



AJ ANGELO
SOLICITORS

LETTING GUIDE

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"YOUR CONNECTION TO THE RIGHT SOLUTION"

LETTING GUIDE

IMPORTANT GUIDANCE NOTES ABOUT LETTING LEGAL OBLIGATIONS AND REQUIREMENTS

As property experts, we have put together this guide to give guidance and overview about letting legal obligations and requirements.

Some Landlords confuse their mandatory obligations to their tenants with their potential liability under the Law of Tort. This can arise where the property is unsafe and a tenant suffers injury and /or loss.

An example where a Landlord may be liable is where they obtain a 3 three-year EIC NIC certificate and considers it valid for the whole duration. However, if a new tenant occupies the house before the 3 years and suffers injury and/or loss, the Landlord can be held liable for unsafe electrics.

It is important to note that Landlords and/or their agents may be personally liable statutory and non-statutory obligations under Tort, which has led to numerous Landlords and/or agents suffering financial loss, often due to failing to appreciate the full extent of their obligations.

Some liability is personal and that punishment can include a fine and/or prison term (e.g. charges may include manslaughter where there is a death by failure to have a defective boiler and invalid gas certificate.

There is an obvious expense in maintaining rented property and much has to do with the compliance of statutory and other legal obligations. At times, Landlords put the expense of maintaining let property above their obligations, without appreciating the risks and neglect to their property. Good planning and regular maintenance reduces the overall expense and sustains the value of your investment property.

We believe "Prevention is better than Cure", which is why we have created this letting guide, which is a simple guide, but highlights how the law can be complex.

This guide provides basic guidance and information, promotes good practice, helps protect the tenant and the property. It is imperative to note that not knowing the law or your legal requirements is not a Defence, as 'ignorance of the law is NOT an excuse'.

This guide is meant to provide assistance, but if you require more detailed or specific assistance, we offer **FREE LEGAL ADVICE - WITHOUT OBLIGATION OR CHARGE**.

LETTING GUIDE – SUMMARY OF OBLIGATIONS AND GOOD PRACTICE

IMPORTANT NOTE - This letting guide is for general information, as each situation is generally different. This is for guidance only. If you have any problem or issue, you must seek specific legal advice.

We offer basic **FREE LEGAL ADVICE - WITHOUT OBLIGATION**, so that we can point you in the right direction.

1) **GAS SAFETY**

Gas Safety Certificate

A gas certificate is required on an annual basis, which is compulsory under the Gas Safety (Installation and Use) Regulations 1994 (as amended). Failure to comply with these regulations may lead to a prosecution with penalties of imprisonment or fines up to £25,000.00.

The Landlord is required to provide a copy of the gas certificate to their tenant before or at the start of the tenancy and furthermore, is required to provide an updated certificate to the tenant on an annual basis. If in the event the gas certificate is not provided to the tenant in accordance with the above, then any Section 21 Notice that is later served by the Landlord would be invalid, until such time that the parties enter into a new/renewed tenancy.

Gas safety appliances

The Gas Safety Regulations 1998 place a statutory duty on all Landlords of residential property to ensure that all gas appliances, pipe work and flues are maintained in a safe condition.

Carbon Monoxide alarm

A carbon monoxide alarm is required in every room occupied as a living accommodation where solid fuel is used. This is now required under the Smoke and Carbon Monoxide Alarm (England) Regulations Act 2015, which came into force on 1st October 2015. It is good practice to have a carbon monoxide alarm in rented property in any event as this reduces the Landlord's potential liability.

2) **FURNITURE AND FURNISHINGS (FIRE) (SAFETY) REGULATIONS**

From 1st January 1997 all upholstered furniture in rented accommodation must comply with the fire resistance requirements of the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended in 1989 and 1993) set levels of fire resistance for domestic upholstered furniture, furnishings and other products containing upholstery.

3) **ELECTRICAL SAFETY**

The Electrical Equipment (Safety) Regulations 1994 have been mandatory since 1st January 1997. They state that all electrical appliances in let accommodation must be safe to use. Further, the electrical installation in the house must be completely safe. The electrical wiring in your property must be safe and in good working order throughout. You must also ensure you have enough sockets to meet the need of tenants. As from 1st January 2005, any contractors used for electrical work should be approved under Part P of the Building Regulations.

