SCOTTISH CONSUMER COUNCIL

Report on
Tenancy Agreements
in Scotland
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PREFACE
The relationship between Councils and Council tenants is one of the most important supplier/consumer relationships in Scotland. The remit* to the National Consumer Council and its associated Councils in Scotland and Wales advised them to concern themselves with the services provided by Central and Local Government as well as by commercial firms. We decided to focus on one aspect of the council/tenant relationship, tenancy agreements, following consultations with the Scottish Development Department, the Convention of Scottish Local Authorities and the Institute of Housing (Scottish Branch). We also took into account the fact that the Scottish Development Department is currently studying council house allocation procedures.

We hope that our report, coming at a time when the new District Councils and Island Authorities have been elected, will be of practical use in stimulating discussion on the contents of present agreements among Councillors, Housing Managers and tenants.

Joan Macintosh
Chairman

*Contained in the Government White Paper "National Consumers Agency"
Cmnd. 5726
Acknowledgements

We thank the District Councils and Island Authorities, as well as the Scottish Special Housing Association, who sent us copies of their current tenancy agreements.

Aberdeen  
Angus  
Annandale and Eskdale  
Badenoch and Strathspey  
Bearsean and Milngavie  
Berwickshire  
Caithness  
Clackmannan  
Clydebank  
Cumnock and Doon Valley  
Dumbarton  
Eastwood  
East Kilbride  
East Lothian  
Edinburgh  
Ettrick and Lauderdale  
Falkirk  
Glasgow  
Gordon  
Hamilton  
Inverclyde  
Inverness  
Kilmarnock and Loudon  
Kincardine and Deeside  
Kirkcaldy  
Kyle and Carrick  
Lanark  
Lochaber  
Motherwell  
Moray  
Nairn  
Nithsdale  
North East Fife  
Orkney Islands  
Renfrew  
Ross and Cromarty  
Shetland Islands  
Skye and Lochalsh  
Stewartry  
Stirling  
Strathkelvin  
Sutherland  
Tweeddale  
West Lothian  
Western Isles  
Wigtown

Our thanks also go to Mr. William Miller O.B.E. who advised us on the legal aspects of the subject, and all those whose comments on our draft report were of great benefit to us, particularly including:—

Mr. A. R. Allan, Secretary, Scottish Special Housing Association.
Mrs. Frances Hamilton, Chairman, Glasgow Council of Tenants.
Mr. James Howieson, Honorary Secretary, The Institute of Housing (Scottish Branch)
Ms. Rachel Peto, National Consumer Council.
Mr. J. W. Sinclair, Scottish Development Department.
Mr. John Smythe, SHELTER.
Mr. William Towill, Chairman, Scottish Council of Tenants.

S.C.C. Housing Sub Committee Members:

Mrs. Joan Macintosh (Chairman)
Dr. Margaret Blackwood
Mr. Tony Burton
Mrs. Gladys Finlay
Mrs. Alice Henderson

Special appreciation should go to Peter Murray, SCC Research Assistant, for months of patient research required in preparing this report.
Chapter 1

Introduction

1.1 The majority of households in Scotland rent their homes from a public housing agency — either a local authority, a New Town Development Corporation or the Scottish Special Housing Association. Figures from the 1971 census show that 899,605 households fall into this category, representing 53.5% of the total number of households. The households making up this 53.5% are not uniformly distributed throughout Scotland. The percentage of households living in publicly-owned houses varies considerably even between the major cities. Edinburgh in 1971 was close to the English and Welsh national average with 31.6% whereas in Dundee at the same date the percentage was 59.6%; Glasgow was very close to the Scottish national average with 53.9%. The highest concentration of public sector tenants was then to be found in the industrial towns of the West of Scotland. In Coatbridge Burgh (as it then was) the figure was 85.3%; in Motherwell and Wishaw 83.2%; in Port Glasgow 79.7% and in Clydebank 77.6%. In the East, Kirkcaldy had 64.9% and Dunfermline 63.0%.

1.2 The high proportion of publicly-owned rented housing in Scotland contrasts strikingly with the position in England and Wales where owner occupation is the dominant form of tenure. This proportion is rising, as is the proportion of owner-occupiers, since the amount of privately rented accommodation on the market continues to decline due to slum clearance and redevelopment policies or to the sale of formerly rented property. Housing Associations are providing an increasing number of houses for rent, but the proportion of the housing stock they account for at present is very small.

1.3 The way in which this stock of publicly-owned houses is managed, affects the lives of the majority of people in Scotland. Some aspects of housing management have been the subject of considerable controversy over the years, particularly the allocation policies which determine who will have access to this stock and in what order of priority. We are informed that this issue is once again under consideration by the Scottish Office. Other aspects, however, have received little attention. Our Report is concerned with one of these, the tenancy agreements which define the terms of the relationship between the public bodies which own and control these houses — through elected representatives, nominees and officials — and the people who live in them. It is surprising that so little central government attention seems to have been paid to this relationship in Scotland, where public bodies play such an important role in the housing market. When the National Consumer Council recently published a discussion paper based on
an examination of English tenancy agreements they were able to cite the advice given on the subject to English local authorities by a circular from the Ministry of Housing and Local Government in 1959 and the views expressed by the Adviser on Housing Management at the Department of the Environment in a memorandum published in 1973. We are informed that no circulars or other publications on the subject have been issued by the Scottish Office.

1.4 In the light of this apparent neglect, the SCC decided to conduct a survey of local authority tenancy agreements. After consulting the Scottish Development Department and the Convention of Scottish Local Authorities, we circulated a letter to District Councils, Island Authorities and the Scottish Special Housing Association seeking information and requesting copies of certain documents (Missives of Let, conditions of tenancy and Rent cards). Out of the 56 District Councils and Island Authorities, 46 replied to our request — as did the Scottish Special Housing Association. This gave us a significantly large and representative sample and we should like to thank all those who took part in our survey.

