

Rent tribunals in England – what do we know?

Generation Rent

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Summary

In the private rented sector, it is possible for tenants to challenge a proposed rent increase. These cases are heard at the First Tier Tribunal.

- But over the course of two and a half years just 341 assessments were made – representing a tiny proportion – less than 0.01% – of tenants
- The tenants who apply to the tribunal rarely get a good deal. One in four are told to pay rent at the same level as or more than their landlord has demanded
- Although 11 percent are awarded a rent lower than they currently pay, the average increase cannot be described as affordable. On average, renters are expected to pay an 11% rent increase in one go.
- On an annualised basis, this is equivalent to a 5.5% increase in rent every year: three times as high as ONS private rent inflation, and higher than wage inflation.

If private tenants are to enjoy protection from unaffordable rent increases after landlords lose the ability to evict them without needing a reason, the Rent Tribunal as it currently stands cannot provide it.

The fundamental problem is that the tribunal bases its decisions on the going market rent.

Renters are often left with a choice to stay and pay an unaffordable rent, or move out and pay an unaffordable rent: no real choice at all.

We recommend:

- Permitting landlords to raise the rent only if they meet basic standards such as deposit protection, licensing requirements and gas and electrical safety.
- Increases be limited to one per year, after the first year of the tenancy, and four months' notice.
- Making it easier for tenants to apply to challenge a rent increase and submit evidence, with online options.
- Improving awareness, with the process made clear to tenants in the How To Rent Guide, tenancy agreements and other communications with renters.
- Maintaining the tribunal's consideration of disrepair, tenants' improvements and other quality issues when making their decision.
- Having the tribunal take into account the tenant's record of payment.
- Capping increases at wage inflation.

Background

If a landlord wishes to raise the rent on a tenant and the two parties cannot negotiate a compromise, they must issue a Section 13 notice.

The tenant can challenge this notice by applying to the First-Tier Tribunal (Property Chamber) for a rent assessment.

The Rent Tribunal awards a rent based on what properties are being advertised for in the local market, taking into account the condition of the property and any improvements the tenant has made themselves.

In its 2019 consultation on proposals to abolish Section 21 evictions, the government noted that the Rent Tribunal would remain in place to adjudicate on rent increases outside fixed terms.

If landlords can no longer use the threat of a Section 21 eviction to force tenants to pay a higher rent, we might expect more landlords to use Section 13 notices. This may result in more cases where the tenant has to move because they cannot afford a higher rent – cases that could be thought of as “economic evictions”. The Rent Tribunal will in turn become more important, so we have taken a look at what decisions it makes currently.

Generation Rent has examined market rent assessments carried out by the First-Tier Tribunal. These are published on the gov.uk website.¹ Generation Rent scraped these webpages for decisions in PDF format and then extracted the details around dates and rent levels for analysis.

Findings

Number of cases

There were 341 market rent assessments between January 2019 and August 2021 – representing a tiny proportion – less than 0.01% – of tenants.

Two thirds of cases – 225 in total – were published with a PDF setting out the reasons for the decision – usually providing details like the original rent and type of tenancy.

The rest of the decisions simply have the rent determined by the tribunal and basic details of the tenancy/property, with no reasons published.

Of cases with reasons, 29% could be identified as relating to a private Assured Shorthold Tenancy or Statutory Periodic Tenancy (which we will refer to as private tenancies as shorthand).

A further 33% were on an assured tenancy (normally starting before 1997 if renting from a private landlord), rented from a housing association or were on another type of tenancy. In the remaining 38% of cases the type of tenancy could not be identified.

Regional breakdown of cases

More than half of cases were in London and the South East. The format of the decision is very dependent on the region, with nearly all cases in the South East, East of England and South West having reasons published. Very few in the North, including Yorkshire, have reasons published. There is a roughly 50:50 chance of cases in London and the Midlands having the reasons published.

We are more likely to have reasons for cases heard since 2019.

