ATLAS & LLAS PRESS

PRIVATE RENTED SECTOR

49th Edition June 2022

LLAS/ATLAS Training, Networking & Live BBQ

on Thursday 7 July 2022

Taj Hotel, Central London

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Inside this issue

ATLAS

London Landlord Accreditation Scheme

Welcome to the latest edition of the PReSs

Boris Johnson recently narrowly survived a vote of no-confidence. Whilst he is anxious to 'draw a line under the debate and move on', it will make it difficult for him to get any contentious Bills through Parliament. The cartel of 148 Tory MP's who voted against him have the potential to use the same tactics used against Theresa May by abstaining in key votes. Johnson has a 75-seat majority, but if 76 of the 148 abstain he will lose vital votes.

Where does this leave landlords and the PRS?
Most landlords are concerned about the proposal to abolish the Section 21, mentioned by Government several times. At iHowz we published a paper before Christmas and sent to all MP's.

In it we were trying to make MP's and Ministers aware of the consequences of losing the Section 21, with the potential for landlords to refuse to take any prospective tenant unless they pass every reference/check. This will lead to more homeless, hurting the very people it is intended to protect.

It is true to say that the Section 21 is overused, all too often landlords are unaware of the Section 8, and how to use it. If training and accreditation (as offered by LLAS/ATLAS) were to be mandatory this would minimise this problem.

This proposal to scrap the Section 21 has been trailed as being part of the Renters Reform Bill, which itself will be preceded by a White Paper on the PRS.

The only problem is that neither have seen the light of day yet. The White Paper was promised last Autumn; then this Spring, then Summer, now a Minister has hinted it might not be until later this year, or even early next. Why?

Most likely because the housing minister responsible for this was replaced at the beginning of February this year, and it is fair to assume that the new minister (The Rt Hon Stuart Andrew) wanted time to get used to his new portfolio (he was previously Deputy Chief Whip for two years).

It is interesting to note that the new minister has made no announcements on this at all; all announcements have come from the more junior minister, Eddie Hughes (Parliamentary Under Secretary of State (Minister for Rough Sleeping and Housing)). It is Eddie Hughes who answers any letters we sent to the housing minister, and it is he who hinted at the delay in a written a written reply to a question from Labour MP Rachael Maskell.

Interestingly enough, in the same written reply he also categorically stated that the government is not considering rent controls in England and said there was enough evidence available to show that rent controls would discourage investment in the private rented sector and lead to declining property standards. So that's good news.

It has also been suggested that part of the White Paper will be a definitive Decent Homes Standard for all rental property. This is to be applauded, as all involved, landlords; tenants and Local Authorities will have a definitive measure, rather than the vague measure frequently used now – '*facilities must be adequate*'!

As you can see, there is a lot going on. In order to remain legal, it is critical to stay abreast of current laws and rules. One good way is to attend the **annual Training, Networking & Live BBQ** that resumes on **Thursday 7th July 2022, from 12pm to 6pm, at the Taj Hotel, Central London**. Here you will be able to listen to well informed speakers and ask them any question on the PRS in the panel session at the end. And I am hosting it – what more could you want?

Look forward to seeing many of you there.

Hope you enjoy this edition.

Peter Littlewood (LLAS & ATLAS Chair)

Peter Littlewood, iHowz Director
For more info on iHowz Landlord Association, visit http://ihowz.co.uk/

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How one married couple beat the Tax Changes

Many landlords have restructured to protect against tax changes these last 6 years. However, not every restructure has involved a change of how property profits are accounted for. The most profitable restructure is not *always* a tax restructure. Indeed, many landlords are making more money now – having made no changes to how they account for their profits - despite the tax changes.

At Less Tax 4 Landlords we have a saying "Don't let the tax tail wag the planning dog" and an easy-to-understand example I gave at the National Landlord Investment Show last year reflects just that. Since then of course the Bank of England has increased interest rates 4 times in a row – the fastest increase in borrowing costs in 25 years - and It's likely that the window on refinancing to beat the tax changes is rapidly closing.

But as with any business – keeping costs down is key, be that finance costs or the chancellor's cheque. So, let's take a look at this example then. A married couple who back in 2015 had a £4 million portfolio, with £2 million in mortgages. The portfolio is financed at a 4% interest rate (or £80,000 in annual interest payments). With a 6% gross rental yield and 20% tax-deductible expenses, their numbers looked like this:

	2015 – Before Section 24
Annual Rental Income	£240,000
£2 million BTL mortgage at 4% interest	£80,000
Other Tax-Deductible Expenses	£48,000
Taxable Profit	£112,000

It's before Section 24, so the finance expenses are still fully tax-deductible. Meaning there are £112,000 of profits to pay tax on. As the portfolio is shared equally by two people, they will pay tax on £56,000 each – and are higher rate taxpayers.

Now fast forward to 2022, and Section 24 is fully in effect and interest is no longer tax-deductible, but we can claim 20% of our finance costs as a deduction against tax.

Since 2015, our landlords have done very well, taking advantage of exceptionally low rates and refinanced their portfolio at 2%. By keeping their mortgages at £2 million, their interest payments have halved to £40,000. With loyal tenants, they have forgone any rent increases so still have £240,000 income. They have also managed to keep spending to the same £48,000 tax-deductible expenses, meaning that after their £40,000 of mortgage interest, they have £152,000 before tax. Or in other words, compared to 2015 they have an extra £40,000 in the bank before they pay their taxes.

However – because of Section 24, they cannot deduct the £40,000 mortgage finance as a tax-deductible expense, and so are actually taxed on £192,000 – an increase of £80,000 since 2015.
You can see this in the table below:

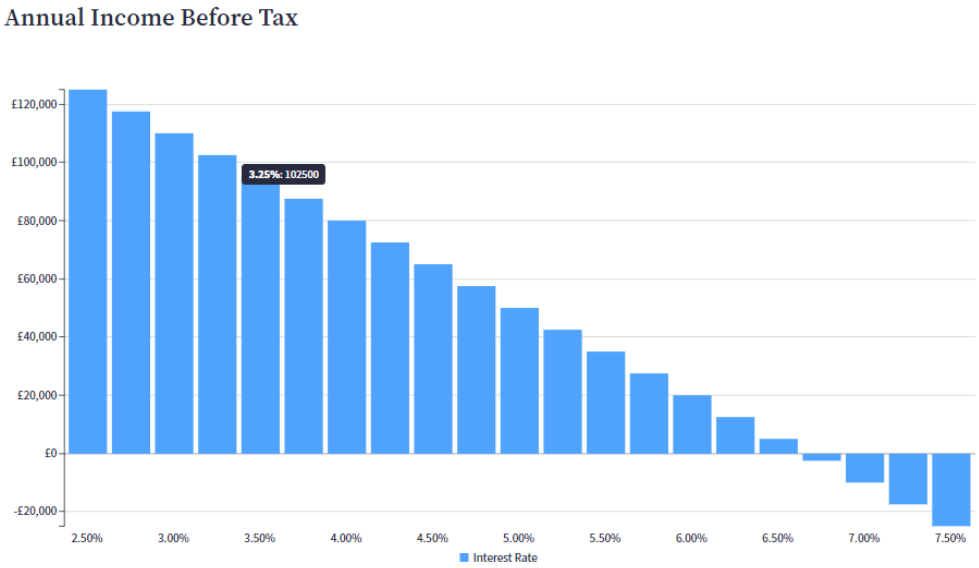
	2021 – After Section 24	**Change vs 2015**
Annual Rental Income	£240,000	-
£2 million BTL mortgage at 2% interest	£40,000	Down £40,000
Tax-Deductible Expenses	£48,000	-
'Real' Profit	£152,000	Up £40,000
Taxable Profit	£192,000	Up £80,000

Based on a 2-person unincorporated partnership, that extra £80,000 will be taxed at 40%. That's an extra £32,000 in tax. However, they also get a 20% tax credit on our £40,000 of interest. So that's a deduction of £8,000. Meaning their final tax bill has increased by £24,000. But remember they do have an extra £40,000 in the bank. So their after-tax income is actually up £16,000 or £8,000 each. Of course, the couple *could* be paying less tax, and any Landlord paying more than 20% tax on their property profit, mortgaged or not – is probably paying more tax than necessary.

