

LANDLORD FACTSHEET

Thinking of renting out your property? If so, here is an information sheet to assist you with the letting and to encourage you to make use of our services.

Residential tenants in the UK have a very high level of protection from unreasonable interference and harassment. This protection is offered to them by law and custom. Where a landlord lets a property to a tenant they will give up much of their control of the property for the tenancy term. Access to the property can only be sought upon seeking the tenant's permission, unless it is an emergency, and tenants can only be removed from a property with a court order, unless they leave of their own accord.

We encourage landlords to use our services for a number of reasons, which are detailed in this factsheet.

- ◆ **Accreditation** - We are members of ARLA Propertymark which means we meet higher industry standards than the law demands, offers a code of conduct and provides consistent updates with the ongoing complex legislative changes.
- ◆ **Client Money Protection** - As required by law all letting agents must be part of a client money protection scheme. All our client monies are held in a specific client account and we are members of and protected by Propertymark Client Money Protection Scheme. This gives the landlord the reassurance that their money is always safe.
- ◆ **Experience** - We have over 66 years of experience in the industry and local area. We can advise on how to maximise on rental returns and what properties are in high demand.
- ◆ **Training** - We regularly attend seminars and workshops to ensure that we are familiar with all the changes in the law that affect our industry. All senior staff have studied and now have relevant qualifications in the industry. This knowledge assists us to ensure that our clients are complying with the law and keeping their tenants safe.
- ◆ **Redress Schemes** - We aim to offer clients an exceptional service but where things go wrong we offer a free redress scheme with The Property Redress Scheme. All letting agents are required by law to join a government approved redress scheme.
- ◆ **Costs** - A list of fees can be viewed in our office and on our website for both landlords and tenants so that they can see and clearly understand what they are being charged.

ESSENTIAL KNOWLEDGE

Tenancy Type

There are several different types of tenancies in England with different types of statutory regimes.

1. **Rent Act** – Historically tenancies were covered by the Rent Act 1977. These tenancies can no longer be created and are generally dying out. These tenancies however provided a high level of protection to tenants for life and benefitted from below market rents.
2. **Housing Act** – The majority of tenancies created today now fall under the Housing Act 1988. The Act applies where tenancies are created on or after 15 January 1989 and creates one of two types of tenancies. The tenancy was either an Assured Tenancy or an Assured Shorthold Tenancy if the landlord served a section 20 notice advising the tenant that his tenancy was NOT an Assured Tenancy. An Assured Tenancy is a tenancy for life, which means it is very difficult to evict a tenant, and a tenancy at a market rent. Assured Shorthold Tenancies are created, as stated above, on the service of the section 20 Notice or those created after 28 February 1997. The vast majority of tenancies today are Assured Shorthold Tenancies which are tenancies at a market rent and permit the landlord to obtain possession much more easily.
3. **Common Law** – Contractual Tenancies are where the rent exceeds £100,000 per annum or where a residential property is let to a company rather than an individual. These tenancies are not governed by any specific statute but are a contractual arrangement between the landlord and tenant.

Deposits and Inventory

Landlords are required to register the deposit with a government approved tenancy deposit protection scheme. In England the maximum deposit that can be taken is equivalent to five weeks rent (six weeks rent where the annual rent exceeds £50,000). In addition to the registration the landlord is also required to provide the tenant with specific information, called Prescribed Information, which differs depending on the scheme that is used. Failure to adhere to the deposit scheme rules can result in a landlord facing claims by the tenant for up to three times the deposit amount in addition to a return of the full deposit. Furthermore, landlords are not permitted to issue possession proceedings on the expiry of a section 21 notice if the deposit rules have not been complied with because the notice is in fact invalid upon service.

The deposit schemes all offer a free adjudication service in the event of a dispute in respect of any deductions from the deposit. In order to consider such disputes, the schemes will expect to see a comprehensive Inventory & Schedule of Condition. It is often the case that landlords do not arrange for an inventory or arrange for a poor quality inventory and this makes it impossible to show that the condition of the property has deteriorated over the course of the tenancy term. In the absence of any proof of deterioration, the landlord is unlikely to be successful in their claim to make deductions from the tenant's deposit. As important as the inventory is a detailed move-out report to clearly indicate the differences since the commencement of the tenancy and any tenant dilapidations.

Consents

If you are thinking of letting your flat or a property where you have a superior landlord, then you will need to seek their permission to let. Insurance companies, Mortgage lenders and even co-owners will also need to be contacted for permission to let. Without the necessary consents you risk having your head lease forfeited, your insurance cancelled and your mortgage lender demanding an immediate return of the full loan amount.

Advertising the Property

Property adverts must be accurate. False advertising is a criminal offence and carries an unlimited fine. Examples of such false advertising includes saying that the flat has an 'allocated' parking space when in fact it does not and the occupier would need to pay for/rent a car parking space and that local schools are 'good' when they are in fact average. Where tenants fall victim to false advertising they may be entitled to vacate the property within the first month of their occupancy and demand a full refund of any rent they have paid.