Length of tenancy

In around half of cases the tenant had been living in the home for more than 5 years. Though among private tenants, 58% had been in their home for less than 5 years.

¹ <https://www.gov.uk/residential-property-tribunal-decisions>

Outcomes

Among known private tenancies, the average **proposed increase in rent was 28%**, and the average increase in **rent awarded by the tribunal was 11%**.

Across all tenancy types, the proposed increase was similar, but the tribunal awarded an average 13% increase in the rent.

Individual landlords ask for most (32% increase) but get half that. Housing Associations set their sights lower and normally get what they want.

Known private tenants have around a 77% chance of the tribunal awarding a rent lower than what their landlord asked for. This compares with 73% across all tenancy types (including unknown). This may simply reflect private landlords being more likely to ask for more than the market will allow.

While three quarters of applicants got a better outcome than if they had paid the rent, many still faced a considerable rent increase.

While half of cases (51%) resulted in a rise of less than 10%, one third saw increases of 10 to 50%.

Just 11% saw a reduction awarded, twice as likely as a rent increase of more than 50%. There was not a significant difference between private and other tenancies.

Even if a tenant can afford the rent the tribunal awards, at present they can still face a section 21 eviction. Indeed, in some cases, the decision notes that possession proceedings were already taking place.

Annual increase

In 30 private sector cases the decision details contained information about when the existing rent was set, allowing us to calculate the annualised increase. This is a small sample so might not necessarily give us an indication of outcomes into the future. In these cases, **the average increase is 5.5% per annum**, which is higher than the annual rate of increase recorded by the ONS rent index, even considering that most cases are in southern England where rent inflation has been higher than average.² At its peak in late 2016 ONS rent inflation was just 3.5% in the South East. It is also unaffordable on average given that wages have not increased by 5.5% per annum at all in that period.

The range is quite wide, with 8 cases of zero or negative changes, and three above 25%. The median increase is 2%. Three cases involving annual increases around 1% involved rents that had not been changed for more than 10 years, so the overall increase was more than 10%.

Comment

Less than 0.01% of tenants used the rent tribunal process over the course of two and half years.

And although the Rent Tribunal has prevented rent increases above what the landlord demanded in 77% of cases, many tenants would still have been left with the illusory choice of paying an unaffordable rent on their current home or the upheaval of an unwanted move to a different neighbourhood or a smaller home in order to afford the rent.

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<https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/indexofprivatehousingrentalprices/february2022>

It would be difficult to persuade a tenant that challenging a Section 13 notice is worthwhile, given the outcomes we have observed.

There are three factors resulting in minimal use of the Rent Tribunal.

First, landlords will normally agree a rent rise with their tenant by signing a new tenancy agreement or otherwise asking for a higher rent informally and the tenant, who does not know their rights, complying.

Second, landlords who meet resistance from their tenant have a Section 21 eviction – or the threat of one – at their disposal to compel the tenant to agree to pay more. As a result of these factors, there are likely to be few Section 13 notices issued in the first place, ruling out the Rent Tribunal as an option entirely.

This second factor may not have a great effect if the experience in Scotland is any guide: even after the abolition of the Standard Assured Tenancy, the Rent Tribunal there still only hears a handful of cases: a total of 26 since 2018.³

A third factor is awareness of the Rent Tribunal among tenants and perhaps, even when they do learn of its existence, a perceived barrier to applying. For example, evidence of poor conditions or the tenant's own improvements is needed to present a strong case and this is administratively burdensome.

Greater effort to raise awareness of the Rent Tribunal and making it more user-friendly may give renters who could benefit from challenging Section 13 notices more access to it. Ultimately, however, without a change to what constitutes an acceptable rent, there will be little value in the Rent Tribunal and we may see economic evictions replace no-fault evictions in practice.

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³ <https://www.housingandpropertychamber.scot/rent/rent-decisions> accessed 24 March 2022