



Established 1966



Residential Letting Agents & Property Managers

The Good Landlord's Guide to Residential Letting



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Introduction

The Relationship between a Landlord and Tenant is steeped in history. Property matters stem back more than 1000 years when peasants became bound to land and looked to their landlords for protection

Before World War 1, most people in England and Wales rented their homes and business premises. It was not until the end of the 20th Century when only 7% of people rented their residential properties, whilst business lettings remained largely unaffected.

Housing changes were influenced among other things by social legislation and public sector housing provision.

Letting a property to another person creates a legal relationship between the landlord and the tenant. However informal you intend the agreement to be, specific legislation binds it. This legislation defines both your rights and responsibilities, and those of your tenant.

The main piece of legislation for this is the Landlord and Tenant Act 1985, which sets out the Responsibilities and Rights of both parties.

It is imperative that you seek legal advice before entering into an agreement with your tenant. Advice can be sought from a solicitor specialising in landlord & tenant law, Citizens Advice Bureaux or a letting agent who is a member of the **National Association of Estate Agents (NAEA)** or **Association of Residential Letting Agents (ARLA)**. Look out for the logos.



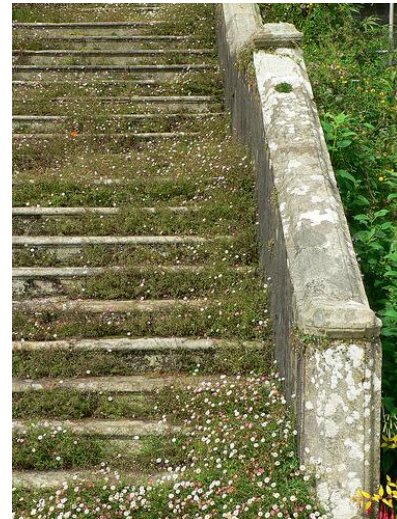
The Property

The modern day tenant is far removed than that of yesteryear, when they would put up with ram shackled properties over necessity rather than want.

Tenant's today want good, well maintained properties which are free from decay and other problems.

A scenario:

A three bedroomed semi-detached house in a suburban area, the property has not been updated form many years, the wiring has not be updated since mid-seventies, the windows are single glazed and frames rotting , the bathroom and kitchens are in poor condition. The garden looks like a natures wilderness.



You require a good return i.e. The rent being fairly high for this type of property

So when you look to let out this property you should consider two main questions–

Would you rent this property in the condition that it is in?

If the answer is **NO**, then you can understand why this property is un-let .

Would you pay the asking rent for this property?

If the answer is **NO**, then you can understand why you have no tenant

So how can we turn the NO into YES ?

In words very simple.

You take a stock look at what you have, your asset. As it is the property's sale value is lower as it is not in good condition. The rental market is poor as there are far better properties on the market for the same price.

You need to spend money and update the property. Not only is it better for you, but it is also better for the housing stock as a whole, uplifting the public's perception of the landlord

Presentation of the property for letting

Many landlords are renting their property for the first time and are unsure on how to present a property for letting.

If an owner/occupier landlord, and you are renting the property furnished, you should remove all items of great sentimental or financial value from the property. Any poor quality or substandard furnishings should also be removed.

Soft furnishings that do not meet the safety requirements **MUST** be removed prior to letting. They cannot be stored in a locked room or in the attic.

Structure

The property must be in a good state of repair and free from damp. The roof must be sound. Windows, doors and other woodwork should be free from rot.

Drains must be free running and in sound condition.

The landlord must make sure at all times that there is adequate space and water heating. Should either fail, the landlord is obligated under statute law to provide alternative source of heating and hot water until such time as the primary source is repaired.

All gas appliances supplied by the landlord must be serviced on an annual basis and a gas safety certificate issued by a CORGI registered installer once in every 12 months. Failure to do so is a criminal offence. Penalties can be as severe as £20,000 fine and/or up to 5 years in prison. See gas safety regulations

All electrical installations should be inspected by an NICEIC or ECA accredited electrician at least once in every five years. If you have not had an inspection and report before, one will be required before letting can proceed. Should any works be required, these will need to be attended to prior to letting. See electrical regulations

Early 2005 saw the implementation of "Part P" under the Building Regulations 2002 which requires that any "Notifiable works" be completed by a Part P qualified electrician. Such works would include changing a consumer unit or altering a ring main etc. A competent person would be able to change a socket without the need to be Part P registered. You should check that your electrician is registered.

Any electrical appliance provided by a landlord needs to be in sound condition and suitable for the purpose intended. Frayed cables, broken or chipped appliance bodies will need to be repaired or the appliance replaced.

Penalties for death or injury to a tenant, visitor or domestic animal due to electrocution are the same as that of the gas regulations.