Discrimination

Landlords may be selective in respect of their tenants but they cannot discriminate unlawfully. Such discrimination is a breach of the Equality Act 2010 and can include refusal to let to people of a particular sex, religion, sexual preference, age, race, colour, marital status, pregnancy and disability. Disabled tenants can ask for non-structural reasonable adjustments, such as handles along the stairs and it would amount to discrimination if the landlord refused the tenant because they asked for the adjustments.

In some cases it may be considered discrimination under the Act to stipulate that a landlord will not consider an applicant/tenant who is in receipt of benefits i.e Universal Credit (UC), Local Housing Allowance (LHA), Employment Support Allowance (ESA) and Personal Independence Payment (PIP). There is increasing awareness around this topic and in 2020 there were two successful judgements made against landlords for this reason.

Lets with Pets

Establish whether you are comfortable renting to a tenant who owns a pet. Allowing pets will no doubt make a property more desirable to potential tenants and achieve more enquiries/viewings along with encouraging tenants to rent for longer. However, even the best-behaved pets may have an impact on a property over time and you will need to consider this into the wear and tear of the property.

Immigration and Right to Rent

Landlords in England are obliged to check the immigration status of any occupiers of their property. In order to comply with the requirement landlords should carry out checks on all occupiers aged 18 and over prior to granting a tenancy. You can be fined up to £3,000 per occupier if you rent your property to someone who isn't allowed to stay in the UK, and you can't show that you checked their Right to Rent. You can also be fined if you make a follow up check and don't make a report to the Home Office saying that a tenant's stay has run out or you don't make a follow up check on a tenant who has a time limited permission to stay in the UK.

Tenant Referencing

As a landlord, you will need to rigorously reference new tenants to check they are reliable and will be able to meet rent payments each month. These include credit eligibility, employer checks and previous landlord references.

EPC

All properties on the rental market must have an Energy Performance Certificate (EPC). The EPC provides potential tenants with an estimate of the cost to heat and light the property and also recommends works which could reduce these costs if carried out. The EPC uses a rating system based on the letters A to G. Any properties with a rating of F or G are no longer permitted to be rented until improvements are made to increase the rating to E or above.

Gas Safety

It is compulsory throughout England for landlords to have gas appliances checked annually. These checks must be carried out by Gas Safe approved engineers and a copy of the certificate must be given to the tenant. It is the Health and Safety Executive that enforces this requirement and landlords can face a prison term and/or fine for failing to comply in the most serious cases. As with deposits, landlords are not able to issue a valid section 21 notice if the Gas Safety Certificate has not been issued to the tenant.

Electrical Safety

The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020 were passed by parliament on 18 March 2020 and therefore it is now compulsory in England for landlords to have every fixed electrical installation at the property inspected and tested at least every five years by a qualified person. This is called an Electrical Installation Condition Report (EICR). Where the most recent EICR requires an inspection and testing to be at intervals of less than five years, it must be at the intervals as specified in that report. A satisfactory report must be in place before a tenancy can commence. It is the local authority that enforces this requirement and landlords can face penalties of up to £30,000 for breach of their duties. As with Gas Safety Certificates, landlords are not able to issue a valid section 21 notice if the EICR has not been issued to the tenant.

Property Standards

1. **The Deregulation Act 2015** placed more pressure on property standards. If a landlord is served with a notice under the Housing Health and Safety Rating System (HHSRS) which requires the property to be improved or allows the local authority to do work itself then the landlord will not be able to serve notice under a section 21 for the next six months. In addition, if a tenant complains to a landlord in writing about the condition of the property and then complains to the local authority who take enforcement action under the HHSRS then any section 21 notice served on the tenant between their initial complaint to the landlord and the enforcement activity will be invalid.
2. **The Homes (Fitness for Human Habitation) Act 2018** has also placed even more pressure on property standards. This replaces section 8 of the Landlord and Tenant Act 1985 (LTA 1985), in England, with the purpose of improving living standards in the private and social rented sectors and is a very complex Act. Under the Homes Act 2018, landlords must ensure properties, including common parts where they have an estate or interest, are fit for human habitation at the beginning and throughout the duration of the tenancy. Tenants will now be able to take direct legal action if their landlord does not comply with the Act whereas previously a tenant had to rely solely on the action of the local authority. Property checks will no longer be needed by a local authority enforcement officers before being taken to Court by a tenant. The 'hazards' used in the Homes Act, are the 29 listed in the HHSRS. It is recommended that the hazards identified in the HHSRS are checked and recorded prior to the commencement of a tenancy. Where a tenant seeks redress under this Act through the Courts, this does not exempt the landlord from local authority enforcement.

