

The Residential Tenancy (Jersey) Law 2011 - A year on

What changes has it brought?

It is now a year since the Residential Tenancy (Jersey) Law 2011 ("the Law") came into effect in May 2013. It is estimated that approximately one third of all Islanders live in rented accommodation, so what changes did the Law make and has it helped?

Which agreements are affected?

The Law applies to tenancies of self-contained dwellings under agreements for value with a term of 9 years or less, or periodic (i.e. weekly or monthly) tenancies made or varied or renewed after the Law came into force.

The legal distinction between a tenant and a licensee or lodger is maintained, so licences are not affected. However it remains important to remember that the Court will look to the substance of an agreement, rather than its label, when determining whether any particular agreement is a lease or a licence.

Under the Residential Tenancy (Jersey) Law 2011 a tenant has the right to:

- a copy of the signed lease and any revision of it
- a receipt for any deposit paid
- enjoyment of their accommodation without the landlord interfering
- not to have to pay full rent if part of the accommodation becomes uninhabitable (as long as the tenant didn't cause the problem)
- at least one working day to review the lease before signing.

What must be in a lease?

All Agreements must be in writing, signed by or on behalf of the parties, The Law provides that certain details, terms and provisions must be included in every agreement, namely:

- A description sufficient to identify the unit.
- The commencement date and termination date. If there is no fixed termination date, this must be made clear.
- The name of the landlord and address of the landlord or managing agent.
- The rent and frequency of payment.
- The name of the person receiving the rent.
- Details of any deposit or guarantee.
- Rent review dates and terms (if any).
- An inventory of the landlord's contents.

All Agreements must also include provision to the effect that:

- The tenant can remove anything he has affixed to the unit, but subject to his making good any damage caused by such removal.
- Landlord's consent must not be unreasonably delayed or withheld.
- The tenant is not required to purchase any fixtures, fittings or movable property in the unit nor pay any premium or key money in respect of the unit.

These provisions will be deemed to form part of the Agreement even if not included, and cannot be excluded. Any contractual provisions that are inconsistent with any provision will be void and it is an offence to attempt to defeat, evade or prevent the operation of the Law.

Will landlords still be able to terminate agreements or evict difficult tenants?

The Law replaces previous rules relating to termination of periodic leases (i.e. where no fixed end date is agreed or where it has passed but the tenant remains in occupation). Landlords must give not less than three months' written notice of termination and tenants must give not less than one months' written notice. If both parties agree to end the tenancy there is no need to serve notice, but the decision is probably best covered in writing.

Termination on the basis of the tenant's breach can be ordered by the Court, but the landlord must serve notice of the breach on the tenant and give an opportunity to remedy that breach.

The Court may not order termination if the breach is not sufficiently serious and may grant a stay of eviction after

considering various factors including any breach, steps taken to remedy it and where the balance of hardship would lie as between the landlord and the tenant if a stay of eviction were ordered. The Court may also look at the history of the tenancy, the availability of other accommodation to the tenant and any other factors it considers appropriate.

The Petty Debts Court has jurisdiction to deal with all disputes in relation to residential tenancy agreements, and may adjust the rights of the parties to an Agreement, terminate or otherwise vary an Agreement.

So, what has changed as a result of the new Law?

Heralded as clarifying landlord /tenant relations and protecting vulnerable tenants, some campaigners felt that the Law did not go far enough and should have included statutory schemes for rent deposits akin to the system in England.

However there are significant steps forward in the legislation which do offer protection to tenants, for example, the formalisation of requirements in a written lease, the 24 hour "cooling off" period and the imposition of a 3 month notice period where none is specified.

*If you are a landlord or a tenant and wish to discuss any aspect of any current tenancy or one you are contemplating, please do not hesitate to contact **Katharine Marshall** at Ogier Property on +44 1534 753904 or Jane Power at **Gaudin & Co** on +44 1534 670336.*

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