If you're in this position, then I recommend taking our initial assessment at **https://lt4l.co.uk/assessment-llas** – it's free and could save you £000s to reinvest in your property business.
The married couple in today's example could save £19,670 a year.

But what about rising rates?

Going forward as interest rates rise, some landlords will look to pay down debt and perhaps reduce the size of their portfolio (restructuring can help reduce CGT as well). Meanwhile others will continue to buy, as long as the numbers stack up. Whatever your preferred approach, we've added a new interactive calculator to our video-vault to show how your pre-tax income will be impacted as your interest rates rise, based on how much you expect to borrow. To access this and plenty of other resources, register for free at **https://lt4l.co.uk/assessment-llas**



Ben Rose – Head of Group Business Development at Less Tax 4 Landlords

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PRODUCT RECALL

When a manufacturer recalls a product for safety reasons it can feature in the news, but not always. Do landlords and agents need to keep a checklist of recalled products? What responsibility, if any, do they have for the items they supplied at the start of a tenancy?

Fire hazards

There are regular reports of fires in domestic dwellings caused by faulty appliances and there have been some notable appliance product recalls in the last few years. Amid growing concerns, the Government has set up the Office for Product Safety and Standards1 in order to manage the risk and the way that larger scale product recalls are processed.

The devastating fire at Grenfell Tower was allegedly ignited by a defective fridge-freezer. A variety of other factors also contributed to the dreadful outcome but, undoubtedly, the inquiry has placed the spotlight on safe appliances in rented homes.

Letting agents and landlords must re-examine who is responsible for appliance safety and what happens if an electrical appliance supplied by the landlord is recalled by its manufacturer for safety reasons.

The 'how to rent guide' is a checklist for renting in England. It must be supplied to every tenant renting under an assured shorthold tenancy at the commencement of the tenancy. It sets out a tenant's rights and responsibilities and what can be expected from the landlord and agent. Among other things, it covers safety issues.

Page 12 of the leaflet lists a number of things landlords must do and should do. The list of 'must do' covers many of the landlord's statutory obligations. Bullet point two states that the landlord must: "Ensure the property is free from serious hazards from the start and throughout the tenancy". It might be assumed that this relates to hazards under the Housing, Health and Safety Rating System, known as HHSRS, although this is not made clear in the text. However, on the 'must do' part of the list, bullet point two states: "Check regularly to ensure that all products, fixtures and fittings provided are safe and that there haven't been any product recalls".

The how to rent guide is, of course, only a guide and its content places no statutory obligation on the landlord or agent (other than the need to supply the document and any updates when granting a new tenancy).However, if a tenant suffers a loss or harm in a rented property and considers that the landlord and or agent have been negligent, the court will be invited to take into account the contents of the guide in establishing liability. This particular comment on appliance recalls and the how to rent guidance has not, as far as can be ascertained, been tested in the courts to date.

Legal position

Section 11 of the Landlord and Tenant Act 1985 (LTA 1985) sets out a landlord's statutory responsibility for repairs. It is specific in its requirement for the landlord to keep in repair, and proper working order, the installations for the supply of water, gas and electricity including sanitation as well as space and water heating. However, it also explains that this does not include: "…other fixtures, fittings and appliances for making use of the supply of water, gas or electricity…".

This obligation is generally interpreted to mean that the landlord has a statutory obligation to keep the 'service' to and from an appliance in repair. In other words, if landlords supply washing machines, they must ensure the electricity and water supply, as well as the drainage to service it, are kept in repair. However, such an obligation does not extend to the machine itself.

The how to let guide broadly mirrors the how to rent guide. Section 5 (During a Tenancy) states that: "As a landlord, you must maintain any appliances and furniture you have supplied". However, this guide does not have any authority to create an obligation. The how to rent guide fulfils a legal purpose in that the law says landlords must give tenants the how to rent guide.

Electrical checks

From 1 of June 2020, private landlords in England were required to have electrical installations in their rental properties checked by a qualified electrician to ensure that they are safe. These checks must be carried out at five yearly intervals (unless an earlier date is specified in the report) and the report given to the tenant at the start of the tenancy.

This requirement extends to fixed appliances because they are installations in terms of the regulations, but portable (plug in) appliances fall outside the scope of the check. Electrical installations comprise all fixed electrical equipment that is supplied through the electricity meter.

Whether any appliances are subject to recall will be a matter for the electrician carrying out the test, but will it be sufficient for the landlord and the tenant to rely on this?
From a landlord perspective, they will have complied with the law by carrying out the test. However, if a landlord knew that an appliance had been recalled and had not acted on this, that landlord could be liable for any loss or harm arising from for example an integrated appliance after the move in.

Portable appliances

It is generally understood that most deaths from electric shock and fire are as a result of a faulty plug, lead or an appliance that has been misused in some way. When a landlord provides appliances in a property, it is the landlord's responsibility to make sure that they are safe at the point of supply to a new occupier.

Safe is defined as not jeopardizing the safety of people, domestic animals or property. The regulations require the landlord to provide written instructions for the safe use of each appliance and these usually form part of a tenant's move in pack or inventory and schedule of condition. Part of the landlord's due diligence will be to ensure the item is not subject to a manufacturer's recall.

If an appliance is brand new at the commencement of the tenancy, the landlord would be deemed as making a safe supply, since the appliance will meet the manufacturer's current requirements for safety and will usually come with a guarantee for a year or more. However, if an appliance has been pre-used at the point of supply, the landlord must check to ensure it is safe for the intended use. The plugs, cable and fuses form part of the equipment and must also be safe and appropriate for the appliance concerned. An up-to-date RCD (residual current device in the main consumer unit) will generally react and disconnect a defective appliance from the mains supply. Repeated use of a portable appliance can damage the cables and it will be a matter for the tenant to report such damage to the landlord. If the appliance is subject to a product recall, it may not be safe, and the landlord will potentially face liability for supplying unsafe electrical equipment.

Contractual position

If a landlord supplies portable electrical appliances, in addition to any statutory requirements, it will be an implied term of the contract that the appliances and means for using them are safe and fit for the purpose intended. If this is not the case, then it opens the landlord up to a claim for loss or harm (damages) based on a breach of contract.

If a landlord supplies an appliance, and there is nothing noted in the tenancy agreement, then in addition to the implication that it is safe at the point of supply, it will also be an implied term of the agreement that the landlord will keep it in repair or replace if irreparable. This will include any product recall, so if a landlord becomes aware of a product recall it should be acted upon immediately. However, because portable appliances fall outside of section 11 of the LTA 1985, a landlord may legally contract out of any obligations to keep these appliances in repair. This means that landlords can simply supply safe appliances and thereafter place the obligation for repair or replacement on the tenant. Any term in the contract should clearly place the responsibility for dealing with the product recall on the tenant. Be aware that a tenant might argue that this is an unfair term because he did not buy the equipment and would not automatically be notified of a recall unless it was seen in a public advert.

Shared occupation

Where three or more people, who are not all related to each other, share, lack or have to go outside their own front door to get to a basic amenity it will be a house in multiple occupation (HMO) in law. The management of HMO regulations are clear with regard to electrical equipment; anything supplied by the landlord must be safe at the point of supply and it remains the landlord's responsibility to check it annually (or sooner if it is a licensing requirement). It will therefore be the landlord's responsibility to deal with any product recall. A product recall is a safety issue and must not be ignored. Clearly in an HMO situation, appliances are usually in communal areas (to which the landlord has access). As a result, the risk of harm is potentially more significant for the users.