Kitchen



If letting furnished the kitchen should have adequate appliances, which are safe to use and in good condition. In a three bedrooomed property there should be place settings for four persons.

Overseas tenants require a fuller furnished property, as they may not have domestic items with them, this may include bedding and a higher spec kitchen, television DVD etc.

For unfurnished lettings it is usual to have "white goods" left for use by the tenant, although when negotiating a letting these may not be required and therefore be removed and stored for future use.

There should be adequate storage facilities for food away from cleaning materials, suitable worktop space and ample power points. The units should be of modern design. If special work surface, such a real Beech Block, maintenance instructions must be available Instruction manuals are required for appliances.

Bathroom

The sanitary equipment should be modern, in good order and free from limescale. A shower is very important item for many tenants and worth the expense for the landlord to install a shower before placing the property on the market.

Showers can cause problems if not properly installed (leakage/condensation), so the installation should be done professionally. An electric extractor fan should also be fitted.

The seal around a bath should be inspected for age and wear, and renewed if necessary. Tiles should be sound, clean and free from mould in grouting.

Flooring should be tiles, cushion or laminate flooring. Carpet should be avoided.

Bedrooms

All decoration should be fresh and if possible neutral in colour. Any young children's wallpaper should be changed to appeal to a wider market

If the property is furnished, the beds must be up to BS 7177 to comply with fire safety regulations and free of stains. Mattress covers are an advantage. Carpets should be free from stains and of reasonable quality.



Reception rooms



Sofas, chairs and other seating should be clean and of suitable type for the property. Remember that soft furnishings must comply with the safety regulations and have labels attached saying that they comply. Antique furniture and furniture-manufactured prior to 1950 are exempt.

Carpets should be clean and of suitable quality. It is a recommendation that all carpeting (where not new) is professionally cleaned prior to letting.

Décor should be of neutral colour and freshly painted. Woodwork should be glossed.

There should be information left for tenants for the cleaning/care of any furniture or items that have special finishes.

Gardens



When preparing a property for letting, do not overlook the garden and outbuildings, such as garages, sheds, swimming pools etc.

If the property is vacant prior to letting, have someone tidy the garden during the growing season. Make sure that there are suitable garden implements for the tenants to use. Consider employing a gardener, as this may be an advantage to overseas or professional tenants.

Sheds, garages and outbuildings should be clear of rubbish and have secure fastenings.

Security

The entrance doors should be in good condition and locks should be 5 lever or higher grade registered keys, so that unauthorised copying is avoided.

Make sure that an authorised person has alarm codes or spare alarm keys as well as the agent for false alarms.

The Instruction manual should be available. If the system has a maintenance contract, the details of this should also be provided



Emergency equipment



It is always advisable to install mains smoke detectors and Carbon Monoxide detectors where necessary.

The Kitchen should have a fire blanket and a power fire extinguisher. Consider installing a heat detector

In furnished accommodation supply a First Aid Kit.

The Tenant

Landlords need to be aware of the type of tenant that make be attracted to their type of property.

Single person/Couple/Family Tenants

If a house is of a reasonably good standard and in a good area, convenient for schools, transport and local amenities it may appeal to families moving into the area or who have recently sold their property and awaiting to find something new.

This type of tenancy may only be for six months, but can be up to 3 years or more.

The advantage is that normally they are less troublesome to neighbours and the landlord.

The disadvantage could be greater wear and tear on the property by young children. Also the property would generate less rental income compared to that of: -

Company Tenants

The "Company tenant" usually demands a far higher standard of accommodation and that the kitchen is fully equipped. Good quality furniture would be required with perhaps the house or apartment being serviced.

The return to the landlord is higher than that of a private let. However, a "company let" is outside the Housing Act and therefore normally operated on a fixed term contract of say 1 or 2 years with a break clause enabling the tenant to vacate with a month's notice after say the first six months.

The disadvantage to the landlord is that the landlord cannot control who the company places in the property at any time

Sharers / Students

You may wish to accept a group rather than a "single" occupier. There will be certainly a higher rate of wear and tear on the property and that you are unable to update the property at the expense of the tenants. Charges can only be made for unfair wear and tear, so this type of let can cause a landlord more expense when a void takes place.

The rental return is higher due to the rent being based on a per person per week basis rather than on the property.

There are restrictions on the number of persons being able to rent a particular size of property. Also if the number of persons occupying exceeds 3, compliance of HMO Regulations will be required. This will be expensive to a landlord. (See later in the document).

What do I need to provide?

Firstly anyone who decides to let a property should make sure it is clean, dry and safe. The kitchen should be of a reasonable standard with safe facilities for storing and preparing food away from cleaning materials.