Plugs and Sockets (Safety) Regulations 1994

This regulation requires that any plug, socket or adapter supplied for intended domestic use complies with the appropriate current standard, and specifically that the live and neutral pins on plugs are part insulated so as to prevent shocks when removing plugs from sockets and all plugs are pre-wired.

It is also best practice for all electrical work to be updated at the beginning and end of each tenancy, to ensure that the electrics are safe. Such practice shall help to avoid potential liability in case of allegations of unsafe electrics in rented accommodation.

4) FIRE SAFETY, HOUSING ACT 2004

Fire Safety in Rental Property

This area of law is covered by both the Housing Act 2004 and the Regulatory Reform (Fire Safety) Order 2005. Landlords are under a common law duty to ensure that the property they provide is safe. All residential properties in England and Wales should comply with building regulations.

Fire Extinguishers

It is strongly advised that a Landlord should provide fire extinguishers or fire blankets, especially in the kitchen area. The Landlord and/or agent must ensure that they are regularly serviced as advised by the supplier.

Fire and Smoke Alarms

In new developments it is mandatory to install mains operated smoke and fire alarms. In addition to it being good practice to have smoke and fire alarms in all rented property, it is also law under the Smoke and Carbon Monoxide Alarm (England) Regulations Act 2015, which came into force on 1st October 2015. The absence of fire and/or smoke alarms may render the rented property unsafe, which may render the Landlord and/or his agent liable in case of an injury and/or loss. It is strongly advised to have smoke alarms installed.

Fire Safety Order

Where a Landlord controls flats, bedsits or hostels, there must be a risk assessment in place to comply with the Fire Safety Order. It should be in writing. A statutory risk assessment is not required for shared houses or single dwelling lets.

Cooker

It is an offence to let a property with a cooker that is damaged in any way, under Section 46 of the Consumer Protection Act 1994. Further, your tenant has the right to see documented proof of your compliance with those regulations.

5) **LANDLORDS INSURANCE**

It is very important to ensure that your insurance company are told about your proposed letting, so that any cover is not prejudiced in any way. Failure to inform your insurance company may result in your insurer refusing to honour any claim. You cannot have an owner-occupier insurance policy when letting your property.

6) **REPAIRS & MAINTENANCE - SECTION 11, LANDLORD & TENANT ACT 1985**

The Landlord has an obligation under Section 11 of the Landlord and Tenant Act 1985 to maintain the property. The Landlord is responsible for the structure and exterior of the property; baths, sinks and other sanitary items; heating and hot water installations. This legislation sets out the Landlord's responsibilities, so you need to be familiar with the legal requirements in this regard and how it relates to your situation. The parties should check to understand details of their responsibilities, especially where their relationship extends for long periods (and not only under an AST).

7) **STAMP DUTY**

There are frequent changes to Stamp Duty, so you must check to see if any Stamp Duty applies to any tenancy. The Stamp Duty issue is complicated and any queries should be addressed to the Stamp Taxes Helpline at HM Revenue & Customs.

8) **LEASEHOLD PROPERTIES**

If you are letting a leasehold property, you should attach a copy of the Head Lease to the Tenancy Agreement, in order that the tenant(s) have a copy of the restrictions they are to observe within the Head Lease.

9) **OBTAINING CONSENT TO LET A PROPERTY FROM LENDERS**

Before letting a property, Landlords must obtain permission and/or inform any lender(s) about the proposed letting and ask for their consent to let the property.

10) **LANDLORD'S DUTY TO DISCLOSE RENTAL INCOME**

Rental profit is unearned income and is liable to tax whether you are a resident in the UK or not. It is the Landlord's duty to ensure that the rental income is properly disclosed to HMRC.

11) **HMRC (LANDLORDS OVERSEAS)**

Any Landlord who is considered non-resident for taxation purposes is liable to pay tax on their rental income from letting property. This is regulated under Taxation of Income from Land (Non-Residents) Regulations 1995. Agents are obliged to provide details to the HMRC of clients letting properties whilst overseas.

