

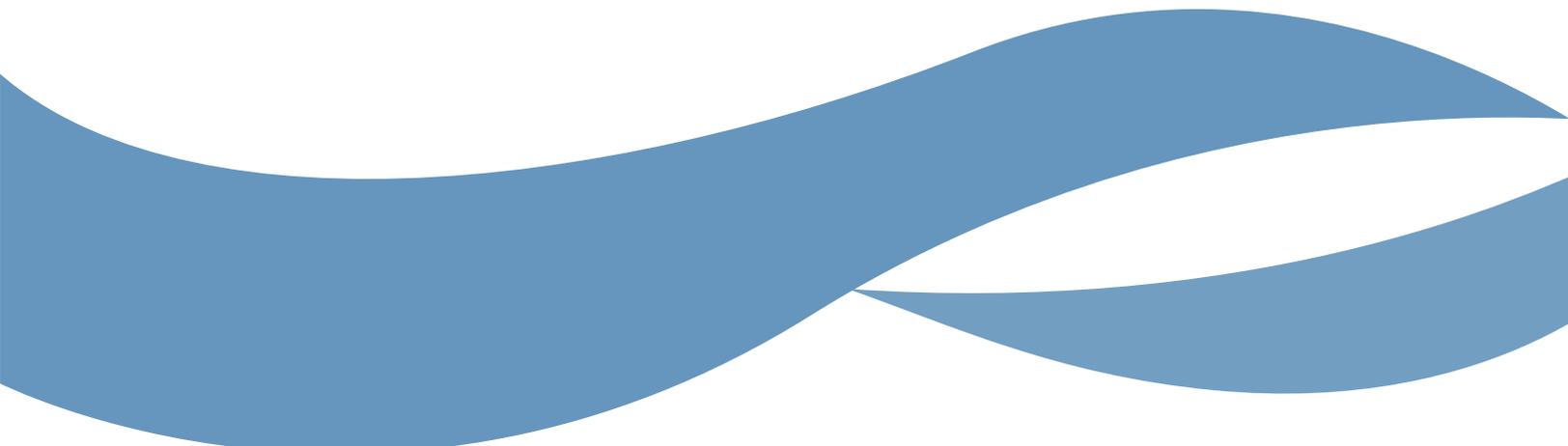


Fair Rents (Scotland) Bill

07/11/2020

About Scottish Land & Estates

At Scottish Land & Estates (SLE) our work helps to ensure that rural Scotland thrives. We are a membership organisation for landowners, rural businesses, and rural professionals. We promote the wide range of benefits land-based businesses provide: tourist attractions, leisure facilities and landscapes enjoyed by the public, as well as housing, employment, tourism & enterprise and farming opportunities. We represent the interests of our members and wider rural Scotland to the UK and Scottish Governments to help ensure that policy and legislation reflects the unique requirements of rural Scotland and its communities.



Introduction

SLE welcomes the opportunity to respond to this call for evidence but we have significant concerns with respect to the proposed Fair Rents (Scotland) Bill and the impact it will have on the private rented sector.

Aside from the content of the proposals, we are of the view that the COVID pandemic is not an appropriate time to be considering proposals that will have significant impact on landlord's ability to reinvest in property. Rural landlords must deploy significant investment to meet energy efficiency standards, repairing standards, maintenance of private water supplies and septic tanks etc., and they need flexibility to allow fair cost recovery in the long-term. Rural landlords are often the major suppliers of affordable rented housing in rural Scotland and measures which deter that provision will generate problems in rural areas where social housing provision is difficult and expensive.

We therefore strongly recommend that this Bill is not taken forward for the reasons we set out in response to the questions below.

1. The Member in Charge thinks there is a need to make private rents fairer for tenants and to create a better balance of power between private landlords and tenants. Do you agree with this overall policy aim? If so, do you think the Bill will help achieve this outcome?

No. While we support the concept of fairness, this fairness should apply to all parties therefore rents should be fair for both the tenant and the landlord. This means allowing a flexible approach that enables a landlord to increase rents to cover the cost of increasingly expensive repairs and maintenance required by regulations, but it also means ensuring a landlord can freeze or reduce rent to assist tenants through difficult times safe in the knowledge that they can increase rent in the future at an appropriate rate.

