

Regulatory Committee

10.00am, Monday, 30 September 2024

Fire in Breadalbane Street: Licensing of Agents and Factors

Executive/routine
Wards

All

1. Recommendations

- 1.1 The Regulatory Committee is asked to note:
 - 1.1.1 This report and discharge point 3 from the motion from the meeting of the City of Edinburgh Council on 21 March 2024; and
 - 1.1.2 That officers will engage with landlords to encourage good practice in these, and similar, circumstances.

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Fire in Breadalbane Street: Licensing of Agents and Factors

2. Executive Summary

- 2.1 This report provides a response to the third action from an [emergency motion](#) by Councillor Day, approved by the City of Edinburgh Council on 21 March 2024 (Appendix 1). The report discharges that action.

3. Background

- 3.1 In the early hours of 14 March 2024, a fire spread amongst flats in Breadalbane Street. 100 residents were successfully evacuated, and the fire was extinguished. However, some displaced residents did not receive support from their respective landlords or agents.
- 3.2 The third action in the motion (Appendix 1) asked for a report setting out the Licensing of Agents, Factors and Landlords. This report discharges that action.

4. Main report

Landlord Registration

- 4.1 Landlord Registration was introduced in 2006 under the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#) ('the 2004 Act'). Subject to some statutory exceptions, it requires landlords of private let properties, including Houses in Multiple Occupation (HMOs), to register with their local authority. Anyone who rents property when they are not on the register commits a criminal offence.
- 4.2 As a local authority, the Council is required to hold a register of private landlords, provide advice and guidance to tenants and landlords, and ensure that only those landlords who are fit and proper are allowed on the register. 'Fit and proper' considerations are set out under Section 85 of the 2004 Act. Within the 2004 Act, the definition of 'fit and proper' is narrowly drafted. It includes the commission of specific offences such as fraud or violence, contravention of any provision of housing, landlord or tenant law, any acts regarding antisocial behaviour affecting

the house, and repairing standard enforcement orders. Where a local authority is satisfied that the relevant person is no longer fit and proper they must be refused entry to, or removed from, the register as the case may be.

- 4.3 All landlords are required to ensure that residential property that they let meets the [tolerable standard](#) and [repairing standard](#). This includes the duty to ensure that houses have fire alarms and satisfactory provision for detecting fires.

Houses in Multiple Occupation

- 4.4 The requirement to hold a HMO Licence is set out in the [Housing \(Scotland\) Act 2006](#) ('the 2006 Act'). A HMO licence is required where any living accommodation is occupied by three or more unrelated people and the property is their only or main residence, subject to some limited exceptions. It is a criminal offence to operate an unlicensed HMO.

Property Factors

- 4.5 The Council has no role in the licensing or registration of property factors. Property factors are required to register with the Scottish Property Factor Register by the [Property Factors \(Scotland\) Act 2011](#). It is a criminal offence to operate as a property factor whilst unregistered.

Support for tenants displaced by fire or other emergencies

- 4.6 Officers have taken advice from colleagues in the Council's Legal and Risk team with respect to the responsibilities of landlords and HMO licence holders where tenants have been displaced by fire or similar circumstance. Members are asked to note that neither the legislation nor associated guidance imposes or suggests an enforceable duty to support tenants in these or similar circumstances. In other words, there is no legal duty to rehouse a tenant in these circumstances.
- 1.1 The Council does provide advice and assistance to tenants and landlords and seeks to promote best practice in an effort to raise standards across the private rented sector. While there is no enforceable duty to support tenants in these or similar circumstances, officers will strongly encourage landlords to support any tenant directly affected. Comprehensive landlord insurance providing for alternative accommodation is likely to be the route which would produce the most satisfactory outcome for affected residents, and officers will promote this as best practice including updating the HMO Best Practice Guide.

