The tenant's dilemma

Warning: your home is at risk if you dare complain

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Debbie Crew is a CAB worker from Merseyside whose work on this issue won her a top campaigning award.

Debbie was presented with the Consumer Action Award by the Sheila McKechnie Foundation charity. The awards are given to people who are new to campaigning or operating with very little resources who are tipped to bring about future social change.

She was presented with the award by the Chancellor Gordon Brown MP at a reception at 11 Downing Street in April 2007.

In autumn 2006, a woman sought advice from Crosby, Formby and District CAB. She has lived alone in her privately rented flat for 13 years and suffers from Crohn's disease. The property is in poor repair with damp and has windows that don't close. Recently the gas fire was replaced with a two bar electric fire because the landlord did not want to pay for the chimney to be swept. This is the only form of heating – it doesn't sufficiently heat the property and is very expensive to run. As the client survives on benefits it is difficult for her to cope both financially and physically since the living conditions aggravate her health condition.

The CAB successfully gained a grant from the 'Warm Front' scheme for gas central heating. As there was no cost to the landlord he was happy to have it installed. However, when the contractors came to survey the site for the work to be carried out they decided they could not do it. The reason they gave is that the gas meter was located in the flat on the ground floor whereas the client's flat is on the third floor. The landlord refused to pay the £800 needed to have the meter relocated even though the landlord has a duty under the health and safety regulations to ensure the tenant has access to their meter. The lack of such access creates a serious safety hazard, for if there is ever a gas leak, the client has to travel two flights of stairs to the neighbour's flat to ask for entry to switch off her gas supply. If the neighbour is not at home she has no other means to deal with the problem other than calling emergency help.

The bureau advised her that she could take action to require her landlord to deal with these health and safety issues. However, if she exercised this right, she could lose her home as the landlord could retaliate by serving two months' Notice to Quit, for which no reason is required.

She reluctantly decided not to go ahead because the landlord had previously served notice on tenants who have tried to have urgent repairs carried out. As a result, she will continue living in unsatisfactory and dangerous conditions which are detrimental to her health.

Introduction

A serious weakness with current housing legislation is that it doesn't protect private tenants from eviction when exercising their rights to have repairs and health and safety issues addressed. We believe there needs to be urgent reform of the legislation to address this problem, so that tenants don't have to choose between living in poor conditions and being evicted.

This report proposes that restrictions should be placed on private landlords' use of Section 21 – the fast-track 'no fault' means of evicting a tenant – to prevent it being used in retaliation in circumstances where a tenant has recently taken steps to enforce statutory rights regarding disrepair or health and safety issues.

Section 21 of the Housing Act 1988 enables a landlord to legally end an assured shorthold tenancy agreement by serving a Notice Requiring Possession upon the tenant, giving the tenant a minimum of two months' notice. This Notice applies to a statutory periodic tenancy – that is a tenancy that automatically continues after the expiry of a fixed term assured shorthold tenancy. As long as this Notice is served correctly there is no defence for the tenant against the repossession of the property. As landlords are not required to give reasons, they may legally use this procedure as a retaliation tactic if a tenant tries to get repairs or safety issues addressed.

This has severe consequences for private tenants who often do not dare risk taking action to exercise their statutory rights. They are therefore forced to continue to live in poor conditions which have a detrimental effect on health and wellbeing.

Government statistics provide an indication of the scale of the problem. Questions included in the 2000 Survey of English Housing showed that 21% of private tenants were dissatisfied with the way their landlords carried out repairs and maintenance of their property. Yet only one quarter of those tenants said they had "tried to enforce their right". When those who had not taken action were asked why not, 21% said they did not want to cause trouble with their landlord, and a further 5% felt their tenancy would be ended if they tried to get repairs carried out. One third of respondents replied that they 'didn't think it was worth the effort', which may indicate a lack of confidence that landlords would respond constructively.

Private tenants were over represented in the most deprived wards where they accounted for 17% of all households as compared with 10% overall.

The problem of retaliatory eviction also has consequences for public policy on two fronts. Firstly, one of the Department of Communities and Local Government's (DCLG) key targets (PSA 7) is to increase the proportion of households in the private rented sector who live in housing defined as 'decent' (see box). Yet achieving this aim is made more difficult if tenants are deterred from taking action that could force landlords to carry out repairs.

For a dwelling to be considered **'decent'** it must:

- meet the statutory minimum housing fitness standard
- be in a reasonable state of repair
- have reasonably modern facilities and services
- provide a reasonable degree of thermal comfort.