1.5 We have looked at the conditions contained in current agreements and have tried to point out (Chapter 3) short comings, where they exist, and to propose ways of achieving a fair distribution of rights and responsibilities between landlord and tenant. We have also tried to make our proposals as concrete as possible by drawing up a Model Agreement which embodies the changes we would like to see made. We should make it clear that where we criticise specific clauses in a particular Council's agreement, we do not necessarily mean to imply that its agreement is, on the whole, a bad one. It may well be that an otherwise reasonable agreement contains one or two questionable provisions. Nor do we regard these proposals as the last word on the subject of Tenancy agreements: rather we hope that they will help to focus attention on the subject and to stimulate a wider debate among councillors, housing managers and tenants groups.

1.6 In a sense this debate has already started. The report of the Morris Committee on links between housing and social work published in 1975, recommended important reforms and a much greater degree of participation by the community in housing management practice. Considerable disquiet has been expressed at evidence from Glasgow and Edinburgh that little had been done, in these areas at least, to implement the policies advocated in that report. There have been other, more encouraging, signs as well. The Government has stated that it is anxious to encourage experiments in tenant participation in Scotland. The first Scottish Tenants' co-operative was recently inaugurated at Summerston in Glasgow and research into tenant participation has been commissioned from Edinburgh University. We applaud this willingness to experiment with new forms of tenure and believe that the experience gained in this way can in time result in the development of more flexible and responsive systems of housing management. For the present, however, experimental programmes can by their nature involve only a small minority of tenants. There is also the danger that, if opportunities to develop and extend tenant participation in other ways are neglected, such experiments will not, in the long term, benefit the majority of tenants but will simply create a new elite group of housing schemes in the public sector.
This is where a revision of current tenancy agreements comes in. Agreements can and should be revised to ensure that the tenants' rights can be effectively enforced and also to ensure that tenants have a greater say in the way the schemes they live in are run. In addition, changes in the law are needed to strengthen the tenants' position (these are discussed in Chapter 4 of our Report). We recognise that the spirit of the agreements can be even more important than the letter since the question is not simply one of rights and duties in the abstract, but also of interpretation, enforcement and, hopefully, co-operation between the parties. This is reflected in the format of the Model Agreement: what we are proposing is a short, signed agreement setting out the commitments of both parties to be read in conjunction with a tenants' handbook which would contain useful advice and information as well as detailed regulations where it is agreed that they are needed between Councils and Residents in the particular housing schemes they apply to. This format reconciles most effectively the competing claims of clarity, fairness and active participation. We recommend it to Councillors, officials and tenants representatives as a basis for discussion.
Chapter 2

**A Classification of Conditions Found in Current Agreements**

2.1 The following classification is based on tenancy agreements received from forty six District Councils or Island Authorities and one from the Scottish Special Housing Association.

2.2 LETTING AND LEAVING THE HOUSE

A period of letting is stated in thirty seven agreements. Table 1 sets out the details.

<table>
<thead>
<tr>
<th>Period of Let</th>
<th>No. of Agreements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Weekly</td>
<td>15</td>
</tr>
<tr>
<td>Fortnightly</td>
<td>8</td>
</tr>
<tr>
<td>Monthly</td>
<td>14</td>
</tr>
<tr>
<td><strong>Total =</strong></td>
<td><strong>37</strong></td>
</tr>
</tbody>
</table>

2.3 The period of notice to be given by the tenant on the termination of his or her tenancy is stated in forty five agreements. In every case the period was twenty eight days or one month.

2.4 The period of notice to be given by the Council or Association on the termination of the tenancy is stated in forty seven agreements. In thirty eight cases the specified period was either twenty eight days or one month. The provisions of the other nine agreements are discussed at para. 3.13.

2.5 Twenty agreements include a provision which states that where a tenancy is terminated on account of a breach on the tenant's part of the conditions of tenancy the tenant shall be liable to repay to the Council all expenses or losses incurred as a consequence of this breach by the Council. One Council (Inverclyde) extends this liability to include: "loss of rent for the period beyond the expiry of the tenancy during which the subjects may remain unlet".

**LIVING IN THE HOUSE**

2.6 The following is a list of injunctions regarding the proper maintenance and use of the house contained in the agreements received.

<table>
<thead>
<tr>
<th>Injunction</th>
<th>No. of Agreements it appears in</th>
</tr>
</thead>
<tbody>
<tr>
<td>To keep premises fired and aired.</td>
<td>27</td>
</tr>
<tr>
<td>To keep premises clean and tidy.</td>
<td>32</td>
</tr>
<tr>
<td>Not to overcrowd the premises.</td>
<td>10</td>
</tr>
<tr>
<td>Not to misuse the premises.</td>
<td>10</td>
</tr>
<tr>
<td>To use as a private dwelling house only.</td>
<td>24</td>
</tr>
<tr>
<td>To maintain the interior of the house.</td>
<td>12</td>
</tr>
<tr>
<td>To use properly the sanitary appliances of the house.</td>
<td>15</td>
</tr>
<tr>
<td>Not to drive nails into the walls or doors.</td>
<td>4</td>
</tr>
<tr>
<td>To replace lost or missing keys.</td>
<td>1</td>
</tr>
<tr>
<td>To clean or have cleaned chimneys, flues or vents.</td>
<td>17</td>
</tr>
<tr>
<td>Not to chop wood in the house.</td>
<td>1</td>
</tr>
</tbody>
</table>