There are already protections in place against excessive rent increases through the Private Residential Tenancy and we are concerned that further capping rent increases will make it more difficult for some landlords to justify making costly refurbishments to properties (energy efficiency standards, repairing standard, private water supplies etc.), resulting in the loss of private rented housing. And without flexibility, it is likely there will be fewer landlords able to help struggling tenants if they have no means of re-cooping costs more quickly in future.

We think that the problems which the Bill is seeking to address are in fact problems of supply and demand which are particularly prevalent in certain locations in Scotland's Central Belt. We believe that those problems will be better solved by policies which seek to address the cause and not the symptoms.

On a fundamental level, we feel the aim of the Bill is to tackle rising rents, although given the changed circumstances this year with the global pandemic and potential future implications as to the way in which people work and go about their business we feel it would be useful for this matter to be considered in that wider context.

In our view, the housing shortage which has been driving prices and rents over the previous period is caused by a multitude of issues. Restrictions on building, complex planning rules, poor infrastructure, remoteness and increased regulation and costs are all factors which are highlighted in the recent report on [The Role of Land in Enabling New Housing Supply in Rural Scotland](#). We are concerned that all that rent control would achieve is the exodus of responsible landlords over time, exacerbating the housing shortage. We feel the focus should be on the housing market, encouraging more investment, both

public and private and provision of incentives, as well as the relaxation of planning restrictions where appropriate and sensible.

It is SLE's view that the proposals overlook current measures in the new Private Residential Tenancy (PRT) which already provide security, stability and predictability for tenants. For example, a new PRT tenancy:

- is open-ended, which means a landlord will no longer be able to ask a tenant to leave simply because a fixed term has ended
- provides more predictable rents and protection for tenants against excessive rent increases
- includes the ability to introduce local rent caps for rent pressure areas.

We consider the rationale for these proposals to be flawed. Our members, many of whom are private rented sector landlords, are concerned that the initial consultation document included the notion of exploitative landlords. Clearly in any sector there are rogue operators who should rightly face sanction, but in our experience the vast majority of landlord / tenant relations are positive, both parties acting responsibly and we do not agree that there is a general power imbalance. We are concerned that with around 70% of private rented sector properties owned by small-scale landlords who let out 5 or fewer properties, these landlords accounting for 95% of the total number of private rented sector landlords could leave the market with further challenges such as rent capping/controls.

In addition, the Policy Memorandum (para 8) suggests the Fair Rent test within the Rent (Scotland) Act 1984 allowed free markets to determine rent, however, [section 48](#) of the Act on determination of fair rent clearly demonstrates that rents were determined by the Rent Officer who had to consider a series of provisions including the age, character, location, state of repair of the dwelling-house etc.

Housing is not homogenous across Scotland, nor in rural Scotland and neither are landlords or tenants. The long-term nature of rural rents often means that rural landlords will not impose increases annually, safe in the knowledge that they have the freedom to increase appropriately in the future to recover costs associated with maintenance / upgrading of property etc. If there is a cap on increases, this will push landlords into annual rent increases to cover any future costs incurred by maintenance and repairs.

This blanket one size fits all approach proposed in the Bill does not adequately address the real challenges nor provide the correct solutions to issues with the private housing rental market and could lead to numerous unintended consequences.

2. Section 1 of the Bill prevents a landlord of a private residential tenancy from increasing rent in any year by more than the Consumer Price Index plus 1%? Do you agree with this? Section 1 also gives the Scottish Government a power to vary the cap by order. Do you agree with this?

SLE is wholly opposed to the introduction of capping private sector rent increases annually across Scotland as proposed. We also consider it vital that the important issue of rent levels and rent increases is considered in its proper context. Setting artificial controls on rent levels is likely to have unintended consequences including:

1. Higher rent increases – as landlords try to increase rents to the maximum possible to protect themselves against open market rents increasing above CPI + 1% in the future. Landlords are currently unlikely to impose market value increases mid tenancy. A [survey](#) of 7,400 tenants in Scotland by the web portal Lettingweb in November 2014 found that 90% had never experienced a rent rise that they deemed to be unreasonable.