12) **SECTION 48 NOTICE – LANDLORD’S DETAILS**

The Landlord’s address within England & Wales at which the Tenant may serve notices upon the Landlord must be provided to the Tenant in writing under Section 48 Landlord & Tenant Act 1987. Failure to provide Section 48 details will also prevent the Landlord from claiming his entitlement to rent.

13) **ENERGY PERFORMANCE CERTIFICATES (EPCs)**

Legislation effective from 1st October 2008 requires all rental properties with a new tenancy in England and Wales to have an Energy Performance Certificate.

14) **LEGIONELLA ASSESSMENT**

Landlords are required to perform a risk assessment for Legionnaire’s Disease. If they do not do this they could be issued with a fine. However, the amount of risk assessment required depends on the type of property and Landlords should be wary of claims that all properties need extensive water sampling tests.

15) **AGENTS DUTIES TO PUBLICISE FEES/THEIR REDRESS SCHEMES**

Under the Consumer Rights Act 2015 it is now a legal requirement for all letting and managing agents in England and Wales to publicise details of their fees and to say whether they do not have client money protection.

16) **COUNCIL PROPERTY LICENSE**

Some Council’s require a property licence for you to rent your property. It is therefore the Landlords’ and/or their agents’ responsibility to check to see whether such a license is required.

17) **HOUSES IN MULTIPLE OCCUPATION (HMO)**

HMOs require a license and it is the Landlord and/or their agent’s duty to ensure that rented HMO property is properly licensed.

18) **IMMIGRATION ACT 2016 (RIGHT TO RENT)**

New provisions came into force on 1st December 2016. The main changes, which currently only apply to England, are:

- Ending a tenancy

There are two new ways to end a tenancy on tenants who do not have the Right to Rent.

- A new criminal offence

As well as the penalties already in place, there is a new criminal offence intended to be used for the more serious offenders. A Landlord (or an agent if he has failed to notify the Landlord) will be liable if he has knowingly let property to tenants who do not have the right to rent; if found guilty he could face an unlimited fine or up to five years' imprisonment.

However, you will have a defence if the correct steps have been taken to end the tenancy and evict the tenants within a reasonable period of time (which the draft guidance states is within three months of discovering that the tenant has no right to rent).

19) **DEREGULATION ACT 2015**

The Deregulation Act 2015 (the "Act") became law on 26 March 2015 in an attempt to dispose of legislation that was no longer relevant. The Act covers different aspects, including the use of land and housing.

Failure to comply with the new changes will prevent Landlords from obtaining possession and/or being unable to obtain possession and/or being subject to fines and other financial loss.

We have highlighted below details of changes to residential legislation, which Landlords, letting agents and tenants should be aware, which arise from the Act. Key changes in relation to:

- Tenancy Deposit Protection;
- Additional Information Relating to Prescribed Information;
- A new prescribed form for a section 21 Notice called form 6A must be used. The old form cannot be used;
- Retaliatory Eviction; and
- The Energy Performance Certificate (EPC)

These provisions apply to all new assured shorthold tenancies that start on or after 1 October 2015 and will apply to all ASTs in existence at that time as of 1 October 2018.

20) **TENANCY DEPOSITS**

It has been a statutory requirement since April 2007 for the Landlord to operate a deposit protection scheme and protect the deposit within 30 days of the commencement of the tenancy.

The Tenancy Deposit Scheme has been a Government backed scheme where the tenants deposit is placed within either a Free Custodial Administered Account or an Insurance Scheme where the Landlord holds the deposit but pays a premium as 'insurance' to pay back the deposit.

The requirement to protect a tenancy deposit has changed and depending on the date of your tenancy, whether any deposit was paid. If paid, when the deposit was paid.

This Act covers virtually all new assured shorthold tenancy contracts used by letting agents and Landlords to let a property in England and Wales.

There has been much case law since 2007 when the Tenancy Deposit Scheme (TDS) was introduced. Some of the important cases, include *Superstrike Ltd v Rodrigues* and *Charalambous v Maureen Rosairie Ng*.

The Act has provided much clarity on the steps a Landlord must take to comply with TDS legislation. General non-compliance with TDS may entitle the tenant to compensation of 1-3 times their deposit, plus the return of their deposit, if the deposit is not protected.