In practice

Where a landlord or agent supplies integrated equipment or other appliances, the liability for product recall rests upon the supplier, usually the landlord. The equipment must be safe at the point of supply. If it is already the subject of a product recall, the recall should be complied with. This might involve exchanging the unit or having an engineer visit to carry out a precautionary fix to the problem that has been identified. If not done before the tenant move in date, the tenants should be advised of the issue and the risk managed and agreed based on the severity of the problem. If a landlord wishes to contract out of the obligation to keep equipment and appliances in repair during the tenancy, then a clearly worded term should be added to the tenancy agreement to cover a product recall, clearly placing this obligation upon the tenant. However, such a clause is not consistent with the how to rent guide, so a landlord must be aware that a clause like this could be challenged as an unfair term, leaving the landlord open to a claim for damages.

Summary

Product registration should be a priority; annual checks in HMOs and new checks with every move in are also essential. If in doubt about a product's provenance, then a simple recall check can be made online. Safety first is the key, so landlords and agents should have a proactive policy around equipment and recalls.

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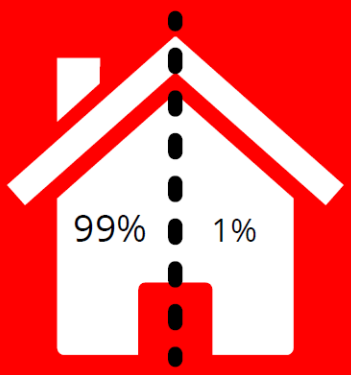

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Specialist landlord & tenant lawyer -Tessa Shepperson Answers landlords' FAQ: Tenancy Deposits What are they?

A tenancy deposit is a sum of money normally taken at the start of the tenancy. It is held by the landlord as security for any damage done to the property and its contents, and to compensate the landlord, where appropriate, for any breaches of the tenancy agreement by the tenant, which have caused financial loss (including non-payment of rent).

An important characteristic of a deposit is that it is not the landlord's money, it belongs to the tenant and is refundable at the end of the tenancy unless the landlord has a valid claim on it.

What about holding deposits?
Note that in this article we will be discussing tenancy deposits. These should not be confused with holding deposits which are a more modest sum paid by applicants to a landlord for them to reserve the property for them while checks are carried out.

Holding deposits are limited to one weeks rent and must in most cases be refunded to the tenant after 15 days or such other time as is agreed in writing.

Are deposits necessary?
It is fairly normal for landlords to take a tenancy deposit but is it essential? The legal answer is no, you do not have to take a deposit. However, most landlords feel it is essential to have a fund in hand to deal with damage that may be found at the property when the tenants vacate and to cover end of term rent arrears.

But if you prefer not to deal with the additional administration of dealing with deposits or are confident that your tenants will not leave owning money or cause any damage, you do not have to take one.

What are the deposit schemes?

There are three schemes:
- The Deposit Protection Service (DPS)
- Tenancy Deposit Scheme (TDS)
- My Deposits

What deposits must be protected in a scheme?
Deposits only (at present) need to be protected where the tenancy is an assured shorthold tenancy. So, this means, for example, that deposits for resident landlord tenancies and company lets, and deposits paid by lodgers are not covered and do not need to be protected.

If the rules apply, what must landlords do?
Landlords must protect the deposit money in a government authorized tenancy deposit scheme and serve prescribed information within 30 days of receipt of the money. ***Note that this is not within 30 days*** (as some think) of the start of the tenancy. So, if the deposit money is paid a long time in advance of start of the tenancy, as happens with some student lets, then the deposit will need to be protected at that time. Otherwise, when the tenancy starts the landlord will be in default.

What is the 'prescribed information'?
Note that it is the **information** which is prescribed, not the form. There is no prescribed information form.

The information which must be given is set out in the Housing (Tenancy Deposits) (Prescribed Information) **Order 2007/797 s.2 (1) (a) – (g).**

Many landlords will deal with the requirement for prescribed information by serving a copy of the deposit protection certificate and their schemes information leaflet. Note however that this will be inadequate as section (g) (vi) or the order also request them to tell the tenants

"the circumstances when all or part of the deposit may be retained by the landlord, by reference to the terms of the tenancy"

In other words, they must tell the tenant which section in their tenancy agreement deals with this. As this will vary from tenancy to tenancy it cannot be included in the certificate or leaflet as standard. So, landlords only serving these documents will be in breach.

Who should receive the prescribed information?

This needs to be served on the persons who paid the deposit money. In most cases this will be the tenants. However, if, for example their parents paid the money, the prescribed information must also be served on the parents as well as on the tenants.

Who must sign the form?

The form must be signed by the landlord or, if the landlord's letting agent was involved in protecting the deposit, the letting agent.

If the landlord or letting agents are a limited company, the signature does not have to comply with the Companies Act, so a single unwitnessed signature will normally suffice.

The regulations provide that, tenants must be given an opportunity to sign the form to confirm that they agree to it, but this is not a requirement, and the form will not be invalid if tenants fail or refuse to sign.

What are the penalties for non-compliance?

There are two – the section 21 penalty and a financial penalty.
So far as the first is concerned, the landlord cannot serve a valid section 21 notice unless:

- The deposit money has been refunded to the tenants (make sure you can prove this), or
- A claim has been brought for the penalty payment which has been resolved.

As regards the financial penalty, tenants can claim a penalty of up to three times the deposit sum by applying to the Court. There is no defence, and the Judge cannot award less than the equivalent of 1x the deposit sum. The precise sum to be awarded is within the Judge's discretion.

What happens if there is a dispute about deductions from the deposit money?

All of the three schemes provide a free to use adjudication service. There are however strict time limits, and the adjudicators decision is final. The parties can, if they wish, use the Court system instead.

What are alternative or replacement schemes?

These are not, as is sometimes thought, cheaper deposit schemes or insurance schemes. They are in fact guarantees. The fee paid by the tenant is a (non-refundable) fee to the guarantee company who will pay any damage found at the end of the tenancy if this is not paid by the tenants. The scheme will then claim back this money from the tenants.

And finally

It looks as if the deposit protection system is not going to be radically changed by the new proposals put forward by the government in their white paper. The deposit scheme will inevitably apply to the new periodic tenancy which is proposed but otherwise will probably be largely unchanged. The government has in the past proposed a 'deposit passport' system which would allow tenants to move a deposit easily from one tenancy to another, but this has proved difficult to implement. It looks therefore as if the government are going to leave it to the market to come up with solutions to this issue rather than do anything about it themselves.

Tessa Shepperson.
Tessa is a specialist landlord and tenant lawyer and runs the Landlord Law online information service at www.landlordlaw.co.uk. You can sign up to her free weekly bulletin (and get a free ebook) at www.landlordlaw.co.uk/bulletin

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Nowhere for HMO landlords to hide as Councils turn to Artificial Intelligence

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By Phil Turtle, Landlord Licensing & Defence

Call 0208 088 3484 or contact us

How long does it take for your Council to work out you're running an unlicensed HMO?

Less than one day!

This was confirmed recently when a worried landlord got in touch with the Landlord Licensing & Defence consultancy team.

Here's the situation: Landlord completes an HMO purchase on the 30th of June. On the 1st July, one of the London Borough Councils sends the new owner a letter "We believe you are operating unlicensed HMO

So, the Council licensing enforcement team must have been alerted about the HMO on the very same day that the landlord completed the purchase.

But how? Nobody told them. Well, not explicitly.

You see, Councils, and particularly those in the London Boroughs, have been working on applying Artificial Intelligence (AI) to searching out unlicensed HMOs since 2016.