2. More frequent rent increases – where there is a formal process set out in law for rent increases landlords are more likely to follow it whereas historically the majority of landlords did not increase rents mid tenancy. A survey of 7,400 tenants in Scotland by the web portal Lettingweb in November 2014 found that 86% of tenants surveyed had never received a request for a rent increase during a tenancy and 91% of tenants thought that the frequency of rent reviews on their property has been reasonable. In July 2014 the Scottish Association of Landlords (SAL) conducted a survey of landlord and agent members, asking for their attitudes to rent increases. The landlord survey showed that 78% of landlords do not increase rent mid tenancy. Amongst those who do, 70% last did so more than 12 months ago. 36% said they would be more likely to increase rents if the government introduced controls on how often increases could be carried out. Amongst SAL letting agent members only a third review rents periodically mid tenancy. 39% don't generally review rents mid tenancy and 28% do so only when the landlord requests it. 47% said they would be more likely to increase rents if the government introduced controls on how often increases could be carried out.

3. Introduction of a “rental cap”, in addition to the other recent and upcoming regulatory requirements will likely mean a reduction in the number of properties available to rent as properties become unviable and are sold off. Capping seems to work against the current proposal for improving energy efficiency standards and moving towards low carbon fuel options. Significant improvements will be required to improve the general condition of housing in Scotland. It is unfeasible for property owners to carry these out with no guarantee they can get funding or recoup these costs through rent. The Energy Efficiency Regulations are still being consulted on, and no rental cap should be considered until more details are available. Rental caps have been tried before in the UK, and this caused a decrease in supply and resulted in landlords being reluctant to maintain or make improvements to their properties. If further regulation is introduced, many landlords may feel that it is unviable for them to continue to offer private accommodation and take their homes out of the rental sector. We have concerns in a rural context where private landlords offer a substantial proportion of affordable accommodation. If even a small percentage of these properties are removed, there will be substantially increased pressure on social housing in these areas and could result in homelessness for the most vulnerable. Internationally there have been various endeavours in respect of rent control regimes. As the consultation document itself alludes to there have been “teething problems” in Ireland. In fact there have been a number of issues around exemptions and monitoring of the system in Ireland and the level of rent increase in Dublin in the first quarter of 2018, a year after introduction, was 7% despite the 2% set limit.

Furthermore, potential new landlords will be put off from entering the market. This will reduce the supply of properties even faster, making it very difficult for tenants to find homes. This is at a time when there is increasing demand for homes in the PRS due to the shortage of social housing and difficulty in purchasing property, with the PRS the only sector able to house some of the country's most vulnerable households. Rent caps as proposed in the consultation paper are likely to lead to a reduction in investment and supply shortages for the following reasons:

- a) Mortgage companies will further restrict the supply of mortgage finance available to potential landlords in Scotland as they will be very concerned at the new risk exposure of landlords not being able to service mortgage payments in a scenario where interest rates rise significantly. This may mean for example that they limit their maximum LTV ratios thus requiring landlords to find larger deposits.

- b) If rent increases are limited to an arbitrary factor such as CPI, then the only way that landlords can even begin to absorb unexpected costs, such as replacing boilers, roof repairs, or being required to install carpets etc, will be to stop investing in other aspects of the property, e.g. redecoration and improvements. Over time the condition of rental properties in Scotland will steadily deteriorate. This will also happen if mortgage rates rise.

A shortage of supply will drive open market rents even higher in the areas the legislation is most designed to help.

One effective long-term solution to increasing rents is to supply more homes. Other solutions and mechanisms already exist, including:

- Rules on restricting rent increases to once every 12 months were a key part of the Scottish Government's Private Housing (Tenancies) (Scotland) Act 2016, which came into force in December 2017. That 2016 Act made a number of regulatory changes including the removal of the no-fault ground on termination, which have placed additional burdens on landlords.
- There is provision in the Private Housing (Tenancies) (Scotland) Act 2016 to designate an area as a Rent Pressure Zone (RPZ). If an area is designated as an RPZ, a cap (maximum limit) is set on how much rents are allowed to increase for existing tenants with a private residential tenancy each year in that area. As yet, no RPZ is in place in Scotland, despite the existence of that power.
- For pre-1989 tenancies a landlord or tenant of a regulated tenancy under the Rent (Scotland) Act 1984, can apply to the Rent Officer to have a 'fair rent' fixed.