Legionella

The landlord is responsible for ensuring that the property is compliant with Health and Safety Executive form ACOP L8 'The Control of Legionella Bacteria in Water Systems' at the start of and throughout a tenancy. This is done by properly undertaking a legionella risk assessment and, if necessary, making any required changes to the water system.

Fire Safety

Properties should be fire safe and should include an adequate means of escape in case of fire. Landlords should carry out fire risk assessments and should provide tenants with written instructions on how to operate any fire safety equipment (where provided).

It is a legal requirement, Smoke and Carbon Monoxide Alarm (England) Regulations 2015, for all properties to have at least one smoke alarm on each floor of the property. Landlords also have to put a carbon monoxide alarm in any room where solid fuel is burnt, such as wood, coal, biomass and includes open fires. All landlords must ensure that the alarms work at the start of each new tenancy. It is the local authority that enforces this requirement and they can serve an enforcement notice requiring alarms to be fitted. The landlord has 28 days to respond/or make good what is needed to comply. The local authority can issue a fixed penalty notice of up to £5,000 on landlords who do not comply with the rules.

Furniture and Furnishings

Prepare your property – If you are offering your property as a furnished home, think carefully about what you can provide. Remove anything valuable or sentimental – aside from the fact they're at risk of damage, it can be off-putting to rent a property that is filled with someone else's belongings. All soft furniture and furnishings must meet appropriate fire regulations. Most modern furniture will meet the required standard and include appropriate labelling but older or imported furniture may not. The standard of safety and furniture labelling is required prior to supplying the tenant with the furniture. Any breach of the requirement is a criminal offence punishable by a substantial fine or even imprisonment in serious cases.

How to Rent Guide

In England all tenants must be given the latest edition of the government published guide "How to Rent: A Checklist for Renting in England" prior to commencement of the tenancy. Where landlords fail to provide the guide they will not be able to serve a valid section 21 notice.

Inspections

Regular property inspections, ideally quarterly, should alleviate any worries about how the property is being looked after. Remember that you cannot enter the property without the tenant's permission as this is classed as trespassing and is illegal. Such inspections are not intended to constitute a formal survey of the property but in verifying the good order of the tenancy (i.e. that the property is being used in a 'tenant like' manner) and the general condition of the property. It allows the opportunity to note any maintenance and therefore react proactively. Regular inspections will help maintain the condition of the property and reduce the risk of issues as indicated in the property standards section of this sheet.

HMOs

A HMO (House in Multiple Occupation) is a property occupied by a group of people who do not form one household. The Housing Act 2004 does not require that all HMOs are licensed but where a license is required and not obtained anyone collecting rent is committing an offence. Local councils can elect to change the licensing requirements in any area and bring it into force retrospectively. Landlords will therefore need to know what the HMO rules are if any and what needs to be carried out in order to comply with them.

Selective Licensing

You must check if you need a landlord license, known as Selective License, from your local council before your property can legally be rented out. This legislation was introduced in 2006 with the main purpose of ensuring landlords maintain their rental properties to a good standard. Not all councils operate selective licensing.

Rent to Rent

Landlords that rent properties to a tenant who elect to sublet the property to other tenants on a room by room basis may not have sought your consent. Rent to Rent tenancies are on the increase with the introduction of companies such as Air B&B. Unfortunately, these tenancies could be a breach of local licensing, headlease, insurance and/or mortgage conditions.

Penalty Notices and Rent Repayment

The Housing and Planning Act 2016 (H&PA) creates new penalty notices of up to £30,000 in respect of all matters which are offences under the Housing Act 2004. This includes all forms of offence relating to HMOs and the HHSRS. In addition, the H&PA widens Rent Repayment Orders (RRO) allowing the local authority and tenants to recover rent paid without there having been a conviction and also applying them more widely to all Housing Act 2004 offences as well as unlawful eviction.

Banning Orders and the Database

Banning Orders are part of a range of measures introduced in the Housing and Planning Act 2016 to tackle rogue landlords. Banning orders came into force on 6 April 2018. The Act gives power to local authorities to apply to the First-Tier Tribunal for a Banning Order against a landlord who has been convicted of a Banning Order Offence. The Housing and Planning Act 2016 (Banning Order Offences) Regulations 2017 specify and introduce the offences. A Banning Order prevents a person from letting a property, engaging in lettings and property management, or doing two or more of those things for a fixed period of time, minimum 12 months with no upper limit. In addition, the consequences of the Banning Order will mean that the banned landlord will not be able to hold a HMO license; Local authorities may be able to take over the management of their properties; The banned landlord will not be able to transfer the property to avoid the penalties; Any tenancy agreements will not be invalidated.

Local authorities also have the power to include persons convicted of Banning Order Offences on the Database for Rogue Landlords and Letting Agents.

The private rented sector is subject to a huge increase in legislation and will continue into the foreseeable future. It is possible that other regulations will be introduced at relatively short notice. Landlords can help guard against being caught out by these changes by using a high-quality professional letting agent who will stay on top of the legislation.