So that whatever happens regarding a property – be it to do with council.

tax, electoral roll, bins and waste, noise nuisance, antisocial behaviour, planning, EPC date and many, many more, their giant AI computers knows!

AI connects all of these together and then when a trigger event happens, the AI spots a 'pattern' in all this data and goes 'Kerching!' we've found another golden egg.

Every unlicensed HMO is a massive revenue opportunity for your council.

And in this case – because it's London Borough whose proud boast is that they enforce (revenue collect) against 500% more landlords than any other Council in the UK, here's what they'll be planning to do:

Send HMO warning letter (which arrived one day after purchase) telling landlord they are suspected of running an unlicensed HMO.

They will wait maybe 14 days and then there is likely to be a dawn raid, drugs-raid style, with five or six housing enforcement officers arriving at the property at 5am to 'catch' all the sleeping occupants.
They will demand the tenants' details and contracts often by intimidation.

They will inspect every inch of the property looking for the slightest non-compliance with HMO Management Regulations.

A few days later, there will be multiple Notices of Civil Financial Penalty fines just dropping through the landlord's door just like parking tickets.

Except the amounts will be eye-watering.

For example:

£12,000 for not having an HMO licence – sometimes as much as £28,000;

£500-£3,000 for not having manager's details on display (HMO Management Regulation 3)

£10,000-28,000 for inadequate fire precautions, plus mould and damp if present (HMO Management Regulation. 4)

£5,000-20,000 for poor maintenance of common parts e.g., stairs and gardens (HMO Management Regulation. 7)

£5,000-£11,000 for inadequate maintenance of living rooms (HMO Management Regulation. 8)

£1,000 for inadequate rubbish and recycling systems (HMO Management Regulation. 9)

The total could easily be £70,000 or more.

It depends, of course, how far below standard the HMO was when purchased and whether the previous owner had it licensed or not.

Often if a landlord is selling, it is because they know the property is sub-standard and they don't want the hassle and cost of bringing it up to par and licensing it.

Of course, it may be that not all the above will apply in this case.

But these are the sort of figures we generally see for Civil Financial Penalties dished out by Councils following an HMO unannounced inspection. There are also Regulations 5 and 6, which can be used to add even more to the fines.

It is a very quick and easy £40,000 to £70,000 or more 'revenue win' for the Council as it asset strips the private rental sector by stealth.

And people wonder why they are advised "Stay silent with the Council!".

If you own or manage an HMO (and that means three sharers and above), you're at risk of a Management Regulations fine at any time if you're not fully compliant. Even worse, if your property isn't licensed but should be.

Don't talk to the Council – take advice from professionals who are landlords themselves and whose motivation is to protect landlords, not to asset strip their investment.

Landlords who realise, on reading this, that they are at risk can book a consultation with one of our specialist consultants for advice on how to make their HMO fully compliant and how to go about obtaining a license without suffering all of these swinging fines by calling **0208 088 3484** or via this contact form

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LLAS/ATLAS Training, Networking & Live BBQ

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Accommodating pets now most common reason for tenants moving

There has been a sharp rise in tenants moving property in order to accommodate a pet, according to the latest survey from The Deposit Protection Service (The DPS).

Around a thousand tenants who had moved property between October 2021 and March 2022 took part in the DPS' 2022 tenant survey, with 30% saying that they had done so to accommodate a pet – making it the most common reason for moving.

Last year, only 7% cited pets as the most significant influence over their decision to move, making it the least common factor.

Conversely, in this year's survey just 11% of respondents cited 'more outdoor space' as the reason for their move, making it the least common influence over their decision.

Last year, 18% said that outdoor space was the most important factor in their move.

Matt Trevett, Managing Director at The DPS, said: "The easing of restrictions earlier this year means that tenants are typically not as interested in moving away from cities to more rural or suburban areas as they understandably were during the height of the pandemic.

"However, it's interesting to see that the reported popularity of pets during the lockdown period seems to be having a continued influence over tenants' priorities.

"The present high level of demand for rental properties means that tenants who secure homes that allow pets typically stay for longer, resulting in more certainty for both tenant and landlord.

"Tenants should however understand and respect any obligations that come with having a pet and consider what changes they may need to make to meet a 'pet-friendly' tenancy agreement, which may reduce the chances of issues when they move out."

The DPS has issued some top tips that you may wish to share with tenants and landlords organising a pet to live at a property.

1: Confirm 'pet rules' in writing

Landlords should be clear on any rules that allow pets in the property, for example the limit on the type or number of animals or whether the tenant can or cannot breed the animal at the site – and put those in writing.

Landlords should share the document with the tenant, and both sides should sign it and keep a copy in case there are disputes or damage at a later stage. Landlords cannot ask for a separate deposit to cover pet damage, however.

2: Get the right insurance

Landlords should check that their property's insurance policy includes accidental pet damage, a feature that is not always standard. Landlords may need to alter or find a new policy to ensure coverage.

Emergency contact

Tenants should also provide an emergency number for somebody who can look after the pet if they fall ill and need to go to hospital.

4: Landlords must by law allow certain pets

Landlords must always allow people with disabilities who need an assistance dog to have one inside the property.

5: Ask for a pet reference

Landlords can also ask for a pet reference from a previous landlord or vet to understand whether the animal is aggressive or has received its vaccinations and correct treatments. They can also ask to see the pet as part of their pre-tenancy checks.

6: Arrange regular inspections

Landlords and tenants should agree regular inspections to assess and discuss the condition of the property, which can reduce the chances of a dispute about any pet-related damage at the end of the tenancy.

Source: [Accommodating pets now most common reason for tenants moving - Property Industry Eye]

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Tenancy or License?

Licenses defined:

A licence to occupy land does not amount to a legal interest in it, being as it is, merely permission to occupy that land, without creating an estate. When permission to occupy is withdrawn the occupant no longer has a licence to occupy.

If a true licence is in place, then the occupant: -

- **Is not bound by landlord repairing obligations.**
- **Is not entitled to a possession order.**
- **Cannot leave their accommodation to another person.**

If permission to occupy is withdrawn then the license ends but, in most cases, even a licensee is still entitled to be evicted by possession order, although there are a small number of exceptions.

Tenancies defined.

The Law of Property Act 1925.

This is where the modern notion of a tenancy as a form of ownership is enshrined, in that a tenancy is a form of ownership of land.

The only estates in land which are capable of subsisting or of being conveyed or created at law are—

(a) An estate in fee simple absolute in possession.

(b) A term of years absolute

- The first one, the estate in fee simple, is freehold.
- The second, the term of years, is leasehold

And in translation…..

The words 'lease' and 'tenancy' are strictly speaking the same thing.

When you are granted a tenancy or a lease of land / property, during the period of the lease you 'own' that land / property, and this applies whether you have a long 99-year lease or just a six month AST.

What a tenancy confers

- The right to exclude anyone else from the property – a landlord would be trespassing if they entered property without the tenant's permission, simply because, back to the Law of Property Act, a tenancy is a form of ownership of land.
- A tenant has the right to transfer the property to another, which is why council and housing association tenants can do mutual exchanges and transfers.
- A tenant can even leave their tenancy to another in a will, because, again, a tenancy is form of ownership of land.
- When a tenant dies the tenancy passes to another in the form of what is called Survivorship or Succession, depending on the tenancy type.
- Even death does not end a tenancy. Just like any other asset the new ownership must be resolved using probate law

The 3 hallmarks of a tenancy

Tenants have more rights under their security of tenure than licensees, and some private landlords try to reduce an occupant's security to make it easier for them to get them out. ***Street and Mountford*** is one such case. Mr Street gave Mrs Mountford a lettings agreement titled "***Nonexclusive occupation agreement***", reserving the right to enter the property whenever he wished and to move in any other occupier with her in this one-bedroom flat regardless of her wishes. Both of which factors, if true would mean that she did not have exclusive occupation i.e., the right to exclude anyone from the property.