To keep windows clean.
Not to leave the premises unoccupied, without the consent of the Council, for more than a specified period of time.
Not to keep highly inflammable or explosive liquids on the premises.
Not to use balconies for storage.
To take care in the use of electrical equipment.
Not to be or become during the period of occupancy the tenant or sub-tenant of any other dwelling house.
To cover all floors with a suitable covering.
Not to carry out any outside paintwork.
Not to bring motorcycles/autocycles, etc. into the house.
To store fuel only in place provided.
To have chimney vents cleaned regularly by a qualified tradesman.
Not to expose unsightly objects to view from the windows or otherwise on the property.
Not to beat, shake or hang carpets/rugs/mats
   (a) over the windows.
   (b) in front of the house.
   (c) on balconies, fences, railings or hedges.
   (d) other than at permitted times
      (these times being: before 9.00 a.m. (2)
       before 10.00 a.m.
       between 7.00 and 9.00 a.m.
       not on Sundays).
Not to use or permit the use of the house for any purpose whereby the fire insurance premiums may be increased.
To keep the property lockfast.
Not to use the property for dancing or any other purpose which does damage to the fabric or fixtures of the house.
Not to accumulate refuse.
Use an approved or supplied bin.
Dispose the refuse as directed by the Council.
Not to throw down litter etc. on the street, on open ground or on the banks of a river.
Not to place liquid matter in the refuse bin.
THE GARDEN

2.7 The following is a list of injunctions regarding the proper use of the garden (if any).

<table>
<thead>
<tr>
<th>Injunction</th>
<th>No. of Agreements it appears in</th>
</tr>
</thead>
<tbody>
<tr>
<td>To keep the garden clean and tidy, cultivated or in proper order.</td>
<td>43</td>
</tr>
<tr>
<td>To keep the grass, hedges or trees cut, pruned or trimmed.</td>
<td>19</td>
</tr>
<tr>
<td>To maintain paths, fences or clothespoles.</td>
<td>18</td>
</tr>
<tr>
<td>Not to cut down trees, shrubs etc. without the Councils' consent.</td>
<td>16</td>
</tr>
<tr>
<td>Not to burn garden refuse before 8 p.m.</td>
<td>1</td>
</tr>
<tr>
<td>To grow only flowers in the front of the house.</td>
<td>1</td>
</tr>
<tr>
<td>Not to let the hedges grow above a certain height.</td>
<td>6</td>
</tr>
<tr>
<td>(The specified heights were 4 ft (3)</td>
<td></td>
</tr>
<tr>
<td>4 ft 6 ins</td>
<td></td>
</tr>
<tr>
<td>3 ft</td>
<td></td>
</tr>
<tr>
<td>1 metre on street frontages)</td>
<td></td>
</tr>
</tbody>
</table>

NUISANCE TO NEIGHBOURS

2.8 Thirty six agreements contain clauses prohibiting tenants from causing any nuisance or annoyance to neighbours. Details of these prohibitions are given below.

<table>
<thead>
<tr>
<th>Injunction</th>
<th>No. of Agreements it appears in</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not to cause any nuisance, discomfort annoyance or inconvenience to neighbours, the Council or others.</td>
<td>33</td>
</tr>
<tr>
<td>Not to act in an unneighbourly or unreasonable manner.</td>
<td>3</td>
</tr>
<tr>
<td>Not to act in a disorderly manner.</td>
<td>3</td>
</tr>
<tr>
<td>Not to allow the house to be used as a resort of disorderly or undesirable persons.</td>
<td>4</td>
</tr>
</tbody>
</table>

Of these, five agreements mentioned noise (either noisy behaviour or TV/Radio type noise) as a source of nuisance. One mentioned language, another dancing and a third work being carried on (e.g. chopping wood on the floor of the house) as sources of nuisance.

2.9 COMMON AREAS

The cleaning of common areas is regulated in thirty two agreements. The standard condition is that tenants must take it in turns to clean the close and also to cut the grass or/and maintain the paths to common drying greens. Some agreements stipulate that the close must be swept every day and washed once a week. Usually the areas to be cleaned are listed in detail and many agreements provide that the Factor should be responsible for deciding the order in which the common drying green should be used. Some missives regulate the times when tenants in the tenement buildings may or may not use certain entrances and paths
to the building (e.g. the use of an end path or close by a centre tenant).

PARKING

2.10 Seventeen agreements contain clauses regulating the parking of vehicles on housing schemes. These are directed mainly against the parking of commercial vehicles and lorries overnight or for prolonged periods and against the parking of cars in unapproved places (usually in gardens or open spaces or where they may cause obstruction).

REPAIRS

2.11 A statement of the tenants responsibility for carrying out repairs is contained in forty six agreements: a statement of the landlords responsibilities in thirty nine agreements. The way in which these responsibilities are set out is discussed in paras. 3.7 to 3.10 below.

INSURANCE

2.12 Four agreements advise tenants on the insurance of the house and its contents. Two state that the Council are responsible for insuring the house against damage by fire and all four advise tenants to insure their personal possessions against risks.

CONSENT BY COUNCIL NEEDED

2.13 There are a number of cases where a tenant must obtain the Councils consent to certain actions before they can be undertaken. These cover:

(a) Alteration and additions to the structure of the house. Forty seven agreements contain clauses of this type.

(b) Sub letting the house or using it other than as a private house.

The following is a list of injunctions of this type contained in the agreements received:

<table>
<thead>
<tr>
<th>Injunction</th>
<th>No. of Agreements in which it appears</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not to take in lodgers, boarders or persons other than members of family.</td>
<td>45</td>
</tr>
<tr>
<td>Not to assign or sublet the premises.</td>
<td>46</td>
</tr>
<tr>
<td>Not to use the premises for business or trade purposes.</td>
<td>43</td>
</tr>
<tr>
<td>Not to display nameplates, business signs or advertisements or exhibit goods for sale.</td>
<td>39</td>
</tr>
<tr>
<td>Not to install a cigarette or other vending machine.</td>
<td>6</td>
</tr>
</tbody>
</table>

(c) The keeping of pets. Forty six agreements regulate the types of animals and birds tenants may or may not keep as a pet. Seventeen Councils allow tenants to keep certain animals without needing to obtain their consent. These animals are:

<table>
<thead>
<tr>
<th>Animal</th>
<th>No. of Councils</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 cat or dog</td>
<td>8</td>
</tr>
<tr>
<td>1 dog</td>
<td>6</td>
</tr>
<tr>
<td>Any animal</td>
<td>2</td>
</tr>
<tr>
<td>1 cat</td>
<td>1</td>
</tr>
<tr>
<td>Total =</td>
<td>17</td>
</tr>
</tbody>
</table>
Two agreements contain what appear to be absolute prohibitions on the keeping of certain animals. These include poultry, pigeons, fowl and rabbits. One Council (Nairn) stipulates that “on receipt of permission to keep a dog, the tenant shall produce for the housing Manager’s inspection a current Dog Licence within fourteen days of receiving the said permission. Dogs will wear collars and name tags at all times”.