Disrepair in the private sector is a significant problem as demonstrated by the Government's latest House Conditions Survey (DCLG, 2006). This shows that almost a million private rented homes fail the Government's decent homes standard – a higher percentage (43%) than in any other tenure. What is more, vulnerable households (defined as people in receipt of a means-tested or disability related benefit) are worst affected, with almost half living in non-decent housing.

Secondly the problem of retaliatory eviction frustrates a central plank of the Government's housing policy which is to reduce homelessness. Eviction from an assured shorthold tenancy is one of the most common reasons for households becoming statutorily homeless. In 2006, 10,470 households were accepted as statutorily homeless by local authorities following eviction from an assured shorthold tenancy, accounting for around 13% of all homelessness acceptances (DCLG homelessness statistics, 2006).

CAB evidence of the problem

In 2005/06 the CAB service dealt with over 72,000 problems relating to private rented housing, of which 13% related to repairs and maintenance issues and 14% to security of tenure. One of the frustrations which CAB advisers face when advising private tenants about disrepair is that any advice about their rights has to come with the warning that exercising these rights may result in the landlord issuing notice to quit.

This problem is graphically demonstrated by what happened to a client of Crosby CAB (see page 3), whose experiences were the catalyst for this campaign. However this case is not unusual and indeed bureaux from around the country regularly report similar cases:

> A CAB in Cornwall reported an elderly couple with long term health problems who had repeatedly told their landlord about problems with persistent mould growth on the walls. He supplied a dehumidifier and advised the clients to use a strong bleach solution on a fortnightly basis. The client was fed up with having to do this and was also concerned that the bleach could be affecting his wife's health. They would like to insist on proper action being taken but fear that the landlord would serve notice if they did.

> A CAB in Yorkshire reported a couple with an 18 month old baby who had moved into their private rented three bedroom property two years previously. The house was in serious disrepair: windows were cracked, one bedroom and the bathroom windows were boarded up and a shower had been installed in the main bedroom with no associated ventilation. The immersion heater had wiring hanging off the wall, secured insufficiently with black tape and the gas fire in the living room had been condemned by a gas engineer. The landlord replaced the gas fire with a two bar electric heater but their home was still cold. As the bathroom was unusable the baby was bathed in kitchen sink, which was increasingly unsuitable as the child grew. The family were living in conditions which were a health risk, especially for the baby. However, they were concerned that if they sought the help of the Environmental Health Department they ran the risk of eviction.

These fears are in many cases well grounded as clients have taken action and have been served Notice to Quit as a result:

> A couple with four children living in the Merseyside area had moved into their flat in September 2006. They were already tenants of the landlord but as their last property was in such bad disrepair the landlord agreed to move them to another of his many properties.
>
> This property was extremely cold and damp with a black mould deposit coating the ceilings and walls. The windows were in severe disrepair and didn't close properly and there were structural defects to the living room

walls. Since the boiler had broken down they were without heat or hot water over the winter months and relied on one Calor gas heater, which was having an adverse affect on the damp. The 14 year old child slept on the sofa as the bedroom was covered in mould. His brother aged six had severe asthma which was aggravated by the living conditions.

The landlord had refused to put things right, despite numerous requests. The client therefore sought help from the Environmental Health Department. However the landlord then retaliated by serving the client with a Section 21 Notice. This family had to be re-housed by the local authority under their homelessness duty.

A CAB in East Sussex reported a couple who had been renting their accommodation for over five years. Over that period they estimated that they had spent £5,000 – £7,000 of their own money on improving the property including installing a new back door and retiling the kitchen and bathroom. The property is badly in need of repairs and modernisation and Environmental Health had requested the landlord to sort out damp and security problems. However the work had not been carried out and the tenants therefore called in Environmental Health who carried out an inspection and sent a list of repairs needed to the landlord with a copy to the tenants. The landlord promptly issued both the clients and the occupant of the upper flat with Notices to Quit.

A CAB in West Sussex reported a couple with two young children whose property was in serious disrepair. When the landlord refused to carry out essential repairs, the clients complained to Environmental Health who issued a schedule of works to be done. The landlord then served a Section 21 Notice on the clients. When the bureau contacted the homelessness department on the clients' behalf, the homelessness officer said it was common practice for landlords to seek to evict tenants who involved Environmental Health.

In some cases landlords have even used their power to evict as a bargaining tool to try to get the tenant to pay for the work needed:

A CAB in East London reported a client whose flat was in serious disrepair. She reported this to the council who deemed the property not fit for human habitation. When the landlord found out that the client had reported the problem, he issued a Notice to Quit. However he offered to let the tenant stay as long as she agreed to a rent increase of £110 per week to cover the costs of the repair.