He tried to get possession against Mrs Mountford but she took the matter to court, arguing that she held a tenancy and that his contractual provisions casting shadows over her exclusive occupation were merely a pretense aimed at creating the impression that she had less rights. Judge Templeman heard the case and determined that the way you tell a tenancy from a license is by examining what conditions are actually going on in the letting.

He held that for there to be a tenancy in force a tenant must:-

- **Pay rent or provide a service.**
- **Have exclusive possession of at least one room.**
- **For a fixed term**

He also added, to avoid creating tenancies where acts of charity are concerned, that there must have been an intent by both parties to enter into a contractual relationship. It is possible to create a situation where the three hallmarks are in place but the reality, in terms of the arrangement between the parties, was that it was a temporary expedient, aimed at meeting the needs of both of them.

What this means, in lay terms is that it doesn't matter what you have got written on your rental agreement, your security of tenure is determined by what is actually going on.

Judge Templeman, being a judge and therefore incapable of using simple language actually said it like this *"If the agreement satisfied all the requirements of a tenancy, then the agreement produced a tenancy, and the parties cannot alter the effect of the agreement by insisting that they only created a license. The manufacture of a five-pronged implement for manual digging results in a fork even if the manufacturer, unfamiliar with the English language, insists that he intended to make and has made, a spade"*

If the answer is yes to the tenancy criteria, then a tenancy is what you have. If you don't, for instance, have exclusive occupation, in other words a right to exclude your landlord then you can't have a tenancy and will instead have some form of license.

Another crucial way that people can lose security is by having meals provided as a genuine part of their contract, as with bed and breakfast. Many landlords in the private sector try to claim that they provide breakfast to reduce security but, as we know, from Street v. Mountford that you have to ascertain if meals are really provided and if so what are they. A bag of bread left for occupants to make toast does not constitute a real meal. Genuine provision of a high level of support services can also convert what looks like a tenancy into a licence, providing this was the understanding from the start and it wasn't imposed upon the occupant later on.

In terms of ascertain the rights of the tenants and in accordance with Judge Templeman's summation you need to look to the facts, not what is written on paper, for instance in one case a couple took on a property together but were given separate license agreements. But the facts of the case were that they occupants asked the landlord to install a double bed, which he did. The courts deemed that this was sufficient evidence to prove that the reality was that the occupants were a couple, not separate licenses and therefore enjoyed exclusive possession as a single household and therefore a tenancy was in place.

You don't need a written agreement to hold a tenancy unless the tenancy is for more than 3 years. Tenancies are created by virtue of the doctrine of "Parol", meaning fact and degree. If an arrangement has all the hallmarks of a tenancy with none of the exceptions, then it will be a tenancy not a license. ***Never, ever decide a person's security of tenure based on what is written on their contract.

Security of tenure

Once you have established that a person is a tenant as opposed to a licensee you need to look at three factors that will determine what type of tenancy they have and this is dependent on:-

- The status of the landlord.
- The date they moved in.

This is because some landlords are incapable of granting certain types of tenancy and the date will tell you what legislation the tenancy sits under.

Protected and Statutory tenancy conditions:

This is the oldest type of tenancy there is.

- Tenancy began before the 15th January 1989, and
- The accommodation is the same as at the outset, regardless of any replacement landlord taking over the property, or
- The tenant has moved but retained the same landlord.

Protected tenants are created by statute and are subject to rent control through which the VOA set a fair rent on the property, usually much lower than the market rent and the landlord is not allowed to charge more than that sum.

It is often the case that new landlords purchasing properties with protected tenants installed try to coerce people into moving out or signing an assured shorthold tenancy agreement. Such a tenancy would not be binding in any way upon the occupant.

Protected tenants are very difficult for landlords to evict, having only very limited circumstances through which they can do so. Often landlords will resort to simply buying the tenant out of the property, but the sums involved can be enormous, usually in the tens of thousands of pounds.

Assured tenancy conditions:
This is the most common tenancy type used by housing association since 15th January 1989, although they are available to private landlords as well. An assured tenant cannot be evicted unless by court order in the usual manner but there is no statutory rent control as with Protected Tenancies.

Assured Shorthold Tenancy conditions pre-28th Feb 1997:
ASTs created between their inception, the 15th of January 1989 and the implementation of the Housing Act 1996 had to be for a minimum period of 6 months only. At this point in time the tenant must have been given a special notice, called a "Section 20 notice"9 to create an AST. Failure to serve a s20 notice meant that the landlord created an assured tenancy by accident, even if the written agreement stated it was to be an AST.

Whilst there is a standard form for s20 it doesn't have to be strictly applied. The test is one of fact and degree, the purpose of an s20 notice was to alert the occupant to the fact that it is an AST with a fixed term. It has been held that even though the agents put their name in the box where the landlord's details should have been filled in, the fact that the notice did its job meant it was still valid and the tenancy was an AST.

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An AST is a type of assured tenancy so is not entitled to rent control. The fixed term is binding on both the landlord and the tenant. If the tenant leaves before the fixed term expires the landlord can sue them for the remaining rent and there is no duty on the landlord to mitigate their loss.

Assured shorthold tenancy conditions post 28th Feb 1997.
With the advent of the Housing Act 1997 the requirement to serve a s20 notice was dropped and they are no longer required. Also there is no minimum period for a fixed term to run, however, in the absence of a written contract a landlord cannot use the accelerated possession procedure until 6 months have elapsed. If there is no written agreement and the occupancy is a tenancy, then it will be presumed that it will automatically be an AST.

Obtaining details where an AST exists but no written contract. 15
Upon abolishing the need for a s20 notice to create an AST the rule of thumb is that since the 28th February 1997 all standard new tenancies created will be AST but this leaves
landlords and tenants in a tricky position, if you don't have a written contract then what are the terms of that agreement? Including the fixed term of it.

This is a notice that can be served by the tenant where there is no written tenancy agreement in place that requires the landlord to provide a statement of terms
"a tenant under an assured shorthold tenancy to which section 19A applies may, by notice in writing, require the landlord under that tenancy to provide him/her with a written statement of any term of the tenancy" Such terms being:

- The date the tenancy began, or if it is already a periodic tenancy, the date the periodic tenancy arose.
- The amount of rent payable.
- Any term providing for a review of the rent.
- The length of the fixed term Section 97 goes on to say:

"A landlord who fails, without reasonable excuse, to comply with a notice under subsection (1) above within the period of 28 days beginning with the date on which he received the notice is liable on summary conviction. The fine is currently £2,500

Periodic tenancy conditions:
When a fixed term expires the AST will automatically become a statutory periodic tenancy11 on the same terms as the original contract but neither party to the agreement are bound by the fixed term.

The tenant can serve one month's notice and leave without penalty and the landlord can serve a s21 notice at any time.

Letting agents will often try to pressurize tenants to sign a renewal because they make extra fees for doing so but there is no requirement for the tenant to comply. Many tenants live on happily for years after the fixed term has expired and all rights and obligations stay in place.

Contractual Periodic Tenancies.

Similar to statutory periodic but in this instance there is a clause written into a contract stating that when the fixed term comes to an end, all the contractual provisions still apply, meaning that if there is for instance a mechanism in that contract for periodic rent increases a landlord does not have to serve a s13 notice of increase in order to raise the rent.

Tied accommodation conditions:

Tied accommodation is where the accommodation provided goes with the job. To establish whether or not tied accommodation is in place requires one of two things, either the contract states that the accommodation goes with the job or, in the absence of a written agreement a question has to be asked: _

"Is it essential, for the better performance of duties, for the person to live in that accommodation?"

If the answer to that question is 'No', then it can be argued that a tenancy is in place, regardless of that employment and the tenancy type will depend on the same factors as any other tenancy, the status of the landlord and the date the tenant moved in.