2.14 Thirteen agreements allow Council to revoke consents that may have been given to the actions of the tenant. Nine councils may revoke any consent at any time. Five councils may revoke a consent given to the keeping of animals and birds by the tenant (one if complaints are received: the other four at any time).

RIGHTS OF ENTRY

2.15 Forty agreements reserve right of entry to the District Council and persons authorised by them (usually ‘at all reasonable times’) for the following purposes.

<table>
<thead>
<tr>
<th>Purpose</th>
<th>No. of Agreements in which it appears</th>
</tr>
</thead>
<tbody>
<tr>
<td>To inspect the state and condition of the house.</td>
<td>40</td>
</tr>
<tr>
<td>To execute any repairs deemed by the Council to be necessary.</td>
<td>37</td>
</tr>
<tr>
<td>Any other reasonable purpose.</td>
<td>30</td>
</tr>
<tr>
<td>To show prospective tenants the house.</td>
<td>5</td>
</tr>
</tbody>
</table>

One Council (Moray) exempts itself from any liability for damage caused on such occasions: “The tenant shall have no claim for any other damage or inconvenience caused thereby”. While another (Nithsdale) stipulates “no claim for damages or other claims whatsoever shall interfere with payment of rent at the terms of payment before specified”.

2.16 Three Councils reserve the right to transfer a tenant to another house. One (Nairn) in the case of underoccupation of the present house: another (Shetland Islands) ‘if a suitable vacancy arises’ and a third (Stewartry) if the Council ‘in their sole discretion’ consider another house more suitable.

2.17 Five Councils state that if the tenant has made any materially false statements in his application, a tenancy allocated on that basis will be null and void and may be terminated by the Council. Of these, two Councils (Hamilton and Edinburgh) state that in this event: “The tenancy of the house shall without legal process whatever be null and void”. Three Councils reserve the right in these circumstances to terminate the tenancy and to recover from the tenant any loss or damage sustained or expenditure incurred.

2.18 One Council (Angus) reserves the right to alter any of its conditions at any time.
Chapter 3
Analysis of Current Agreements

3.1 The main impression left by a reading of a large number of tenancy agreements is the inequality of the distribution of rights and duties between the parties. The rights, by and large, are on the landlord's side and the duties are on the tenant's. In some cases this one-sidedness is taken to its logical extreme and any reference to the Council's obligations is excluded. We shall have more to say on this subject later but let us look first at the tenant's side of the bargain.

3.2 The tenant in many cases finds his freedom of action curbed, on the one hand, by a set of regulations which set out in great detail and with painstaking exactitude exactly what he shall or shall not do and, on the other hand, by a series of discretionary powers which the Council reserves to itself. There is no obvious reason why a Council tenants' behaviour should be subject to such detailed regulation in matters such as the height of his hedge or the exposure of 'unsightly objects' around his house. Other types of householder are not and the absence of regulation does not seem to create any great problems. Indeed it could be argued that too many rules and regulations help to exacerbate rather than avoid conflict because they lead to the involvement of the Council in a wide variety of disputes among its tenants, many of which are capable of being resolved without the Council's intervention, and also because of the existence of such rules may lend spurious importance to what are, in reality, petty disputes. Where there is a need for regulations — in relation to the use and maintenance of communal facilities, for example — we believe that councils should draft regulations which are suited to the needs of individual housing schemes in consultation with representatives of the tenants who live there.

3.3 The paternalistic attitudes which seem to underlie many of the present regulations are irrelevant to people's expectations today. This has been recognised, in different ways, by the Morris committee which recommended greater 'community participation' in housing management and by recent initiatives in setting up tenant co-operatives supported by central government. There are still agreements, however, which contain clauses such as this one from Clydebank, "Coal and fuel shall be stored in the space or cellar provided for that purpose; the bath shall be used as a bath and, if provided, perambulator space shall be used accordingly; the accommodation for these purposes shall not be used in any other way whatever". We are not suggesting that a conspiracy exists on the part of housing authorities to oppress their tenants — the most likely explanation of the scope and number of regulations is a process of piecemeal additions. If this is the case, it might be expected that new rules would be added more often than old ones deleted and that some of the older rules will acquire an archaic ring as time passes. One example we found was that of a council (Orkney Islands) which levies a 13p fine on tenants who negligently allow their chimney vents to catch fire. Such a fine is unlikely to act as an effective deterrent to would-be offenders and the cost of collecting it probably exceeds its value several times over. We believe that Councils should now take a fresh look at whether or not all the regulations embodied in their individual tenancy agreements are needed and that, in doing so, they should take their tenants views
into account.

3.4 This is also true of discretionary powers reserved by the Council. Some of these, such as the right to withhold consent from a structural alteration or addition that the tenant proposes to make, are reasonable and justified. However Councils should make clear the policies they are operating on these matters, and the reasons for them, to their tenants. The following clause, from the Missives of Let of Moray District Council, illustrates the way such powers can be used to keep all the Council's options open.

"The tenant shall not make any additions or structural alterations on nor attach anything in the nature of a fixture to or in the house or premises nor erect any building or structure of any kind fixed or portable nor erect any wireless or television aerial nor park any vehicle or caravan within the garden or premises without the written approval of the Council and on such terms and conditions as they may impose. At the termination of the tenancy all fixtures shall become the property of the Council without any compensation being paid therefore to the tenant. The Council may however call upon the tenant at any time to have such buildings, structures, fixtures, aerials and vehicles and caravans removed or may themselves remove same and the tenant shall be bound to pay the cost of removal and the cost of restoration or repair and redecoration upon the removal therefor".