A CAB in Hertfordshire reported a client whose landlord served a Section 21 Notice two days after she complained about damp. He also told the client she would not get back her £1,000 deposit unless she rectified the damp problem.

The view from the professionals

Although advice agencies such as Citizens Advice Bureaux regularly see clients faced with the fear or threat of retaliatory eviction, it is Environmental Health Officers (EHO) and Tenancy Relations Officers (TRO) of the local authority who are in the front line dealing with such cases on a daily basis. It was therefore felt to be important to attempt to assess the extent to which these officers believed that retaliatory eviction was a significant problem which needed to be addressed.

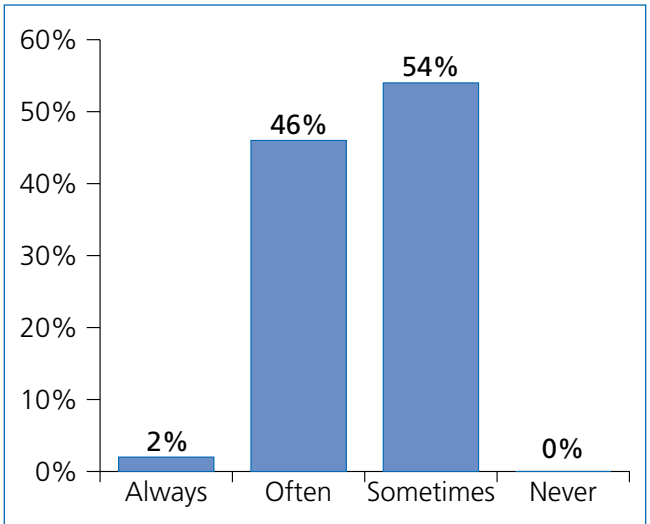
A short e-mail survey was therefore carried out with environmental health officers and tenancy relation officers through the medium of LACORS (Local Authorities Coordinators of Regulatory Services) and the Association of Tenancy Relations Officers. Responses were received from 129 officers across England and Wales, as shown in Table 1.

Respondents were asked whether, in their experience, people were put off using the help offered by environmental health and tenancy relations officers because they didn't want to put their tenancy in jeopardy. As Table 2 shows, all the respondents had had clients who were deterred from accepting help because they were afraid of repercussions from landlords if they pursued a course of improving their accommodation in line with environmental health standards. Forty eight per cent of respondents said this happened always or often.

Table 1: Region of respondents

	Nos.	%
North West	40	31
Midlands	24	19
London & South East	17	13
North East, Yorkshire and Humber	16	13
East England	14	11
South West	12	9
Wales	6	5
Total	129	100

Table 2: Are tenants put off using help because of fears of jeopardising tenancy?



In their comments, most of the respondents agreed that tenants were afraid and that these fears were grounded. One respondent put it succinctly stating:

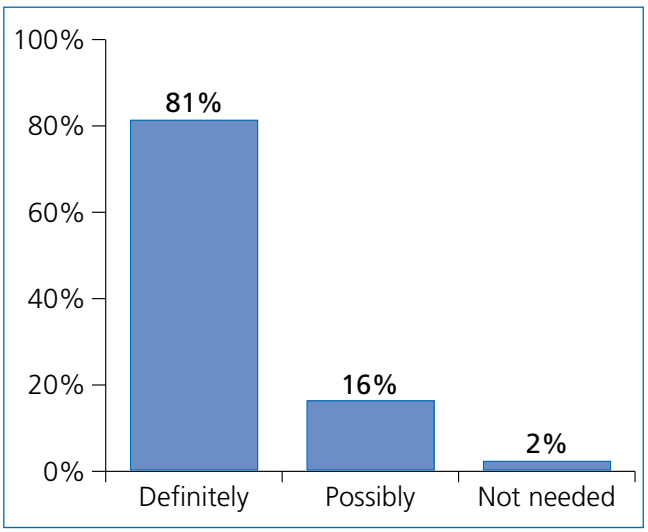
> "I would say that the majority of cases in which I have taken enforcement action, the tenants have been threatened with eviction by the owner of the property as a result of my intervention."

Another officer highlighted the problems facing tenants who live in rural locations:

> "We frequently experience reluctance from tenants for us to pursue formal action. Our authority is rural and families have particular worries as they have children at a village school and there is probably no other rented accommodation available in the catchment."