As an apolitical organisation, we note that once government becomes involved with controlling rents, there is a risk it becomes a political issue at elections and the longer rent control remains in place, the more difficult it is to remove it: inflation ensures that controlled rents fall further and further behind an economic level, until it becomes politically impossible to remove the controls without a public outcry.

In practice few of our members have had a policy of increasing the rent annually. In the rural locations in which the majority of our members operate, the intervals between rent reviews are often several years. We suspect that one potential outcome of this proposal would be to encourage landlords to increase the rent annually by at least CPI, leading to the perverse outcome of more tenants paying higher rents.

3. Section 2 allows a tenant in a private residential tenancy to apply to have a “fair open market rent” determined by a Rent Officer. Do you agree with section 2?

In any answer to question 3, the Committee also welcomes your views on—

- The right set out in section 2 to appeal a Rent Officer’s determination to the First-tier Tribunal***
- The matters set out in section 2 that must be taken into account in determining what is a “fair open market rent”***

Whilst we have no objection to giving tenants the right to have the market rent determined, we don't consider it fair to artificially restrict the amount that can be determined by preventing a rent officer from increasing the rent where it is below the open market level. We also have concerns about the number of applications that might be received from tenants if this proposal was introduced in its current form and the consequent cost to the public purse.

We are particularly concerned about section 22B(6) which proposes that the landlord cannot increase the rent within 12 months of an order from the rent officer setting the rent. Along with clause 22B(5) which prevents the rent officer from increasing the rent, these measures could be used by tenants to prevent a landlord from ever increasing the rent on a PRT. The tenant would simply need to apply to the rent officer once a year for a determination of a fair rent. Dealing with these appeals will create much additional work and could have an impact on landlord and tenant relationships.

Rent Pressure Zones were introduced at the end of 2017. More time is needed to judge the effectiveness of these zones. The premise that these zones are not working seems pre-emptive when no zone has yet been designated across Scotland. There needs to be proper consideration as to the reason no successful application has been made, rather than simply reducing the criteria. Interestingly, at the time of introduction of RPZs it was noted that methodology for identifying them was more complicated than suggested because rent rises vary according to the demand for particular sizes and types of private rented sector housing in particular locations. This latter point is ignored by the proposed Bill with its all-encompassing approach.

The wording in s.2(2) for the proposed s.22B does not use recognised wording for the definition of open market rental value. We suggest that the wording in 22B(1) is replaced by one of two recognised definitions: either that used in the RICS Red Book for International Valuation Standards:

"The estimated amount for which an interest in real property should be leased on the valuation date between a willing lessor and willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion"

Or the definition used in the European Valuation Standards (2020) published by The European Group of Valuers Associations:

"The estimated amount for which the property should be leased on the date of valuation between a willing lessor and a willing lessee on the terms of the actual or assumed tenancy agreement acting independently of each other after proper marketing wherein the parties had each acted knowledgeably, prudently and without being under compulsion."

The wording in s.22B(3) should then be deleted as those matters would be assumed to be taken into account by knowledgeable and prudent parties in reaching the agreed figure. By requiring the Rent Officer to deduct rent for those items AFTER assessing the open market rental value, there is a strong risk of double discounting.

4. Section 3 requires the following to be entered into the Scottish Landlord Register: the monthly rent charged for a property, the number of occupiers, and the number of bedrooms and living apartments. The MSP who introduced the Bill thinks this change will help ensure we have more public data about private rent levels. Do you agree with section 3?

SLE does not support the requirements for the register as outlined in the proposals. In our view requiring disclosure of monthly rent charged is potentially against the interests of tenants who likely consider the rent they pay a private matter. It would not be difficult to find out where somebody lives (particularly in a rural setting) and conflate this with rent level. This could lead to conflict and friction in small communities where people might realise they are paying more than their neighbour.

For example, one SLE member noted; *“We have a case of 2 (near identical) cottages that are on different rents. This is largely due to the different duration of the tenancies, as we have started charging higher rents for new tenants as part of the PRT and then let the rent soften if the tenant proves to be a good tenant that looks after the property.”*

Extending the landlord register to include rent prices serves as a blunt instrument comparison – a similarly located pair of houses, one in excellent and one in very poor condition, may rent for dissimilar sums but the only public comparator available would then suggest the very poor house/landlord would be the better of the two. This would present a misleading situation and updating would involve further administration and checks.