3.5 It is surely unreasonable that having agreed to the tenants request to make an alteration or addition and having, possibly, imposed extra terms and conditions before the work can be carried out, the Council can then 'call upon' the tenant to remove the addition 'at any time' and at his own expense. There is also a tendency in some agreements to give the Council very wide and vaguely defined powers. West Lothian District Council, for example, "shall be entitled at any time to execute works within the garden ground of the dwelling house or to resume for any purpose any part thereof without abatement of rent". Stewartry District Council specifies "the tenant shall be bound at such times as the Council deem it desirable or expedient to remove himself and family and belongings at the tenants own expense to such other council house as the Council may in their sole discretion consider more suitable for the tenant's needs". This last clause points up the problem of the council tenants' lack of security of tenure — a point to which we shall return in Chapter Four. The ultimate discretion is expressed in the agreement of Angus District Council which simply reserves the right to alter any of its conditions at any time.

3.6 As a landlord, a Council has two basic legal obligations. One is to carry out certain repairs — to keep the house wind and water tight and to keep in working order the installations for the supply of water, gas, electricity, for sanitation and for space and water heating. The other is to give a tenant at least 28 days notice to quit and to seek an order for possession — a decree of removing or a warrant of ejection — from a court before the tenant can lawfully be evicted. How are these obligations expressed in the Councils' tenancy agreements?

3.7 REPAIRS
Responsibility for repairs between landlord and tenant, can be a vexed question and a source of many disputes. In order to avoid such disputes one might think
that tenancy agreements would indicate in some detail what the responsibilities of both parties are. However, many agreements do not and, it is the Councils’ obligations which are most commonly omitted. Table 2 shows how Councils’ obligations are stated in current agreements.

**TABLE 2. — THE COUNCILS OBLIGATIONS TO REPAIR**

<table>
<thead>
<tr>
<th>Category</th>
<th>No. of Councils</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Obligations not stated.</td>
<td>8</td>
</tr>
<tr>
<td>B. Obligations stated in general terms.</td>
<td>32</td>
</tr>
<tr>
<td>C. Obligations stated in specific terms.</td>
<td>7</td>
</tr>
<tr>
<td><strong>Total = 47</strong></td>
<td></td>
</tr>
</tbody>
</table>

(Note: 4 Councils are included in both categories B & C)

A number of the Councils classified as stating their obligations in general terms used such vague clauses as: “The Council will carry out any repairs it considers necessary”

or

“The Council will carry out repairs in accordance with its statutory obligations.”

On the other hand, all the Councils who replied included in their agreements a statement of the tenant’s responsibilities either in a general or in a specific way.

3.8 We believe that the obligations of both parties should be stated as clearly as possible in all agreements. This applies to obligations agreed between the Council and the tenant as well as those imposed by statute. Since the specific details of each party’s responsibilities will vary widely between Districts and even, within Districts, which are voluntarily undertaken ought to be a subject on which tenants representatives are consulted as of right.

3.9 It is common practice, we found, for Councils to reserve the right to enter the tenants house and carry out repairs which are the tenant’s responsibility if the tenant has been notified of the defect but has failed to have it repaired — and, of course, to charge the tenant for the cost of the work. If a tenant is to be able to enforce his rights, a similar power should be available to him. He should be able — if the Council has failed to carry out the repairs in a reasonable time — to have the work carried out by an independent contractor and to deduct the cost from his rent. For such a scheme to work, a number of matters would have to be agreed upon beforehand:

(a) Time limits within which Council undertook to carry out repairs. (There could be a scale related to the urgency of the repair).

(b) A panel of qualified contractors acceptable to the Council.

(c) Cost limits, acceptable to the Council, where the work is carried out by contractors.

(d) An agreed method of deducting the cost from the rent payable on the house.

Once agreement between a Council and its tenants has been reached on these matters however, there is no reason why such a scheme would not work well in practice: it would make the tenant’s rights genuinely enforceable and would act to ensure that repairs were carried out as promptly and efficiently as is possible by the Council.
3.10 At present when disputes arise, people must depend on their own persistence, the efforts of local councillors and Tenants Associations or those of a Citizens Advice Bureau or other advice agency (if they happen to have access to one) to resolve the problem. The courts are seldom resorted to in the ordinary way, although organised tenants in places such as Alloa, Salford and Dover have won some notable victories in test cases brought under the Public Health Acts.

(2) However, the expense and delay involved in bringing cases to court make this an inefficient and unsatisfactory method of settling routine disputes. It should be noted that councils have an absolute legal obligation to keep in good repair the items listed in para 3.6. Under Scots Law the landlord's failure to carry out its obligations to repair these items within a reasonable time after being given notice may give rise to a right on the part of the tenant to withhold rent. No one wants to see a situation arising where major repairs are left undone and rent is withheld: that is why there is a need for some system which is capable of settling such disputes quickly and fairly. This is the subject which we hope to look at in greater detail in the coming months following a special remit by the government to the National Consumer Council to examine and report on the scope for greater tenant involvement in the repair, maintenance and improvement of council housing. As part of this study, the Scottish Consumer Council hopes to review the present situation in Scotland.

3.11 There were two other points of note regarding repairs. One was the willingness of some Councils to help tenants who through age or infirmity are unable to carry out repairs or maintenance work which would normally be the tenants responsibility. This is something which, we hope, more Councils will consider doing. The other was the following clause from Eastwood District Council's Missive of Let.

"I agree that the Council will not be liable in any way for any loss or damage to the furniture or furnishings in the house arising from the bursting or leakage of any pipes, cisterns, drains, or others whether in the house or in adjoining houses, or flooding from within or without or damp from any other cause". This type of blanket exemption from legal liability seems to us to be extremely dubious and we doubt whether it is in fact legally valid.