There is a difference between 'Service occupiers' and 'Service tenants. Service occupiers are in true tied accommodation and when the employment ends, so does their right to occupy, for instance: -

- Live-in nurses,
- Members of the clergy living in church owned property.
- Residents in property licensed for the sale of alcohol.
- Caretakers, park keepers etc.

However, if the resident does not move when no longer employed then a possession order should still be sought, although there will be no Defence to an application if the contract is clearly drafted, although the occupier could challenge through an employment tribunal.

Common law tenancy conditions: AKA Unprotected Tenancies.

These tenancy types sit outside of the Rent Act and Housing Acts. They are still entitled to quiet enjoyment and to have their repairs done, they are also entitled to a possession order, but they have no defense to possession.

A common law tenancy will be in force when the occupier lives in the same property as their landlord but doesn't share facilities with them, for instance where both live at 31 Acacia Ave, but the landlord lives downstairs while the tenant lives upstairs and both have their own kitchen and bathroom.

Sharing a common entranceway is irrelevant.

Advisers need to be aware that people often think that this means the occupier is a lodger but remember, to be a lodger you must share some of the accommodation with your landlord.

Other factors creating this kind of tenancy would be:

- The property is licensed for the sale of alcohol.
- The tenant does not reside in the premises.
- The tenancy has a very high or very low rent.
- The tenancy is classified as a 'non-Secure tenancy' granted following a homelessness application.

Sub-Tenancies.

Whilst it is true that there can be the sub-letting of a room in a house, we already know that this would be a lodger arrangement.

What we are looking at here is where the tenant moves out and sub-lets the whole. The bottom line with this is that sub-letting the whole is prohibited unless there is a clause in a contract saying it's allowed. It should be noted that whilst many tenancy agreements in social housing permit sub-letting a room in a dwelling, sub-letting the whole is now a criminal offence.

Once a tenant sub-lets, they become known in law as the 'Mesne tenant'. The sub-letting will be fully binding against the Mesne Tenant as the landlord of the sub-tenant, whilst simultaneously holding no legal relationship with the head landlord.

A sub-tenant is not a squatter as so many head landlords think in these situations because remember, back to section of the Law of Property Act 1925, a tenancy is a form of ownership in land, which brings with it the power to grant a sub-lease, subject to contract.

If the Mesne Tenant, who is the sub-tenant's landlord, wants them to leave they have to obtain possession through the courts and if the sub-tenant needs a repair doing, the Mesne Tenant is duty bound to fix it. If the head landlord wants the sub-tenant out, they must take proceedings against the Mesne Tenant to end the sub-tenancy. A head landlord can't leapfrog over their tenant and evict the sub-tenant on their own-.
If the Mesne Tenant surrenders their tenancy, then the sub tenant becomes the new tenant of the head landlord, even if they didn't know they were there.

It is often argued that if the Mesne tenant did not have the permission of the owner to sub-let, then as a result they have no power to grant a sub-lease and that a tenancy cannot be in place but this position has been addressed by the House of Lords where it was decided that if the conditions of a tenancy are met then a tenancy will be in force, regardless of the character and/or lack of title of the landlord granting the tenancy.

Joint Tenancies.
You can have a joint tenancy of any of the above tenancy types. Sometimes this could be a married or cohabiting couple or at others a group of people taking on a property at the same time and under one tenancy agreement for the whole.
For a joint tenancy to be in place there must be what are called "The four unities":
• Unity of title
• Unity of time
• Unity of interest
• Unity of possession

This means that they all have title of the whole property with no right to exclude any other from any part of the property.
They are all, jointly and severally liable for the whole of the rent, however they decide to apportion payments among themselves.

If the rent is £2,000 per month and one of them leaves, the others have to dig into their pockets further to make sure the full amount is paid. They usually take on another occupant to do this, who would, if they paid their rent to the remaining house mates, be lodgers, because they have a resident landlord.

Because of the jointly and severally liable rule any one of the party can terminate the agreement and this is binding on the rest but note that one joint tenant cannot surrender on behalf of the others, without their express permission.

Bare Licensees – which is the accepted arrangement for parents and children, friends staying over, or other personal arrangements which includes genuine acts of charity or a situation where there is clearly no intention by either party to enter into a contractual arrangement, despite the payment of rent.

Excluded occupiers.
- lodgers
- Temporary expedient to a former trespasser
- Holiday let
- Let other than for money's worth
- Lettings granted to asylum seekers or their families under Part 6 Immigration and Asylum Act 1999
- Public sector hostel

ANYONE not on this list can only be lawfully evicted by the landlord obtaining a possession order from the county court. Eviction without following what is known as 'Due process' is an illegal eviction which is a criminal offence.

Now clearly it is vitally important that a person advising and supporting persons renting accommodation should be very clear about this fundamental difference between tenancies and licenses because true licensees have less rights in occupancy than tenants.

It is this dividing line where much activity goes on among the rogue landlord/agent community because for many landlords it is preferable for them to issue licenses rather than tenancy agreements.

Contractual licenses:

These are types of licenses which, while not being full tenancies are still, nonetheless entitled to an eviction by court order.

Tied accommodation often falls into this category, where the employer provides accommodation along with the job. Sometimes the employment contract sets these conditions out or sometimes there is a separate lettings contracts which may say the same thing.

We shall look at these arrangements below.

In other circumstances, for one reason or another the letting arrangements falls short of a full tenancy but is neither a bare license nor an excluded license (see below). In order for there to be a tenancy, one of the main tests is whether or not the person has "Exclusive possession" of the accommodation but for this to be in place you have to be clear on what that person has exclusive possession of.

If a person enters accommodation and pays rent but you can't clearly identify what they are renting, for instance if they keep moving rooms, then it will not be a tenancy but a form of licence. However, if the license is not a bare license, or is not an excluded license, then that person still has the right to be evicted by court order, even though they may not be a tenant.

Often a license agreement is given, simply because the landlord does not understand the law and thinks that it is within their power to choose whether to grant a license or a tenancy but what is increasingly common is the tendency for rogue landlords and agents to issue license agreements to hoodwink the tenants into thinking that they have less rights than they do. The adviser needs to be awake to the key differences between licenses and tenancies.

In August 2017 Islington Council Trading Standards successfully prosecuted a local letting agent to the tune of £11,500 just for issuing two license agreements that should have been tenancies.

Also there are other distinctions which need clarifying in order to properly advise a person and establish their true occupancy rights.

It is commonly believed that there cannot be a landlord-tenant relationship where the parties are related. This is not true. A landlord could be the parent of their tenant but still creates a tenancy.

There are three hallmarks of a tenancy which form the bedrock of all renting law that we shall look at shortly and which form the basic principles by which an adviser can clearly find a dividing line between tenancies and licenses.

Much of the documentation presented to advisers and case workers will indicate that a license is in place when this is not actually the case. So, having established the conditions through which a license is created, what are the criteria for the creation of tenancies?

Lodger or Common Law Tenant?

There is a further possible arrangement we have to look out for, where a landlord lives in the premises but doesn't share facilities with the other occupiers. For instance a converted three story house and the landlord lives in a self-contained flat on the ground floor, so effectively they all live in the same building but there is no sharing between landlords and other occupiers.

This arrangement does not apply where the building is a purpose-built block of flats.

Then what you have is a Common Law Tenancy. They are still entitled to be evicted by a possession order.

The same rules apply as for lodgers, the landlord must have been resident from the start and must genuinely live there as their sole or principal home, not just claim to. However, there is another thing to watch out for and that is whether or not the occupiers share with a member of the landlord's family as this would lift them back out of greater security and make them lodgers again but the landlord still has to live on the premises as well – you are not a lodger if you share with a member of the landlord's family and the landlord doesn't live there. Both elements have to be in place.