Respondents were asked whether they believed there needs to be more security for private tenants when they are exercising their statutory rights. A large majority of respondents (81%) felt there was a definite need for more security for tenants. Only three respondents disagreed with this.

Table 3: Need for more security for tenants when exercising statutory rights?



The comments offered showed a diversity of ideas and suggestions about the issues and how to remedy retaliatory eviction:

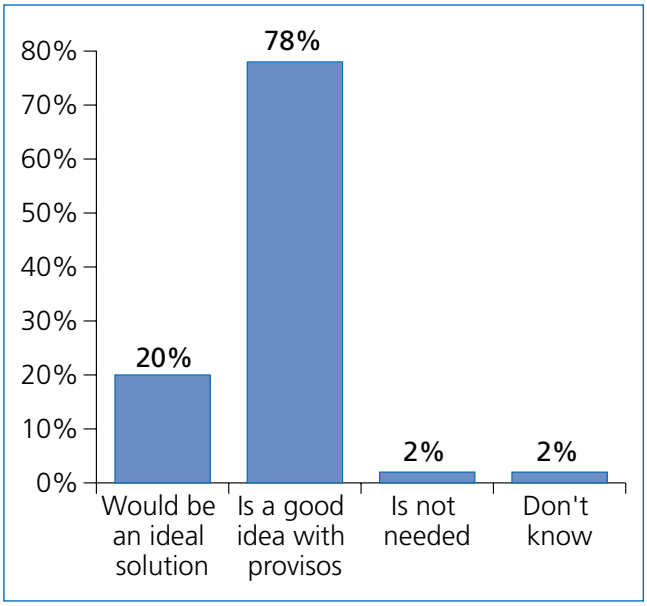
> "The issue will remain invisible if tenants are too intimidated to complain. It is for this reason that there should be some legal protection for tenants in these circumstances."

> "There must be adequate access to specialist housing lawyers who can draft proceedings and/or enter into negotiation. The telephone advice scheme is really not a solution. It is pointless having a remedy unless there are methods for it to be enforced."

> "The tenant should have some protection. However, there also needs to be protection for landlords as there will be tenants who use this as a way of avoiding eviction that may well be warranted. Someone who can give an impartial opinion like the Residential Property Tribunal would be in a good position to judge each case on its merits."

Finally respondents were asked what they thought of the idea of legislation to preclude a landlord from serving a Section 21 Notice if the tenant has taken steps to exercise a statutory right. As Table 4 shows, there was widespread support for such a change, although most respondents recognised that this would need to have conditions attached.

Table 4: Attitude to changing legislation on serving a Section 21 Notice



Many officers elaborated their views with further comment:

> "I feel very strongly about this issue. There are some large landlords who carry out this practice. Even some of our most respected landlords have suggested to me that they would evict their tenants if they complained to us. I would be keen to get involved in any campaign to stamp out this appalling practice which is an infringement of people's rights."

> "This is a constant issue with our work in the enforcement team. Tenants who do complain nearly always end up getting a Notice to Quit. we need a way to overcome this issue to deal with unsatisfactory housing conditions in the Private Rented Sector."

> "Tenants often report problems with their rented property when their tenancy is about to end. They have not reported things before because they have feared the consequences.

Others suggested that a wider review of the security of tenure offered by assured shorthold tenancies was needed:

> "The legal position regarding an assured short hold tenancy needs to be re-examined. Reviewing the position of the 1996 Housing Act would be a start."

Improved legal protection was not seen as sufficient by one respondent, who offered further suggestions.

> "Additional legal protection would definitely be a help but I don't think this is adequate on its own. Additional resources are needed to enforce tenancy protection and environmental health legislation. Landlords often get away with unlawful treatment of their tenants because EHO workloads are so high that it is not feasible to prosecute the very worst landlords. I believe it would also be helpful if environmental health and tenancy protection services within local authorities were more joined-up."

Several officers responded positively to the issue of legislative change, but felt that provisos would be needed to safeguard landlords' legitimate interests.

> "Before opening this questionnaire I have just written an e-mail to senior officers in the Council on this very subject and suggested that we lobby for the specific change in the law that you describe. There must be safeguards however to prevent tenants who are in serious arrears or who have damaged the property from complaining just so the landlord cannot then evict them."

> "Although I agree the bias is currently in favour of landlords and a change in legislation is required, there must be provisos so that landlords can legitimately evict tenants who have breached their tenancy agreement in

areas not related to the disrepair complaint. In addition in several cases there is evidence that the tenants have contributed to the problem and this ought to be considered on a case by case basis."