3.12 NOTICE TO QUIT

A Council is obliged by law to give a tenant 28 days' notice to quit, in writing, and to get an order for possession from a court before the tenant can be evicted.

If a private landlord wishes to serve a valid notice to quit, that notice must convey the following information to a tenant who is protected under the Rent Acts:

i. Even after the notice to quit has run out, before the tenant can lawfully be evicted the landlord must get an order for possession, that is to say a decree of removing or warrant of ejection, from the court.

ii. If the tenancy is a protected tenancy under the Rent Acts, the court can normally give the landlord such an order only on the grounds set out in those Acts.

iii. Where the tenancy is not a protected tenancy, the tenant may be able to ask the Rent Tribunal to postpone the date when the notice to quit runs out for up to six months, as long as he does so before the notice
iv. If the tenant does not know whether his tenancy is a protected tenancy or is otherwise unsure of his rights, he can obtain advice from a solicitor. Help with all or part of the cost of legal advice and assistance may be available under the Legal Aid Scheme. He can also seek information from a Rent Officer, a Rent Tribunal Office, A Citizens’ Advice Bureau or a Housing Aid Centre.

3.13 These regulations are intended to ensure that tenants under the threat of eviction are aware of their basic rights under the law, and know where to go to get advice. It is not a requirement that the exact words set out above are used, merely that the information is conveyed by the notice to quit (2).

3.14 Council tenants, if they are threatened with eviction, ought also to be made aware of what rights they have. There is at present, however, no obligation on Councils to inform tenants on whom notice to quit is being served of these rights. (we make proposals regarding legislative reform in Chapter 4). Tenants of many councils who turn to their tenancy agreements hoping to find out their rights will not find them of much assistance: in some cases they may be positively misleading. Thirty seven of the agreements we received referred to the necessity of the Council giving a tenant 28 days notice to quit — but very few make any reference to the role of the courts once this notice has expired. Nine agreements did not mention at all the legal requirement to give the tenant 28 days notice to quit. Instead, some contained clauses, such as those below which are open to serious question. Some could easily mislead tenants who are unaware of their legal rights: some seem designed to intimidate rather than to inform. Some contain clauses which seem to us to be incompatible with the present legal position:

i. “A tenant who shall refuse or neglect to observe any of the foregoing conditions or who shall . . . shall be forthwith subject to ejection”. (Clackmannan)

ii. “In the event of any breach of the foregoing conditions the tenancy shall in the option of the District Council cease and determine”. (Annandale and Eskdale)

iii. “If the tenant shall refuse or neglect to observe any of the foregoing conditions or shall . . . he shall be subject to his tenancy being terminated”. (Kirkcaldy)

iv. “A tenant who shall refuse or neglect to observe any of the said terms or conditions or who shall . . . shall be forthwith subject to ejection within 28 days”. (Inverclyde)

v. “In the event of the tenant failing to make payment of rent within seven days of the due date removal may be required on forty-eight hours notice and legal action taken for recovery of arrears”. (Kincardine and Deeside)

vi. “The tenant must not, by taking in lodgers sub-tenants, overcrowd the house. Failure to observe this condition will involve the instant eviction of the tenant . . .”. (Cumnock and Doon Valley).

Such clauses should be removed from agreements immediately and a clear statement of the present legal position substituted. As with private tenants
protected by the Rent Acts, this statement should include information on advisory agencies who can help the tenant to understand and obtain his full rights.

3.15 Tenancy Agreements ought to be documents containing provisions which are fair to both parties and which define clearly the responsibilities of both parties. Such agreements should not try to regulate in minute detail every activity of the tenant. They ought also to be intelligible to those with no special knowledge of the law or of legal terminology. We have already given examples of confusing and misleading clauses in discussing the legal requirements in giving notice to quit. The clause reproduced below from the Conditions of Tenancy of Kincardine and Deeside District Council is an example of another form of inappropriate clause which could be replaced by one sentence, a fraction of its present length, without loss of meaning.

"Prohibition of Sheds, Notices, Trading etc. . . . the tenant shall not, without the written permission of the factor, erect or place on the premises any shed or other building, whether fixed or portable, make additions to or structural alterations on the house, or alter or interfere with the fences or paths. He shall not exhibit on the premises any sign or notice sign or advertisement, or any goods for sale, and he shall not carry on therein any trade or manufacture, or do or allow anything which is prohibited by the feu charter or other title deed of the property. Any breach of these regulations by the tenant may involve the forfeiture by the Council of the feu with all the buildings on it, and accordingly this lease shall, in the event of any such breach, ipso facto and without notice, become void and null, and the Council shall be entitled to apply for, and to obtain a warrant for instant ejection of the tenant".

3.16 In putting forward a Model Agreement (in Chapter 5) we have tried to give practical application to the criticisms we have made in this chapter. In the place of coercion and restriction we have tried to emphasise the concept of mutual responsibilities and to set out these responsibilities as simply and clearly as possible. Our discussion of repairs obligations and the rights of a tenant when threatened by a Notice to Quit has shown that the terms of a tenancy agreement are to a large extent influenced by the wider context of legal provisions and administrative practice. Before turning to our Model Agreement we look more closely in the next chapter at some aspects of the law and of housing management which we believe to be in need of reform.

Notes
1. Shelter have published a useful guide to Public Health Law in Scotland for tenants and community groups in Housing Action Notes No. 1 (January 1976) available from Shelter, 6 Castle Street, Edinburgh.
2. "Notice to Quit", a pamphlet issued by the Scottish Information Office on behalf of the Scottish Rent Registration Service.
Chapter 4

Tenant’s Rights

4.1 We have already referred (in Para 3.5) to the lack of security of tenure suffered by public sector tenants. It is worth looking in some detail of what this means in practice.