First-tier Tribunal for Scotland (Housing and Property Chamber)

- 4.7 First-tier Tribunal for Scotland ('FTT') is responsible for determinations of rent or repair issues in private sector housing; and assistance in exercising a landlord's right of entry.
- 4.8 A landlord can apply to the FTT for a determination of whether a property factor has failed to comply with their duties or the property factor [code of conduct](#).

It also assists with informal resolution of issues between homeowners and property factors - this is the legal protection for residents who think that factors are not complying with their responsibilities.

- 4.9 Where a tenant has not been able to use either all or part of their house due to disrepair, they can apply to the FTT for the abatement of rent in proportion to the area of the property which is unusable.
- 4.10 Where a tenant believes that the [Repairing Standard](#) is not being met in the house that they rent from a private landlord, they can apply to the FTT for a determination. Vulnerable tenants can contact the Council to request a third-party referral to the tribunal on their behalf. It should be noted that a third-party referral is time consuming and resource intensive for officers.
- 4.11 The FTT will consider a case and, where deemed appropriate, will enforce repairs by issuing the private landlord with a Repairing Standard Enforcement Order (RSEO). It is a criminal offence to fail to carry out repairs required under an RSEO without reasonable excuse.
- 4.12 Where a landlord has failed to comply with a RSEO, or any other relevant determinations from the FTT, the Council will consider whether the landlord remains a fit and proper person. Where this is not the case, a report will be submitted to the Licensing Sub-Committee seeking to remove the landlord from the register.

5. Next Steps

- 5.1 The Council will continue to fulfil its statutory requirements, provide advice and guidance, and engage and promote best practice in relation to Landlord Registration, HMO licensing and associated legislation.

6. Financial impact

- 6.1 None arising directly from this report.

7. Equality and Poverty Impact

- 7.1 Not applicable.

8. Climate and Nature Emergency Implications

- 8.1 Not applicable.

9. Risk, policy, compliance, governance and community impact

- 9.1 Risk of legal challenge if HMO licensing or landlord registration systems are used to hold landlords accountable where there is no explicit legal provision to do so.

10. Background reading/external references

- 10.1 [Landlord registration: statutory guidance for local authorities 2017.](#)
- 10.2 [Repairing Standard: statutory guidance for private landlords.](#)
- 10.2 [Licensing multiple occupied housing: statutory guidance for Scottish local authorities.](#)
- 10.3 [The Scottish Property Factor Register.](#)
- 10.4 [Property Factors \(Scotland\) Act 2011: Code of conduct for Property Factors](#)
- 10.5 [First-tier Tribunal for Scotland \(Housing and Property Chamber\).](#)

11. Appendices

- 11.1 Appendix 1 – Motion from meeting of City of Edinburgh Council on 21 March 2024.

Appendix 1

Fire on Breadalbane Street – Emergency Motion by Councillor Day

Council:

Is aware of the fire that took place in the flats of Breadalbane Street in the early hours last Thursday. All 100 affected residents were safely evacuated and after 12 tireless hours by 70 firefighters, the fire was successfully put out.

Places our sincere gratitude on record to our emergency services for keeping the community safe, to our own colleagues from housing, and health and social care teams who were quickly on-site providing help to those who needed a safe place to stay, and to recognise the reaction from the local community and businesses alike who rallied to donate food, blankets and warm clothes, the generosity to their neighbours during this difficult time.

Also wishes the safe and speedy recovery of the two firefighters were injured in the line of duty.

Notes that some residents remain displaced and agrees that those who were living in rented accommodation should also be receiving support through their respective landlords or agents. This support has unfortunately not been forthcoming from all organisations who have a duty of care responsibility for their tenants.

Council therefore agrees:

1. To hold an event for residents, landlords/agents and factors with council officers and local members to look at the response to this incident and all further outstanding actions.
2. To request an update is provided to Council or Committees, as appropriate, on the steps that have been taken by council officers, and partners, as a result of the fire, including information on building standards, fire regulations, cladding and any relevant detail from Fire Scotland.
3. To request a report to the next appropriate Regulatory Committee on the licensing of agents, factors and landlords who have not acted fairly in supporting their tenants in this situation.