT AUTHOR DETAILS

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