"It is not uncommon to visit assured shorthold tenants and discuss with them what action the landlord could take and for them to decide to approach them themselves before we become involved. We would always encourage such an approach and perhaps this should be built into any proviso."

Overall the survey clearly showed that a large majority of respondents felt that the problem of retaliatory eviction was a relevant and important issue, which they experienced in their work and needed tackling. The detailed comments offered showed that the officers who responded had clearly taken the time to thoroughly consider the questions and issues.

A majority of respondents felt that fear of retaliation by landlords stopped tenants asking for advice although a few respondents commented that some tenants actually welcomed a Notice to Quit out of desperation, as an aid to obtaining better housing in the social sector.

The overwhelming majority of respondents felt that tenants definitely needed more security when exercising their rights to live in healthy and safe accommodation.

Of those surveyed 98% agreed with the CAB that legislative change concerning Section 21 Notices needed to be made.

Lessons from abroad

In an attempt to find a realistic and workable solution to this problem, we undertook desk research to explore how other countries deal with this issue. Our findings showed that there are broadly two approaches.

In a number of European countries retaliatory eviction is really not an issue as private tenants have much greater security of tenure. Tenants can only be evicted in prescribed circumstances such as rent arrears, damage to property or, in some countries, if the landlord needs the property for his own home (see appendix 2). It is interesting to note that in all these countries, there appears to be a healthy private rented sector which is often significantly larger than in the UK. This challenges the traditional argument made in this country that limited security is necessary to enable the private rented sector to thrive.

In other countries where tenants have less security such as Australia, New Zealand and the United States, there is often specific legislation in place to protect against retaliatory eviction (see Appendix 1).

In Queensland, Australia, landlords can in general terminate tenancies without reason. However legislation prohibits this happening where a tenant has complained to a government entity or taken some other action to enforce their rights. In these circumstances the tenant can apply to a tribunal for an order setting aside the Notice to Leave.

There is similar legislation in New Zealand. A tenant can apply to a tribunal for an order to declare the notice is of no effect on the ground that the landlord was motivated by the tenant exercising a right or remedy. The tribunal has to be satisfied that the landlord was so motivated. The tenant's action cannot be 'vexatious or frivolous' to an extent that it justified the landlord's serving notice.

Protection is offered in 39 out of 51 states of the USA. In California, if the landlord serves notice on a tenant who has exercised a right or complained about the "tenantability" of his property, then as long as the tenant is not in rent arrears, the landlord may not recover possession for 180 days.

In Florida it is unlawful for a landlord to increase rent or decrease services to a tenant, or to bring or threaten to bring an action for possession or other civil action, primarily because the landlord is retaliating against the tenant. In order for the tenant to raise the defence of retaliatory conduct, the tenant must have acted in good faith.

It therefore appears that, in comparison with their counterparts abroad, private tenants in the UK are badly served. Not only do they have far less security of tenure than many of their European counterparts, but they also fail to benefit from specific measures to outlaw retaliatory eviction which such a lack of security makes possible.

The evidence from abroad indicates that it is possible to address the problem of retaliatory eviction without damaging the viability of the private rented sector market.

Conclusions and recommendations

This report has demonstrated how the problem of retaliatory eviction is often associated with some of the worst aspects of the private rented sector where tenants have to live in properties which are in serious disrepair and are often a danger to health and safety. Moreover the response of landlords can be to threaten to evict the tenant rather than to deal with the underlying problem. We believe that the continuing existence of such properties and the use of such inappropriate and sometimes dangerous practices undermine Government objectives to create decent homes for all and to prevent homelessness. They are bad for the reputation of private landlords, damage consumer confidence and should have no place in a thriving private rented sector in the 21st century.

We therefore recommend that the legislation should be amended in line with the government's objectives to create decent homes for all and to prevent homelessness. Specifically, where a tenant has recently taken steps to enforce their statutory rights on disrepair or health and safety issues, landlords should not be able to use Section 21 to evict a tenant inappropriately. Not only is this proposal supported by well trodden parallels in other countries, but it would also be consistent with recent reforms in housing law in this country. Legislation on licensing prevents landlords from using Section 21 where they do not have the required license, and the tenancy deposit protection legislation makes use of Section 21 conditional on the landlord having met the legislative requirements concerning deposit protection.

A similar approach already exists in employment law where an employee cannot be dismissed for trying to enforce their statutory employment rights. In such circumstances the dismissal would be deemed unfair. We are seeking a similar outcome for a tenant who has a Section 21 Notice served as retaliatory action for attempting to exercise their legal right to repair and safety work.

