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and has a number of globally renowned Universities. It is the perfect location for the next stage of BFS's growth strategy and will complement the expected growth locally. It is true to say that many prospec-

**How will this expansion affect business in Cayman? Will the Cayman office experience a loss in business as a result of the change?**

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# Spotlight on residential landlords

*The word is out about the publication of the first draft of The Residential Tenancies Bill. The reaction has come mostly from residential landlords, who are mostly now bemoaning the imminent loss of their position of advantage in the landlord and tenant relationship, as Cayman law presently prescribes. Daniel Priestley, counsel with Ogier, examines the Bill exclusively for The Journal.*



The aim of the new Law is to import a measure of social responsibility into the conduct of residential landlords, a relatively small portion of which have been caught out abusing the lack of regulation, notably in the rather extreme circumstances that faced us after Hurricane Ivan.

**Daniel Priestley:** The irony is that most of these acts would almost certainly already be unlawful. However, Government has inevitably concluded that the success of those unscrupulous landlords in perpetrating these abuses dictates that further measures are required

Typical abuses complained of were refusing to return security deposits, refusing to refund pre-paid rent, (in the case of partially damaged premises) refusing partially to abate the rent, unilaterally increasing the rent on an immediate basis, and unlawful evictions. The irony is that most of these acts would almost certainly already be unlawful. However, Government has inevitably concluded that the success of those unscrupulous landlords in perpetrating these abuses dictates that further measures are required.

This Bill proposes a large number of changes to Cayman law and I refer to just a few of the more salient ones, as follows.

First, there would be established a Residential Tenancies Commissioner, a public officer, whose job would be to hear and determine disputes between residential landlords and tenants. The idea is obviously to create a relatively informal, financially-accessible-to-all, no-lawyers-required forum for the determination of small scale

disputes. The RTC would have power to make orders to impose his judgement on these disputes but is somewhat undermined by the fact that the matter can be made subject to re-hearing in the Summary Court as of right. Residential landlords are no doubt concerned at the cost to them, in terms of time as well as money, of defending frivolous suits brought before the RTC.

All residential tenancies must be in writing and contain a number of basic provisions to enable the landlord/tenant relationship to function administratively and be signed by both parties.

The maximum security deposit a landlord may now demand is one month's rent for all tenancies other than weekly tenancies, in which case the maximum security deposit is one week's rent. The security deposit must be invested and the location and details of the account must be disclosed to the tenant. Failure to do so will be a criminal offence

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dard, Johnson says that all the major developed financial markets require that statements are in compliance with GIPPs as a best practice. In the Cayman

folio management, risk management, asset allocation, and performance measurement. (Enrollment information may be found at [www.cfainst-](http://www.cfainst-)

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# Spotlight on residential landlords

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and attract a fine of \$2,000. There is now a mandatory procedure for a joint inspection of the premises which must be followed in connection with the final disposition of the security deposit. Landlords should beware that following the stipulated procedure is likely to every bit as important to substantiating a claim as proper evidencing of the claim itself.

Although the Bill does not seek to control the level of rent that a landlord may demand, it does restrict the way in which rent increases may be imposed. There will be a period of no less than six months between rent increases and notice of a proposed rent increase must be given at least 60 days before it is due to become effective. Although hardly representing a change in the law as it presently stands, the Bill provides

that rent increases cannot be made in contravention of the provisions of the relevant tenancy agreement.

The Bill proposes a number of new obligations on both parties to be implied in any residential tenancy agreement. Among the new implied obligations of the tenant are to: pay the rent when due, ensure that the premises are used principally for residential purposes, keep the premises reasonably clean and tidy, to relinquish occupation and remove his belongings at the end of the tenancy and not interfere with the peace and quiet of the neighbourhood.

On the other hand, the landlord will be required to ensure that premises are "fit for human habitation" to which the following criteria will be relevant: state of repair, freedom from damp and mould, access to natural lighting, water supply, stability, ventilation, drainage

and sanitary conveniences and facilities for the preparation and cooking of food and for the disposal of waste water.

Landlords will have to keep the structure and utilities in repair and working order and will be liable to compensate tenants for expenses incurred in performing these obligations following service of a notice making the landlord aware of the disrepair and the tenant's intention to incur expenditure to make repairs.

Although it is again a case of the law not being changed but instead being codified, the landlord may not interfere with the delivery of utility services to the premises and must prevent interference with the quiet enjoyment of the premises by and among his neighbouring tenants.

Landlords will be subject to new regulation concerning access to the premises. Except in cases of emergency, landlords must now give notice of an intention to access the premises and may only enter during certain specified times. The amount of notice which must be given will be a minimum of 24 or 48 hours. The frequency of visits for the various purposes is, in some cases, restricted. In some cases, the consent of the tenant is required for access.

Landlords may not use force or the threat of force as a means of gaining access even if entitled to access under the Law.

The Bill underscores the jurisdiction of the Court in determining whether or not a residential tenancy may be forfeit and possession regained by the landlord. Landlords again take note: a tenant's remedy for unlawful eviction entitles the tenant to obtain accommodation on an emergency basis (usually only hotel accommodation is available in these circumstances) and stay there, at the landlord's expense, for a reasonable period or until suitable alternative accommodation can be found.

Those who cry foul are exaggerating: the fact is that if this Bill is enacted in its present form, it will cause relatively little in the way of hardship to those residential landlords who provide a decent standard of accommodation and are ethical in their dealings with their tenants. There would undeniably be a significant re-balancing exercise which favours the tenant but it would be wrong now to believe that the advantage in the landlord and tenant relationship has shifted in favour of the tenant. In contrast to many other jurisdictions, residential tenants in the Cayman Islands will still not enjoy any form of security of tenure nor control over the level of rent a landlord can demand.

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