COLLAS CRILL

The termination of residential tenancy agreements as of March 2018

APRIL 2018

This note is intended to provide high level guidance on points to consider when taking steps to bring a residential tenancy agreement to an end under the Residential Tenancy (Jersey) Law 2011 (the '**Law**').

What does the Law apply to?

- The Law applies to all residential tenancy agreements of nine years or less made after 1 May 2013.
- The Law also applies to all tenancy agreements of nine years or less entered into before 1 May 2013, provided they have been varied or renewed since 1 May 2013.
- For residential tenancy agreements that were entered into before the Law came into force, and have not been varied or renewed, the *Loi (1919) sur la location de biens-fonds and Loi (1948) concernant l'expulsion des locataires réfractaires* (the '**Old Laws**') will apply.

Article 6 of the Law – termination of a periodic tenancy

- This article **can only** be relied on when the term of a residential tenancy agreement has expired or there is no end date (for example, a rolling tenancy, i.e. month by month). This is what is known as a 'periodic tenancy'.
- This article **cannot** be relied on where the residential tenancy agreement is for a fixed period which has not yet expired. In these circumstances, the options are to either wait until the fixed period had expired or rely on article 12 of the Law (see below).
- The notice to quit (the '**NTQ**') under article 6 of the Law **must**:
  - be in writing;
  - be signed by or on behalf of the landlord;
  - be served on the tenant; and
  - give the tenant at least 3 months' notice to quit the property.

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Please note that the Law empowers the Minister for Housing to change the NTQ requirements. However, the requirements set out above are those applicable as at the date of this note.

- When preparing to serve the NTQ, regard must also be given to any contractual notice requirement set out in the tenancy agreement. Where the contractual notice exceeds the statutory notice (i.e. the tenancy agreement requires 4 months' notice to be given), the contractual notice should be followed to avoid any potential breach of contract claim, **unless** both parties agree to waive or reduce the contractual notice to the statutory notice of 3 months. Please note that the statutory notice requirement cannot be waived or reduced.

- In terms of the service of the NTQ, landlords may do this or the Viscount's Department can do this on their behalf. Effecting service through the Viscount's Department might add an element of seriousness to the legal proceedings, albeit at additional cost (normally around £100).

- Subject to the contractual notice and the statutory requirements being complied with as above, the residential tenancy agreement shall automatically terminate 3 months after the NTQ is served (unless the NTQ refers to a longer period).

- The benefit of using an NTQ is that it provides a clear end date and an automatic end to the residential tenancy agreement (on the basis that the contractual and NTQ requirements have been met). However, in the event that the tenant refuses to leave the property, an application to the Petty Debts Court would still need to be made for an eviction order, where the tenant might apply for a stay of eviction (although if they have already received at least 3 months' notice this might be harder for the tenant to obtain).

Article 12 of the Law – termination and eviction where the tenant has failed to rectify a breach

- This article can be relied on where the tenant has acted in breach of one or more provisions of the residential tenancy agreement (i.e. has failed to pay their rent, is guilty of anti-social behaviour, etc).

- However, a breach alone is insufficient to terminate the residential tenancy agreement. The following requirements must also be met:

  - the tenant must be served with a notice to cease the conduct that constitutes the breach and/or take reasonable steps within 7 days after the service of the notice to rectify the breach, or to do both these things; and

  - it must be possible to evidence that the tenant has failed to comply with the notice, (together, the '**Article 12 Requirements**').

- Provided there has been a breach and the Article 12 Requirements have been met, then the landlord may apply to the Petty Debts Court for an order for the termination of the residential tenancy agreement and the eviction of the tenant (and the recovery or rental arrears, etc, if applicable).

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- The Petty Debts Court may order the termination of the residential tenancy agreement and the eviction of the tenant if:
  - it is satisfied that there is a breach of the residential tenancy agreement;
  - that the Article 12 Requirements have been met; **and**
  - that the breach is sufficiently serious to warrant the termination of the residential tenancy agreement and the eviction of the tenant (i.e. the Petty Debts Court retains a discretion).
- A landlord does not need to first serve a NTQ before pursuing an action under article 12 of the Law. Accordingly, article 12 is a much faster process as only 7 days' notice need be given to the tenant. However, this initial attraction should be balanced against the fact that it is generally a more contentious route and there is no automatic termination of the residential tenancy agreement as any breaches of the tenancy agreement will need to be proved.

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