It would also be necessary to include measures to prevent the landlord from instead taking retaliatory action by imposing an extra-ordinary rent increase.

How could it work?

Tenants facing eviction under Section 21 who feel action has been taken in retaliation, should be able to present to the court the steps they have taken to exercise their statutory rights and which they felt triggered the eviction action. It would then be up to the landlord to put their case as to why this was not a retaliatory eviction.

No separate proceedings would be required and the only change would be to give the judge a power to exercise discretion in the proceedings, based on whether this appeared to be a retaliatory eviction. Landlords who wanted to evict for any other reason, would still have recourse to all 17 mandatory and discretionary grounds which cover issues such

as anti-social behaviour, rent arrears, or prior notice of requiring the premises for use as a main home.

The judge would decide whether the Section 21 Notice is upheld or overruled. Once a Section 21 Notice is overruled it should not be possible for a landlord to reissue a Section 21 Notice for a set period of, say, six months. Rent increases should also be prohibited during this period.

In addition, as a preventative measure, when a Notice regarding disrepair is issued, this should automatically suspend a landlord's right to rely on a Section 21 Notice, in the same way that a landlord of an unlicensed House in Multiple Occupation cannot use Section 21.

Longer term reform

In the longer term, use of Section 21 could be restricted to landlords who were members of a national accreditation scheme which set high standards which were properly enforced. If such schemes were voluntary then they would need to be accompanied by a range of incentives to encourage landlords to join, such as access to mediation, support for landlords and tax breaks. The use of Section 21 could be one such incentive and the scheme would set out clearly the circumstances in which Section 21 could not be used.

Landlords who chose not to join would be very much out in the cold and participating landlords who subsequently did not meet their obligations would be expelled from the scheme.

The landlord perspective

In the course of researching this problem, the author discussed the issue with number landlords, some of whom own a small number of properties and some of whom own large portfolios of housing stock. Both groups raised similar concerns regarding any legislative changes – that it is important for them to be able to reclaim their properties as quickly as possible when they need to. However, they did concede that there are some instances where the Section 21 Notice might be abused by landlords in order to avoid meeting their responsibilities. Their main argument against any change of legislation was, 'why change the law for all, when it is a small minority who are offending?' However, from the evidence collected by bureaux nationally, together with the response from the EHOs and TROs it is clear this is a significant problem that can affect any private tenant including the young, the old, and the vulnerable. If the question was rephrased as 'is it fair that someone should be worse off for exercising their statutory rights regardless as to whether this is a housing, employment or consumer problem?', the answer has to be 'no'.

We believe that responsible landlords should have no reason to fear reform as it would only affect those landlords who are acting unethically. On the other hand, reform would make it easier for effective action to be taken to improve property standards in the private sector and prevent the cycle of tenants being evicted and replaced. A greater confidence in the private rental sector will be beneficial to all landlords.

Voices of support

"Notices served under the Housing Act to deal with hazards in the home are designed to protect the health, safety and welfare of tenants. The Chartered Institute of Environmental Health supports any moves to prevent tenants suffering unwarranted eviction and is happy to support the recommendations in this report."

Andrew Griffiths
Acting Director of Policy, CIEH

"The Association of Tenancy Relations Officers (ATRO) supports any viable change in legislation aimed at preventing the use of Section 21 to undermine the pursuit by tenants of their legal rights and remedies. ATRO's members report that many tenants with shorthold tenancies are reluctant to exercise their statutory rights on issues such as disrepair, harassment and non-issue of rent books for fear of retaliatory eviction by their landlord. Tenants should be able to pursue legally enshrined rights without the fear of losing their home."

Andrew Greathead
Secretary, ATRO

"Shelter strongly supports this campaign to end retaliatory evictions. Much of our advice and lobbying work is aimed at preventing homelessness and this campaign would help ensure that, rather than being part of the problem, the private rented sector can be part of the solution. It is vital that tenants in the private rented sector have protection to enable them to take action on disrepair without the risk of losing their home."

Adam Sampson
Chief Executive, Shelter

"We are pleased to support this campaign. Responsible landlords get no benefit from retaliatory evictions and accredited landlords have no need for them."

Tom Toumazou
Project Manager, Decent and Safe Homes Project

"We would welcome a clause within Section 21, which would prohibit landlords from using this legislation to evict a tenant purely because they have made a complaint to the Council about poor property conditions. We frequently speak to tenants who have experienced these actions or who fear they will be served with an eviction notice if enforcement action is taken by ourselves."