The Landlord Register is there to assure tenants and regulators that landlords are compliant with the relevant regulations in respect of the property. Landlords will be reluctant to have financial information published and many tenants will similarly have concerns about this data being publicly available.

Occupancy levels can be difficult to ascertain throughout the course of a typical long-term rural tenancy. One SLE member described a case where grandparents were suddenly asked to house their grandchildren by social services which meant a far higher occupancy rate that lasted 9 months. Another noted that they have a case of a cottage let to a single man (with 2 children at weekends) who took in his brother when he lost his job. And one of them has a girl friend who visits. On the basis of these examples, if landlords are required to publish accurate occupancy levels they will have to interfere more in tenants’ private affairs.

Landlords should be able to use any agent they choose rather than being tied to the one they have specified at the time they redo their landlord registration. As Landlords have to use a regulated agent, there is no need for this to form part of the landlord registration.

There is also some confusion around the rationale for this proposal. On the one hand we are told that there is not sufficient information and we need compulsory rent disclosure, while on the other hand we are given detailed figures (analysed by area and number of bedrooms) outlining the above-inflation rent increases as a major driver for the bill.

5. What financial impact do you think the Bill will have – on private tenants, on landlords in the private rented sector, on local authorities, on Rent Services Scotland, on the First-tier Tribunal, or on anyone else.

We do not believe that the current proposals outlined in the Bill can be delivered sustainably. If long-term, sustainable investment into new rental housing is deterred, this would be a step further away from resolving the underlying housing issue of a lack of supply. If this Bill is taken forward there requires to be full economic, social and environmental impact assessments undertaken and tested for rural proofing. Prior UK as well as international experience of rent controls requires to be thoroughly reviewed.

For the public sector the introduction of a rent cap and altering the appeals process will generate further work at a time of limited resources. There will be both staffing and time requirements. Given the number of consultations and upcoming reforms to the private rented sector we would suggest that no further regulations are proposed at this time. It is vital to understand the impact of changes in advance of simply making further reforms.

We believe the costs to landlords will be significant and adversely affect supply in the sector. The potential impact cannot be understated. The regulations on repairing standards, energy efficiency and private water supplies will mean higher costs for landlords and combined with the recent changes with the introduction of the new Private Rented Tenancy, it is important for the sector that individuals are not disincentivised from the private lettings market.

Despite the intent, we are not clear that the rent cap will be of substantial benefit to tenants. Any financial gain will in fact be wiped out by the loss of accommodation.

We believe the Bill will have a significant financial impact on all those involved in the private rented sector, as detailed below:

Government/local authorities:

- the cost of housing those unable to find accommodation as the supply of PRS accommodation reduces
- the cost of enforcement of/training on the new legislation
- the cost to the public purse of covering more frequent rent increases for those in receipt of housing benefit/universal credit
- the cost of amendments to the landlord registration system

Rent Service Scotland/First-tier Tribunal:

- the cost of overseeing a large number of applications for determination of a fair rent/appeals

Landlords/letting agents:

- the cost of compliance and training
- the cost of subsidising properties where rent becomes well below the market level and no longer covers the operating costs of the business
- the cost of maintaining / upgrading properties without guarantee of cost recovery
- the cost of having to be involved in regular fair rent determinations/appeals

Private tenants:

- more frequent and higher rent increases to “keep up” with the market
- costs associated with difficulties in finding accommodation when rent control legislation leads to a shortage in the supply of properties in the sector
- more frequent rent increases leading to an increased risk of tenants getting into debt resulting in eviction and debt recovery action.

6. We welcome any other comments you may have on the Bill that you think are relevant and important, including its likely impact (positive or negative) on equalities, human rights and quality of life issues.

Introduction of a rental cap, in addition to the other recent and upcoming legislative changes will likely mean a reduction in the number of properties available to rent. The original consultation paper itself recognises possible shrinkage in the sector, albeit considers this will not be substantial, without presenting any clear evidence why.