4.2 At present a local authority must give a tenant 28 days notice to quit and may then apply to the Courts for an order for possession of the house. Such an order will not normally be refused. By comparison, the Rent Acts confer a greater degree of protection on most tenants of private landlords. To be valid, a notice to quit given to most private tenants must convey specified information explaining to tenants their legal rights (see Para 3.13). Also, the grounds on which a court can give an order for possession are restricted to those specifically set out in the Acts. Some of these grounds relate to particular circumstances which are unlikely to arise in the case of Council tenants: for example, where a tenancy is tied to the performance of a particular job by its tenant — such as the management of a public house — or where the landlord reasonably requires the house as a residence for an adult member of his or her family. Other grounds are more relevant to the situation of Council tenants. These include failure to pay the rent, conduct which is a nuisance or annoyance to adjoining occupiers, causing or allowing the condition of the house to deteriorate and illegally over-crowding the house.

4.3 It is sometimes argued that it would make very little difference to council tenants if they enjoyed security of tenure equivalent to that of private tenants. ‘Innocent’ council tenants, it is said, are not now arbitrarily evicted from their homes and a change in the law is, therefore, unnecessary. On the other hand tenants with rent arrears or behaving in an ‘anti-social’ manner would still have orders for possession granted against them in Court. It is also argued that security of tenure would not only inhibit Councils from evicting ‘difficult’ tenants but also might prevent them from resettling them in more suitable housing environments. There is some truth in these arguments. It is important to emphasise that security of tenure would not give the tenants an absolute right to occupy houses, come what may.

4.4 This does not mean however that public sector tenants would derive no benefit from security of tenure. First, tenants would feel less vulnerable than they do at present. For example, if a Council wished to transfer an elderly tenant to a smaller house the tenant might be reluctant because of the fear of eviction to refuse an unsuitable offer. Secondly, Councils would have to state the grounds on which they were seeking an order for possession from the Court and this would give tenants a better chance to state their side of the case and thus ensure that each case is decided on its merits. Thirdly, we do not believe that local authorities ought to enjoy absolute discretion in their dealings with tenants, ‘difficult’ or otherwise. There are obvious dangers inherent in such a situation and the constraint of having to justify their actions in court would act as a check on possible abuses of the sanction of eviction by Councils.

These are valuable safeguards and they ought to be available to all tenants. The Morris Committee — appointed by the Government to consider the
relationship between housing and social work services in Scotland — also examined this question and they concluded in their report that "We see no valid reason for a large proportion of tenants having less security of tenure than others, merely because their landlord happens to be a local authority". (1)

The SCC recommend that the government should give urgent consideration to the removal of this anomaly in housing legislation.

4.5 The use of eviction is a complex and explosive issue. However, the proposition that eviction should only be used as a last resort in dealing with rent arrears or 'anti-social' behaviour provides a starting point for discussion agreed upon by all parties. We have set out in Table 3 the most recent information available on the use of eviction covering a twelve month period in the major cities (2).

<table>
<thead>
<tr>
<th>Scottish Cities</th>
<th>Eviction Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No. of Council Houses</td>
</tr>
<tr>
<td>Dundee</td>
<td>39,364</td>
</tr>
<tr>
<td>Aberdeen</td>
<td>34,184</td>
</tr>
<tr>
<td>Edinburgh</td>
<td>55,319</td>
</tr>
<tr>
<td>Glasgow</td>
<td>169,481</td>
</tr>
</tbody>
</table>

These figures do not tell the whole story — to do this one would have to take account of other factors, such as the number of "moonlight flits" — but they do indicate the existence of wide variations in the policies regarding the use of eviction operated by different authorities. Such variations strongly suggest that, in some Districts at least, eviction is all too commonly resorted to by housing authorities. This is not surprising. It is easy for an authority to recover possession of a house (in which case its former tenant and his or her family may become the responsibility of the Regional Social Work Department) but much more difficult to avoid or to recover arrears of rent. As Peter Gibson, Director of Shelter Scotland, notes of Dundee, the city with the lowest eviction rate:

"It is not that there is no poverty in Dundee — the city has the lowest adult male wage rates in the whole of Britain. Rather, the city's housing division does some very obvious things to make sure that rents are paid, and liaises closely with social workers and social security officials on a local basis when arrears mount. One of the key procedures is that rents are collected round the doors, fortnightly, on Friday nights: non-payment is immediately noted while only two weeks' rent is owed. Reminders are sent: information on how to claim rent and rate rebates is followed up by visits from housing officials who specialise in helping people to apply for what they may be eligible. Where arrears continue to mount, the case is brought to the liaison committees and the social work department may intervene where the housing department has genuinely failed." (3).

Unless, housing authorities are taking effective steps to control rent arrears (that is, to prevent their accumulation) they cannot justifiably claim to be using eviction as a last resort.
4.6 What changes should be made to prevent the abuse of eviction? We would suggest that three types of action are needed.

i. We should like to see closer scrutiny by the Courts of individual cases before orders for possession are granted. This we hope would be one consequence of the extension of security of tenure to council tenants.

ii. We should like to see Housing Authorities given a statutory duty to provide housing for the homeless. This was one of the recommendations of the Morris Committee who argued that “If Housing Authorities are to be responsible for the consequences of eviction they may consider more carefully alternative methods of dealing with the problems which lead to it” (4).

The present situation where responsibility is divided between District Housing and Regional Social Work Departments is a notoriously unsatisfactory one. A Bill which would place such a duty on Housing authorities, The Housing (Homeless Persons) Bill, is to be debated in Parliament in April. The Scottish office has agreed to Scotland’s inclusion in this Bill and we are hopeful that the Bill will have a successful passage.

iii. We should like to see much greater emphasis by Housing Authorities on informing people of their entitlement to welfare benefits such as Rent and Rate Rebates and on campaigns to increase the take-up of these benefits. A recent report on evictions in Edinburgh claimed that of 307 Tenants whom the District House Letting and Loans sub-committee decided to evict, three out of every ten were not receiving the Rent or Rates Rebate to which they were entitled: one out of every ten were not getting the Family Income Supplement they were due. (5)

Positive action to increase take-up of these benefits can, as Dundee has shown, lead to a lower level of rent arrears and many fewer evictions. We suggest that Councils should produce handbooks for their tenants (see Para 5.3) in which entitlement to these benefits is clearly explained.