Clare Taylor
Principal Environmental Health Officer, Sefton Council

I support the campaign to protect tenants from retaliatory eviction, as it would reduce the number of tenants finding themselves homeless, as a direct result of tackling their landlord with legitimate complaints."

Sarah Green, Re-housing Services Manager Liverpool City Council

"As an authority, we are very concerned about the lack of protection for private landlord residents and will look for initiatives and positive responses to help people in this predicament."

Steve Guy
Housing Strategy Manager
Liverpool City Council

"We have heard numerous cases of unscrupulous landlords exploiting this loop-hole. We fully support the campaign to introduce similar reforms as those applying in employment law where to be sacked for exercising your statutory rights is deemed as automatically unfair. Our organisations are fully supportive of Crosby CAB's retaliatory eviction campaign."

North West Tenants and Residents Assembly, Yorkshire and the Humber Tenants and Residents Federation, North East Council of Tenants and Residents Associations

Acknowledgements

In the process of gaining information for this report, I have had the pleasure of speaking to people from many different organisations. This has allowed me to examine the problem of retaliatory eviction from different perspectives and the impact it has. Without the advice and expertise of the organisations below, it would not have been possible to bring the issue to the forefront. My initial plan was to raise the profile and provide a voice for the many tenants who have to live in substandard accommodation though fear of eviction. This began as a small project at a local level. However, it resonated with so many people that before long there was a wave of national support.

I would like to thank:

Everyone at Crosby, Formby and District CAB Special thanks to Barry Dooley and Andrea Sharp, for their valuable help in researching retaliatory eviction provisions abroad

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Alex Marsh and Professor Martin Partington, Law Commission
Andrew Greathead and everyone at ATRO
Andrew Griffiths, Chartered Institute of Environmental Health
Barry Markham, Chief Executive, National Federation of Residential Landlords
Bernard Caine Chairman and James Devlin Vice Chair, North West Tenants and Residents Assembly
Bill Rashleigh, ROOF magazine
Catherine Dolman, writer
Catherine Green, Wirral Council
Claire Taylor, Sefton Council
Colin Bennett, Landlord Accreditation Team, Salford City Council
Colin McPherson, photographer
Debi Jones, Sefton Councillor
Irene Hall, researcher
Jacky Peacock, Director of Brent Private Tenants Rights Group
Jessica Mulley, Communities and Local Government Select Committee
Lynn Smith, Chair, North West Property Owners Association
Michael Hall Chairman North East Council of Tenants and Residents Associations
Pete Price, Radio City
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Sarah Elliott, Consumer Correspondent at Granada TV
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Steve Guy, Liverpool Council
Tony McVey, Secretary, North West Property Owners Association
Vijay Jethwa, Private Sector Officer, Blaby District Council
Wendy Herman, Tenants' Union of Queensland
Will Hatchett and Tom Wall, Environmental Health News

Appendix 1 – Retaliatory provision around the world

New Zealand

On the presentation of Notice to Quit, the tenant may make an application to the Tenancy Tribunal to ask for an order to state the notice will have no effect. If the Tribunal agrees the Notice to Quit was given in retaliation the Tribunal will make an order stating that the Notice has no effect.

Australia

New South Wales

Under the Residential Tenancies Act 1987, the tenant may apply to a tribunal in order to resolve matters such as where the landlord has increased rent in retaliation.

Queensland

The Residential Tenancies Authority (RTA) is the statutory body responsible for administering the *Residential Tenancies Act 1994* and the *Residential Services (Accommodation) Act 2002*. Under this legislation if the landlord retaliates against the tenant by giving the tenant a Notice to Leave, the tenant can apply directly to the Small Claims Tribunal to have the Notice set aside. The Small Claims Tribunal can hear and resolve tenancy disputes.

Tasmania

The Residential Tenancy Act 1997 sets out the rules which apply to residential tenancies in Tasmania. There are several provisions under the 1997 Act which outline the landlord's obligations to maintain the property and respond to notification of repairs required. If the tenant cannot contact the landlord there are procedures which they may follow in order to have the repair done and then be reimbursed by the landlord.

South Australia

The law regarding tenancy is laid out in the Residential Tenancies Act 1995. When an issue arises such as retaliatory eviction, the tenant may apply to the Tribunal for assistance. There are limitations on the landlord's right to terminate. In relation to a housing improvement notice, the eviction must be on specific grounds with the Tribunal's consent.