We note paragraph 2.61 of the report commissioned by the Mayor of London on “[Reforming Private Renting](#)”, published last year (2019) and would suggest such an approach if being taken forward is absolutely vital: *“The Mayor is clear that any system of rent control must both tackle problems around affordability and avoid or mitigate potential negative impacts. Some international examples demonstrate that rent control has the potential to reduce the supply and quality of rental housing if the approach chosen makes investing in the rental market less attractive. Any system should be implemented gradually over time, and its design should be informed by a robust evidence-gathering process, to address such wider impacts and avoid unintended consequences”.*

SLE feels that the potential impacts of the Bill could be immensely damaging to the private rented sector, not just for landlords or only for tenants, but for both parties. Introducing further powers, while existing powers have not yet bedded in or been properly assessed would not make for efficient legislation. Proper evidence-based consideration is required rather than rushing into a quick fix solution which will create further problems.

We believe the bill will have a negative impact particularly on young people, low income households and families with children because they are disproportionately represented in PRS housing and will face the unintended consequences of a cap in rent increases which we have highlighted elsewhere in our response including higher and more frequent rent increases and a shortage of available properties.

We are also concerned by the lack of consideration this Bill appears to have for the rural sector. The explanatory documents make no distinction between the urban and rural context. As far as we can tell there is no evidence to support a big issue with poverty in the rural private rented sector, without which there can be little justification for these proposals being applied to rural Scotland. There is no mention of

issues affecting rural Scotland where many jobs, especially within a farming and land sector, often come with tied accommodation. This sector must not be overlooked in the same way it has been by previous legislation which makes it impossible to resume property for business purposes, for example.

Below are some examples that SLE members have recounted which would be impacted by these proposals:

1. SLE member has a rented cottage for over 30 years, initially let at a low rent. Early on the tenant's partner left her with young children, so the landlord left the rent unchanged for about 20 years to help her through. By the end of that period the rent was at least 40% below market. The landlord wanted to invest in improvements which they could ill afford at that level of rent, so they discussed this with the tenant and agreed priorities.

To balance the investment the landlord agreed with the tenant that there would be a phased increase in rent, as gentle as possible, to be spread over a period of several years. The ultimate target was a rent just on the low side of market. Nevertheless, the increases had to be a little more than 1% above inflation, otherwise they would never have begun to catch up with fair market rents. Even today the member advises the net rent received after ongoing maintenance etc. cannot begin to approach a worthwhile return on capital invested, but *"the tenant is happy so we're all happy"*.

If the rent cap as proposed was applied to this situation, the SLE member advises that they would never have allowed the rent to fall so low, and improvements to the property would have been limited to what was required by regulations.

2. One tenant of 15 years has had a tricky employment record so the landlord has been flexible over the years. His last job was as a taxi driver but he was struggling at off peak times of the year so the landlord cut his rent. He is now a driving instructor and his rent will go back up to the level it was 3 years ago. If the proposed rent cap was in place the member advises they would not have been in the position to reduce his rent without knowing they could put it back to a fair level once his circumstances changed.
3. A landlord put a newly refurbished property on the market for rent at £675pcm (as advised by their agent). They offered it to existing tenants at £650pcm, but when they did credit checks it became apparent that the tenants had an IVA (individual voluntary arrangement to clear debt) and were in a tricky financial situation. The landlord agreed to start the rent at £600pcm to help with moving costs etc. with an agreement to increase the rent to £650pcm over the next 2 or 3 years as their financial situation clears. This increase would not be possible under the proposals.
4. One SLE member built 14 affordable houses for rent in 1999 and the conditions of the grant were that the landlord was, and still is, allowed to increase rents by RPI +2.5%. Rents for his sitting tenants tend to be increased by RPI +0% and when properties fall vacant they are re-let at the RPI + 2.5% adjusted figure or low-market rent, whichever is lower. As a result, within this group there are two identical 3-bedroomed properties where rents are markedly different. Tenant A who has been a tenant since 1999 pays £434/month while Tenant B, who only moved-in in 2017 pays £592 which is still an affordable rent (i.e. <80% of the Rent Allowance). Tenant A, who is not on a high income, is effectively being subsidised by the landlord by approx. 26%. If rent caps prevented the landlord from adjusting the rent of Tenant A's property, should it fall vacant, then the response of the landlord

must be to adjust rents upwards annually by the maximum permitted and thus the Bill would deter landlords from taking a supportive approach to long-standing tenants.

For more detailed information

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