NOTES

2. Due to different systems of record-keeping, these figures do not refer to the same twelve month period.
Chapter 5

5.1 A Model Tenancy Agreement
In this chapter we set out our proposals for a Model Tenancy Agreement which could be adapted by housing authorities and tenants to suit the circumstances of different localities. In our example the tenants are joint tenants: however, we recognise that there are disadvantages as well as advantages attached to this type of tenancy. For example, a wife could be held equally responsible for arrears incurred by her husband. The question of whether or not joint tenancies should be more widely used is being considered by a number of District Councils at present and some of them may opt to make joint tenancies mandatory. Whatever policy is adopted, Housing Departments should endeavour to make clear at the outset to tenants and prospective tenants the legal implications of the different types of tenancy.

5.2 We have tried to keep the agreement as short as possible while at the same time stating clearly what we regard as the necessary and reasonable obligations of both parties. Our agreement is shorter than most of those sent to us by housing departments and it is a good deal more specific in spelling out Councils’ obligations. Some people may feel that the local consultation process envisaged by the Model Agreement would generate a variety of new sets of rules and that this could cause confusion. It is possible that this might be the case but uniformity seems to us less important than the need for agreements to reflect more closely the aspirations of tenants and requirements of local circumstances. In any case, lack of uniformity is nothing new. At present variations in the Conditions of Tenancy arise most commonly in the case of extra restrictions imposed by Councils e.g. on the tenants of high-rise flats regarding the keeping of pets. What would be new is the fact that tenants would have a say in the process of rule making.

5.3 It has also been suggested to us by some of those with whom we have discussed the Model Agreement that its brevity to would lead to many legal loopholes and that the details of interpretation to be contained in the Tenants Handbook (see below) would be the equivalent of the ‘small print’ to which we object in many existing agreements. We submit that the fact that the details of the agreement are not spelled out in the main text will lead to a flexibility more suited to agreements based on consultation and local suitability. We should also add that in one English District (Chichester) where a brief agreement of the type we recommend is used there has been no legal difficulty or confusion of the kind anticipated by some critics.

5.4 What should be the scope of the consultation process? Without trying to compile an exhaustive list we would suggest the following as subjects which should be covered by it:—

The supply of heating/hot water.
Arrangements for cleaning communal areas.
Provision of caretaking.
Arrangements for refuse collection.
Keeping of pets.
Regulations regarding nuisance to neighbours.
Use of washing and drying facilities.
Use of lifts.
Use of play areas.
Regulations regarding open plan areas.
Parking regulations.
Internal repairs.

5.5 We hope that Councils will consider producing Tenant's Handbooks which could incorporate the new tenancy agreement as well as the detailed regulations. The emphasis in the Handbook, as we have argued at para 4.6 should be on the presentation of information important to tenants in a clear and attractive manner. We would suggest four subjects that should be covered in the Handbook. These are:—

i. Details of a scheme along the lines suggested at para 3.9 for carrying out those repairs which are the Council's obligation.

ii. Policies operated by the council concerning transfer and exchanges and those actions of the tenant which under terms of the tenancy agreement require the prior approval of the council.

iii. Welfare rights which particularly concern housing. These include Rent and Rate Rebates and direct rent payment for Supplementary Benefit claimants.

iv. A directory of local facilities, advisory services and social and community organisations.

5.6 And so to the Model Agreement itself.
Tenancy Agreement between Tendales District Council and

Mr. & Mrs. A. Tenant of 10, Glasgow Road, Tendales

Tendales District Council and Mr. and Mrs. Andrew Tenant agree that as from (Day) (Date) Mr. and Mrs. Andrew Tenant shall be the joint tenants of 10, Glasgow Road, Tendales under the terms of agreements set out below.

Terms of Agreement

The tenant agrees:
1. To pay punctually the rent and rates due on the house.
2. To keep the interior of the house in a reasonable state of decoration and to carry out those repairs which are the responsibility of the tenant.
3. On being given reasonable notice in writing to allow persons authorised by the Council to enter the premises to inspect the state of repairs of the premises or to carry out repairs.
4. Not to cause nuisance to neighbours.
5. To give the Council four weeks notice in writing in order to terminate the tenancy.

The tenant agrees that he will not, without first obtaining the Council's approval in writing,
6. Take in lodgers or sub-let the premises in any way.
7. Use any part of the house for carrying on a business or as a workshop for carrying on a trade.
8. Make any structural alterations or additions to the premises.

The Council agrees:
1. To maintain and decorate regularly any common parts of the premises including common entrance halls, landings and stair cases.
2. To keep in good repair the structure and exterior of the house including drains, gutters and external pipes.
3. Within the house to keep in repair and proper working order all pipes for the supply of water, central heating or gas and for space heating and water heating.
4. To maintain in good condition any neighbouring houses, and any gardens attached to such houses which have for any reason been left unoccupied for more than 28 days.
5. Not to withhold its consent unreasonably where such consent to an action of the tenant is required under the terms of this agreement.
6. To give the tenant four weeks notice in writing of the Council's intention to end the tenancy, to state the full reasons why such notice is being given and to advise the tenant of his rights in this situation.
7. To consult the Tendales Tenants Association (or other bodies representing local tenants interests) in drawing up or amending detailed regulations suited to the needs of your housing scheme. The current regulations agreed to be necessary and suitable for your scheme are contained in your Tenants Handbook.

(Signed)
A. N. Official (on behalf of Tendales District Council)
Mr. A. Tenant
Mrs. A. Tenant