Victoria

The Landlord and Tenant Act 1958 provides restrictions on eviction. Provisions give the circumstances under which notice of eviction will be permitted. A landlord cannot serve notice without reason. This has the effect of landlords being unable to evict a tenant through retaliation. Under s73 Residential Tenancies Act 1997, when a required repair has still not taken place after an inspection report has been received, then the tenant has 60 days to apply to the Victorian Civil and Administrative Tribunal for a repair order. In the case of an urgent repair usually regarding a safety issue, the tenant may organize the repair within a financial limit and then be reimbursed by the landlord.

Western Australia

The landlord may only terminate the tenancy on specified grounds.

For further information regarding Australian Law visit www.austlii.edu.au.

USA

Out of 52 States, 39 have Retaliatory Eviction statutes:

Alaska
Arizona
California
Connecticut
Delaware
District of Columbia
Florida
Hawaii
Illinois
Iowa
Kansas
Kentucky
Maine
Maryland
Massachusetts
Michigan
Minnesota
Mississippi
Montana
Nebraska
Nevada
New Hampshire
New Jersey
New Mexico
New York
North Carolina
Ohio
Oregon
Pennsylvania
Rhode Island
South Carolina
South Dakota
Tennesee
Texas
Vermont
Virginia
Washington
West Virginia
Wisconsin

Common examples of conduct for which the landlord may not retaliate include:

- The tenant has complained in good faith to the landlord, department of health, building department, officer of consumer protection or any other governmental agency.
- The landlord has been served notice, complaint or order by such agencies
- The tenant has sought to enforce rights and remedies available to them by lawful means.
- The tenant has become a member of a tenant's union or similar organisation.
- The landlord acts in violation of the rental agreement

In a majority of states where a Retaliatory Statute exists, the landlord is prohibited from increasing the rent in retaliation, to an amount in excess of fair-market value.

Notwithstanding the above the landlord may still bring an action for possession if:

- The disrepair was caused primarily by the lack of reasonable care by the tenant
- The tenant is in default in rent
- In compliance with the application building or housing code, the property requires alteration, remodelling, or demolition which would effectively deprive the tenant of the use of the dwelling.
- The dwelling has been used for illegal purposes or any other violation of the tenant's rental agreement.
- The landlord seeks in good faith to recover possession of the dwelling for the immediate use as the landlord's own abode or the landlord's immediate family.

For example – how it works in Alaska

An aggrieved tenant who believes that the proposed eviction is in retaliation can file a complaint with the board.

Within five days of the tenant filing the complaint, the board will determine if there is reasonable cause to believe that the reasons for eviction are not valid. It shall be presumed that there is reasonable cause to believe this if the tenant has previously filed a complaint against the same landlord.

If the merits of the complaint are accepted by the board, notice of the complaint will be sent to the landlord. Once the landlord receives this notice they may not implement the proposed eviction until issued with a certificate of eviction specifying that the reasons for the eviction are valid. This will be decided at a hearing by the board.

Further information regarding the United States of America laws on retaliatory eviction can be retrieved from *Survey of State Laws regarding retaliatory provisions*, Alliance for healthy homes (2004) www.afhh.org/res/res_pubs/disclosure_Retaliatory_Laws.pdf

Appendix 2 – Security of tenure in European countries

	Typical length of contract?	How much notice required from landlord	% Privately rented dwellings	What reason needed to evict?	Possible to appeal?
Germany	Majority are *unlimited* contracts.	If it would result in hardship, tenant can force continuation for up to 1 year.	51% (2002)	Very specific reason required.	Yes, a landlord's legitimate reason can be overridden for up to a year if causes hardship to the tenant.
France	Minimum of 3 years/ 1 year minimum contract (unfurnished/ furnished).	Minimum 6 months	20% (2002)	Must be for a specific, legitimate reason.	Yes
Spain	Tenant has right to annually extend contract for up to 5 years.	1 month before annual renewal date, though acquiring an eviction order can take many months.	10% (2001)	Specific reason required, and then court order must be sought.	Yes, though it is a lengthy process. .
Italy	3 or 4 years	6 months	16% (2001)	Must be a specific, legitimate and sufficient reason.	Yes
Ireland	After the first 6 months tenancy is extended for a further 3½ years.	First 6 months – 28 days Then a sliding scale up to 112 days after 4 years.	11% (2006)	No reason in the first 6 months. For the next 3½ years only for specific reasons such as a breach of contract.	Private Residential Tenancies Board provides an informal, cheap and speedy forum for resolving disputes.
United Kingdom	6 months	2 months, but can be served 2 months before initial contract period ends.	12% (2006)	None	No, Section 21 Notices are mandatory with no scope for judicial discretion.

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