Tenancy Agreements should include a deposit amount, as not specifying a deposit may cause issues as to the validity of such clause and the agreement.

A very important point to note is that, if you are in breach of this requirement you, as a Landlord, can be sued by your tenant for damages for 1-3 times of the value of the deposit. What most Landlords do not appreciate is that this penalty is actually applicable for EACH tenancy, to include renewals and periodic tenancies.

21) PREScribed INFORMATION

The rules explain the circumstances, in which the Landlord is required to serve Prescribed Information, in the appropriate format. Failure to serve the Prescribed Information within 30 days of the commencement of the tenancy and/or to serve the same in the wrong format, may render the Section 21 invalid.

22) SECTION 21

The Act is designed to protect tenants against unfair eviction when they have raised a legitimate complaint about the condition of their home. It requires Landlords to provide all new tenants with information about their rights and responsibilities as tenants.

The Landlord must provide tenant(s) with the Department for Communities and Local Government's booklet entitled "How to rent: the checklist for renting in England", an EPC and gas safety certificates, before the tenancy begins, which the Landlord must prove has been provided. Otherwise, the Section 21 will not be deemed valid in any possession claim, if they have not complied with certain legal responsibilities.

The Act has introduced a new standard Section 21 form that Landlords must use when evicting a tenant under the 'no fault' procedure. The new Section 21 is used for both fixed-term and periodic tenancies.

A Section 21 Notice may not be given if the Landlord has breached the Act, due to the: -

- condition of dwelling houses or their common parts
- health and safety of occupiers of dwelling-houses
- energy performance of dwelling-houses.

The new Section 21 cannot be served within the first four months of the contractual term of the tenancy. Possession proceedings must be started within 6 months of the date the Section Notice was given or it will be invalid and a new Notice must be served.

Whilst the Section 8 procedure is available for the purposes of claiming rent arrears, unless you are able to recover/enforce a judgment against your tenant, which in most cases is unlikely, you could become involved in a fully contested dispute. This would mean instructing surveyors to support your claim as your tenant could raise counterclaim for disrepair, which means that the entire process could take between 6-18 months. During this process, your tenant may not pay some or all of the rent and the prospects of achieving an Order for Possession may become significantly low. Therefore, the lack of certainty in obtaining an Order for Possession and the cost risk/loss of rent, leads us to form the view that this procedure is problematic to say the least.

23) **UNLAWFUL EVICTION**

Landlords should be aware that various actions may amount to an illegal eviction which is a civil and criminal offence. Such actions include: -

- Removing your tenant forcibly by threatening or harassing them;
- Physically throwing the tenant out; or
- Changing the locks whilst the tenant is out.

The penalties for such conduct include damages of up to 10% of the value of the property on the civil side and a fine of around £400 and/or 6 months imprisonment on the criminal side.

24) **RETALIATORY EVICTION**

The Act contains provisions suspending the operation of Section 21, so as to protect a tenant against retaliatory eviction. This reference relates to situations where a Landlord takes steps to evict a tenant due to their complaints about the condition of the property, rather than carry out repairs.

The Act requires the tenant to expressly inform their Landlord about any disrepair. The Landlord has 14 days to respond to the tenant, setting out when they will access the property, look at the remedies and carry out repairs.

In the event of the disrepair not being carried out, the tenant can complaint to the local housing authority. The Council have the power to serve an enforcement notice on the Landlord, setting out "a reasonable timescale" for improvement works to be carried out. Landlords served with an Improvement Notice cannot issue a section 21 within six months of an enforcement notice being served.

25) **HOMES (FITNESS FOR HUMAN HABITATION) ACT 2018**

A new law came into force on 20th March 2019 that is designed to ensure that all rented accommodation is fit for human habitation. This will strengthen the tenant's means of redress against Landlords who do not fulfil their legal obligations in respect of keeping properties safe.

This Act amends the Landlord and Tenant Act 1985 to require that all Landlords (private and social) ensure that their properties, including common parts of the building, are fit for human habitation at the beginning of the tenancy and throughout. There is an implied agreement between Landlords and tenants at the beginning of the tenancy that the property will be fit for human habitation.