AST or Contractual Licence?

This important distinction takes us back to A G Securities v. Vaughan and Street v. Mountford.. Having rubbished the landlord's claim that the occupiers are lodgers we have to look to the true nature of the arrangement.

- Do they have exclusive occupation of at least one room for which they pay rent for an identified term? If the answer is yes, then we need to see the occupancy agreement to see if it identifies the room they occupy.
- If it does then we need to ask the tenant if they have ever swapped rooms. If they haven't then what you are dealing with is an AST
- If you can't identify the room, they rent then the chances are they will be contractual licensees.

So, what is the import of this distinction?

• If they hold an AST then in order to get them out the landlord will have to serve either a section 21 or a section 8 notice and obtain possession through the courts.

• In addition, the landlord is obliged to comply with deposit protection legislation.

• If there is no written agreement a notice under section 97 of the Housing Act 1996 can be served on the landlord demanding a written statement of terms – see later chapter on landlord identity issues.

If they are Contractual Licensees, then the landlord isn't obliged to protect the deposit. He still has to obtain a possession order from the court but will have to serve a standard Notice to Quit to do so, not a s21 or s8. Therefore, the protection built into the Deregulation Act 2015 on s21s isn't there for Contractual Licensees.

It is often thought that in the absence of a written tenancy agreement an AST will be in place since 28th February 1997 when the Housing Act 1996 abolished the need for the old section 20 notice, but you have to look closely at the arrangement. In AG Securities the occupiers regularly swapped rooms and in effect lost their exclusive occupation and did not hold ASTs but it may be the case that there is a genuine arrangement for the landlord to require people to move rooms, for instance to facilitate works that the occupiers knew about from the start.
If the arrangement is the genuine understanding of both sides and not a pretense aimed at merely reducing the tenant's security and get the landlord out of deposit protection then with no exclusive occupation it won't be a tenancy.

Mixed tenures.

In many large HMOs you visit the occupiers can often be a mixture of tenants and licensees depending on a range of factors:-

• Whether the landlord lived there before the occupier moved in • Whether they genuinely live there.

• Whether the occupier has a room of their own or shares with someone who they aren't in a relationship with.

• Whether a notice has been served an expired

• Whether the occupiers share with a member of the landlord's family.

So, you need to be awake to the fact that not everybody in the same house will necessarily have the same rights. All these factors have to be ticked off the list before you know how strong or weak their position is.

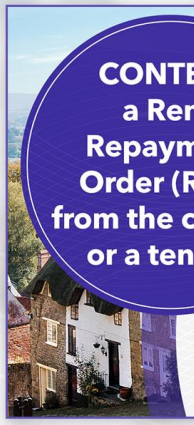
And an extra one.

Since May 2016 and the advent of the Immigration Act a 6th category can be added to that list where a person was a tenant, but the government wrote to the landlord, identifying the tenant as having no legal status in the UK. The landlord can serve 28 days' notice to quit which shall, according to the Act will be on its own, "Enforceable as if it were an order of the High Court.", in other words no possession order is needed. The landlord can use reasonable force or a high court enforcement officer of the "Can't pay we'll take it away" kind.

Source: Ben Reeve Housing law in a rogue landlord environment

LANDLORD LICENSING & DEFENCE

CONTEST a Rent Repayment Order (RRO) from the council or a tenant.



Received an application for a Rent Repayment Order (RRO) or a notice from the First Tier Tribunal (Property Chamber) that a claim has been made against you?

Do NOT ignore.
Do NOT talk to the tenant or council.

You have limited time and you need immediate advice. Most tenants use ruthless no-win-no-fee solicitors.

TALK TO US 0208 088 3494

PROTECT yourself from enforcement with a Property COMPLIANCE Audit.

- HHSRS 29 Hazards – Confidential audit to bring your property into compliance (that the council cannot use against you)
- Professional Fire Risk Assessment – the best defence against Gross Negligence Manslaughter
- Council & Amenity Standards
- Full confidential audits covering all of the above

TALK TO US 0208 088 3494

CHALLENGE A CIVIL FINANCIAL PENALTY

Councils can issue massive Civil Financial Penalties for breaches of housing law.

- Failure to licence a property or having the wrong licence.
- Breaches of your property licence or HMO conditions.
- Failure to comply with an Improvement Notice, Prohibition Order or Management Order.

The council gets to keep all the money so their motivation to fine you is immense.

Stay silent with the council and get immediate professional defence.

£30,000 FINE

TALK TO US 0208 088 3494

FIGHT a Tenancy Deposit Claim

Received a letter or notice of deposit protection claim from your tenant or a solicitor?

Most claims come from aggressive no-win-no-fee solicitors.

It probably demands a lot of money and threatens court action.

Whatever you do, do not respond.

Seek immediate professional help to avoid court and minimise extortionate demands for compensation.

TALK TO US NOW 0208 088 3494

Compliant HMO design advice

90% of architects and builders do NOT understand HHSRS and Amenity standards requirements.

Advice on compliance after 2nd Fix can cost a fortune in reworks.

Get a professional review of your drawings or at 1st Fix and save yourself a fortune.

TALK TO US 0208 088 3494

Unwitting, Accidental or Unlicensed HMO?

Any property with 3 persons where one is not related to the others IS an HMO even if you are unaware.

If it should be licensed but isn't you have already committed a criminal offence and the fines can be £30k+

Do NOT talk to the council. Get professional defence to mediate for you and apply for the missing licence in the safest way possible.

TALK TO US 0208 088 3494

DEFEND against Enforcement from Council!

Landlords are entitled by law to have professional defence.

- Improvement Notice
- Failure to Licence HMO or Selective
- Prohibition Order. Not Fit and Proper Declaration
- HMO Management Regulations Penalty
- PACE interview under caution

TALK TO US 0208 088 3494

CONTEST a Fitness for Human Habitation claim

The latest get-rich scheme of ruthless no-win-no-fee litigation solicitors.

They will rack up vast legal costs and attempt to make you pay them through the courts. Plus, they'll take a hefty percent of the damages they win for the tenant.

They do not care about getting repairs done or tenant safety

Do NOT answer them, you're likely to self-incriminate.

TALK TO US NOW 0208 088 3494

Muddled thinking on Right to Buy will just make the housing crisis worse

New data from Halifax shows the average UK house price hit a new record high last month, rising 1% between April and May, making the average price of a home now more than £289,000.

So with affordability and opportunity to buy declining, the government's new right to buy proposals, enabling council tenants to buy their homes, will ostensibly give those who can't get on the housing ladder the opportunity to do so.

But this is no magic wand to solve the housing crisis – instead of easing it, the government's muddled thinking is likely to have the opposite effect.

First, extending the policy means appropriating assets of charities and housing associations – which will either have ethical questionability or be subject to legal challenge, so there's no guarantee that the numbers of homes the government hopes will be delivered will actually be realised.

Second, even if the numbers are substantial, the extent of the housing crisis means those homes that are sold need to be replaced with more social housing. Boris Johnson may have said there will be a "one for one" approach, but, as other commentators have pointed out, every previous version of right to buy has failed to replace the number of affordable homes lost. In 2019/20, for instance, more than 10,500 homes were sold through right to buy, yet Shelter estimates that more than one million households are still waiting for social homes.

Rather than short term, headline announcements, what's needed is long term coherent strategy to increase social and affordable housing. Instead, we've got muddled policy.

Replacing the number of affordable homes lost to the right to buy extension would mean speedy planning permission is required to enable more homes to be built in areas where they're most needed – often in, or near, leafy, affluent neighbourhoods.

But the government has already diluted plans to reform the planning system in England which would have made it easier for developers to win planning permission after a revolt from Tory MPs in the shires. Instead, it has committed to allowing neighbours to hold 'street votes' to approve or reject house extensions in their area.