Where a Landlord fails to meet such obligations, the tenant has a right to take action in the Courts for breach of contract on grounds that the property is unfit for human habitation. There are remedies available to the Landlord, but that depends on their circumstances. It is important for Landlords to keep full records of the conditions of the property and all complaints made by the tenant and take action to carry out repairs and/or disrepairs urgently.

This will apply to a tenancy of not less than 7 years in England and Wales granted on or after 20th March 2019, new secured, assured and introductory tenancies on or after 20th March 2019, tenancies renewed for a fixed term on or after March 2019 and all periodic tenancies from the 20th March 2020. (This is all tenancies started before 20th March 2019 that has since become periodic tenancies).

Since the Act has come into force, Landlords with properties let on existing tenancies therefore have 12 months to comply. For any new tenancies that start now i.e. after 20th March 2019, the Act will apply immediately.

If the tenant has a cause of action against a Landlord pursuant to this Act, the tenant can also notify the Council, which means that they can utilise their enforcement powers and serve compulsory improvement notices requiring the necessary works to be undertaken.

The criteria for “fitness for human habitation” is set out in section 10 of the Landlord and Tenant Act 1985 which provides the various considerations utilised by the Court to decide whether a property is fit for human habitation:

- The building has been neglected and is in a bad condition;
- The building is unstable;
- There is a serious problem with damp;
- The building has an unsafe layout;
- There is not enough natural light;
- There is not enough ventilation;
- There is a problem with supply of hot and cold water;
- There are problems with drainage and lavatories;
- It is difficult to prepare and cook food or wash up; or
- Any of the 29 hazards set out in the Housing Health & Safety (England) Regulations 2005.

Landlords should also be aware that tenants are likely to notify the Council so as to ensure that Enforcement Notices are served as this will prevent a Landlord from serving a valid Section 21 Eviction Notice.

It would therefore follow that if a tenant has notified a Landlord of what works would form part of the requirements under this Act, Section 21 Notice would ultimately be deemed invalid, thus preventing the Landlord from obtaining possession of their property.

Should Landlords require any further guidance in respect of these recent developments, please do not hesitate to contact us at: info@ajasolicitors.com

Source:

www.gov.uk/government/publications/homes-fitness-for-human-habitation-act-2018/guide-for-landlords-homes-fitness-for-human-habitation-act-2018

26) TENANT FEES ACT 2019

From the 1st June 2019, all Landlords and Agents will no longer be able to charge tenants for fees in England on new tenancies that are commenced on or after that date. Landlords and Agents will only be able to charge for payments defined as permitted in the legislation.

At the present time, this only relates to tenancies that are commenced on or before 1st June 2019 but it will apply to all renewals of tenancies, excluding statutory and contractual periodic tenancies that arise after the law comes into effect.

From 1st June 2020, this will apply to pre-existing tenancies and any clauses that charge such fees will become ineffective.

If, in the event any prohibited payments are charged to the tenant following introduction of the new legislation, this sum will have to be returned to the tenant within 28 days, failing which this will be considered a breach of this legislation.

The types of fees that would be void in tenancy agreements would be for:

- Credit checks;
- Inventories;
- Cleaning services; and
- Charges for guarantor forms.

Holding deposits are exempt from the banned list. However, there are for 4 restrictions that would be in place. Failing to adhere to the restrictions would result in the legislation being breached.

In respect of deposits, these will be limited to a maximum of 5 week's rent in respect of tenancies that have an annual rent of below £50,000. Again, failure to comply with this restriction will result in a breach of the legislation.

Breaching the legislation will therefore expose Landlords and Agents to being sued in the County Court, which can include interest being charged from the day that the prohibited payment was made until the sum is returned.

The civil consequences of any breach would include a fine of up to £5,000 for the first offence and thereafter subsequent breaches would be a criminal offence with a fine of up to £30,000 and subject to a banning order.

Landlords and Agents should be aware that a valid Section 21 Notice cannot be served if a prohibited payment was requested, paid by the tenant or still being held by the Landlord or Agent.

Source:

www.gov.uk/government/publication/tenant-fees-fees-act-2019-guidance

**This Letting Guide has been prepared by
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