We all know that these already stir up neighbourly discontent, so this policy will only further clog up planning officers' time. Are planning officers really going to have the resources to take forward larger planning applications? These proposals, incidentally, were introduced under Michael Gove's Levelling Up Bill, the day before the right to buy announcement – highlighting just how disjointed the government's policy thinking is.

The main barrier to 'one for one' being delivered, however, is the financial model. The provision of current government funding for affordable housing is at historic low levels as a percentage of investment, at around 20% now compared to f between 50-80% in the 1990s and 2000s.

The government needs to look at how housing associations and the wider affordable housing sector are funded to help them deliver more affordable homes. A recent report by Legal & General and the British Property Federation (BPF) estimates that increasing annual supply to 145,000 homes will require £34bn of additional capital funding per annum – and institutional investment can help plug that gap.

As the BPF has pointed out, new private capital, both equity and debt, has also started flowing into the sector attracted by its stability and returns but extending right to buy risks undermining the interest in investment in the sector and actually reducing supply.

The government should therefore look to help stabilise the environment by redressing the idiosyncrasies between tax treatment of not-for-profit providers and for-profit registered providers. As the L&G/BPF report says, creating a level playing field across the sector would encourage new investment and foster closer partnerships between housing associations and institutional investors. Longer term rent settlements would also provide investors with reassurance to encourage activity, reduce the amount of risk capital required for investment and lower the subsidy requirement per unit.

Unless financial reforms to stabilise and encourage institutional investment and ensure like-for-like replacement affordable housing is delivered, then any spell cast by the government's latest magic wand idea to solve the housing crisis will simple fizzle away.

Clive Docwra is managing director of McBains, a property and construction consultancy.

Source: **Property Industry Eye**

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Before you rent

Tenant choice is probably the most important thing you do as a landlord! Remember –

- It is easy to let a tenant in
- But often very hard (and expensive) to get them out again.
- Also, ASB and property damage can cost you dear So
- ALWAYS check tenants carefully.
- Tip – do not put temporary 'normal' tenants in a student property – what if they fail to vacate on time?
- Checking applicants
- Ideally meet with the applicant.
- Check their identity
- Get them to complete an information form
- Double check all information provided
- Pay for a credit check (but be careful)
- Ask for 3 months worth of bank statements
- Take references: – Bank – Employer – Last landlord – Person
- Check them out online (Google, twitter, LinkedIn, FB)
- NB Student lets may be less problematic

Guarantee issues (1)

- Guarantee is very important for student lets (and increasingly being used for 'normal' lets)
- Guarantor should be in UK or enforcement will effectively be impossible
- Check guarantor as carefully as you would check a tenant - a guarantor with no assets is of little value.
- Alternatively ask for full rent in advance
- There are commercial guarantee companies e.g. Housing Hand

Guarantee issues (2)

- Guarantor should sign before the tenant signs the tenancy agreement
- Or ensure that the guarantor signs as a deed
- If tenants sign as joint tenants, then guarantor will in most case be effectively guaranteeing all tenants
- Best position for landlords! But if you prefer there is a 'guarantor friendly' guarantee at the Renters Guide.
- Be careful about giving the guarantee to the tenant to arrange for signature – forgery is not unknown!
- NB Some student landlords may prefer to take the risk rather than go through the time -consuming business of getting guarantors signed up. Do you trust your judgement?

Consider insurance

- All properties should carry proper landlord insurance – domestic policies unsuitable
- Ensure you are covered for malicious damage by tenants and accidental damage
- Consider rent guarantee insurance
- FREE Landlord Law Insurance Mini-Course can be found at landlordlaw.co.uk/insurance

Helping tenants pay

How you can help (1)

- Changing the date in the month for payment – to the day after salary paid
- Help the tenant apply for benefit – or check they are receiving all they are due
- See if they are eligible for a Local Authority Discretionary Housing Payment
- See if they are eligible for grant aid

How you can help - resources

- https://www.turn2us.org.uk/ - – Benefit calculator – Search for a grant – Help for energy and other bills
- Landlord Law 'Helping Tenants in Arrears Kit' – detailed guidance, see videos on the info page
- Julie Ford debt assessment service
- Landlord Law Local Authority Directory

How you can help (2)

- Agree to a payment plan
- confirm in writing saying
- Legal action will not be taken so long as they comply
- If payments are missed the agreement is at an end
- Warn about effects of CCJ
- Ask them to contact you if they have problems NB Landlord Law Rent Arrears Action Plan has draft letters

Considering eviction

The Four Stages of Eviction proceedings

- Analysis
- Notices
- Court Proceedings
- Bailiffs/HCEO

Things to take into account

- What is the occupation type? This will affect the notices you serve and the procedure you use
- Landlord Law Which Possession Proceedings?
- Will you want to do it yourself or use solicitors?
- If you want to use solicitors – best to use them from the start. Choose solicitors who are familiar with this work and who offer a fixed fee. Free guide here.
- Be careful about unregulated eviction companies (Gill v. Kassam case

Notices

- Section 8 Notices
- Section 21 Notices
- Notices to Quit

Section 8 Notices

- Mandatory grounds, and
- Discretionary grounds
- Most common is rent arrears - ground 8
- Notice period – – Normally 2 weeks (bad tenant grounds) or – Two months
- Prescribed form
- Life of 12 months
- Make sure you are using the most recent version!

Letting legally- A guide to the Law for Landlords and agents

Permitted Payments

It is illegal to charge certain fees to tenants, unless they are classed as 'permitted payments'.

These are the ONLY payments you are permitted to charge:

- ✓ Rent
- ✓ Holding deposit (capped at 1 weeks rent)
- ✓ Tenancy deposit (capped to 5 weeks rent)
- ✓ Utility bills and council tax
- ✓ Default fees – including key loss and rent arrears (reasonable charges)
- ✓ Changes to a tenancy at the tenant's request - £50 / reasonable costs
- ✓ Fees for leaving a tenancy early, known as termination charges (to cover actual loss suffered by the landlord)

To work out the weekly rent, multiply the monthly rent by 12 then divide this sum by 52.

It is safer to receive payments in a traceable manner, but if you are paid in cash, always provide a receipt.

Prohibited Payments

You can 'no' longer charge the following:

- X Administration fees
- X Contract negotiation fees
- X Application fees
- X Inventory charges
- X Set up fees
- X Referencing fees
- X Check-in and check-out fees unless by mutual agreement, e.g. for an out of office hours checkout
- X Credit check fees
- X Renewal fees
- X Guarantor fees
- X End of tenancy fees
- X Permitted occupier fees
- X Default professional cleaning fee
- X Right to Rent fees

This list is not exhaustive and if the payment is not permitted within the Tenant Fees Act 2019 then it will be deemed prohibited. You should no longer make reference to these fees in your tenancy agreement or property adverts - they cannot be charged.

What else do I need to know?

Landlords should check that the agent they use is a member of the necessary industry schemes before entering into a management contract with them.

Agents must ensure they are members of the following schemes and maintain their membership.

Redress Scheme

Letting and managing agents must belong to one of two redress schemes below, either:

- The Property Ombudsman (TPO)
- The Property Redress Scheme (PRS)

You can check if your agent is a member online:
www.tpos.co.uk/find-a-member
www.theprs.co.uk/consumer/members/

Deposit schemes

When your tenant pays a deposit, this must be protected in one of three schemes and you must give the tenant prescribed information within 30 days of it being paid:

- Deposit Protection Service
- MyDeposits
- Tenancy Deposit Scheme

Client money protection (CMP) schemes

Letting and management agents who handle client money must be a member of a client money protection scheme. There are 6 schemes:

- Client Money Protect
- Money Shield
- Propertymark
- RICS
- Safeagent (previously NALS)
- UKALA Client Money Protection

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