Depending on what type of tenant you are after will require you to provide different options, such as a single person/couple or family let, student let, company let. Where you wish to let the property furnished or unfurnished.

If the property is to be let furnished then all soft furnishings must be fire resistant and carry labels to prove this. If there are no labels etc, they should be deemed as not complying with the regulations and will have to be removed completely from the property. This is to comply with the Fire and Furnishings (Fire)(Safety) Regulations 1988 amended 1993 (See later section).

You have no legal right to provide furniture, nor is the tenancy any different if the property is furnished or unfurnished. However, the furniture you do provide could affect the level of rent you charge. The type of letting you intend to create could influence whether or not you decide to provide furniture.

Company tenants will require a higher standard of furniture and may require the property to be serviced. Student will require desks for study as well as internet access in many parts of the property..

An unfurnished letting the minimum should be clean carpeting to living areas and cushion flooring to bathrooms and kitchens.

Be very cautious about buying second hand furniture and beds, so that you do not fall foul of the furniture fire safety regulations as detailed previously.

If you are intending to make changes in the structure of the property or in the way it is used you should check with the Planning Department of the Council to see if your proposals constitute change of use or require other formal planning or building regulations.

If there are problems with disrepair or poor facilities when you let, these are likely to get worse and will affect the desirability of the property to prospective tenants. It will also affect the level of rent that one can achieve. (see later on this)

The Tenancy

Unfair Terms & Conditions Regulations 1999

A relatively new set of Regulations has come about regarding certain clauses in tenancy agreements and terms of business.

Tenancy Agreements must be made available for reading prior to signing. You cannot expect a tenant to take 2 minutes to look through the agreement and sign.

The Agreement must be in writing and written in plain language.

If a term in a contract mirrors a mandatory statutory provision then it cannot be deemed unfair.

Any clause within contract that gives one party the impression that they have limited or no rights has the potential to being unfair. If a complaint is made to the Office of Fair Trading (OFT), they have the power to seek an injunction against the Landlord or Agent from using the clause. They may ask the landlord or the agent to withdraw the offending clause or re-write it suitably.

Examples of unfair clauses would be:

Specifying the tenant must clean the property at the end of the tenancy if is not clean at the commencement.

The obligation to replace all broken glass. The tenant will only have to replace the glass if it is due to his negligence or a visitor or occupier

Exclusion or liability for death or injury

If two parties individually negotiate clauses they will not be unfair.

Such as: Install a satellite dish at the tenant's expense, but that it becomes the landlord's property with no compensation to the tenant at termination.

Assured Tenancy

Whether Assured or Assured Shorthold, a tenancy is an agreement between the landlord and the tenant whereby in return for rent the tenant can live in the property as his or her home.

The agreement does not need to be in writing unless if it is for a fixed term of three years or more. It can either be for a fixed period (say six months) or it can be "periodic" (continuing from week to week or month to month until the tenant leaves.

However, it is always sensible to have a written tenancy agreement, in order that certain clauses e.g. pets, subletting etc can be controlled and that misunderstandings do not arise. It is also easier to prove a case in a Court of Law, should this be necessary.

The Landlord can be a single Landlord, joint Landlords or a company. The Tenant must be an individual or group of individuals.

There are several stipulations regarding Assured Tenancies such as:

A landlord cannot let on an Assured Tenancy to

A company

If the rent exceeds £100,000 per annum.

Letting to a university (as a body)

Holiday letting

Licensed premises

Resident landlord

Agricultural tenancies

The rent is negotiated between the parties i.e. a market rent. By law the rent can be re-negotiated annually if the agreement allows (again easier with a written tenancy). The Housing Act 1988 and its amendment in the Housing Act 1996 sets out the procedure the Landlord must follow for a rent increase if the parties cannot agree the amount. If the rent is paid weekly you will need to provide a rent book for your Tenant, and the rent book must comply with certain specific requirements. Once any fixed period of a tenancy has expired the Tenant has the right to continue to live in the property on a periodic tenancy either weekly or month to month.

As you are giving the Tenant the right to use your property as his or her home, you are not entitled to enter the Tenant's living area without his or her permission. You must give at least 24 hours notice of any intention to visit the property. You cannot enter if the tenant declines your entry.

You can only obtain possession of the property, if certain "Grounds" are met. These are described in a later section.

One of the main reasons for setting up an Assured Tenancy is if you wish to return to the property to live. You must have a provision to evict the tenant under Schedule 2. If provisions have not been followed correctly, then you will not be able to evict the tenant, unless they break any of the other "Grounds" for possession.

You can also use the Assured Tenancy if you wish to gain possession for: A property to be used by a minister of religion; Out of season holiday let; Letting between student lets (summer recess)

Assured Shorthold Tenancy



Since the Housing Act 1996 came into force, All tenancies are Assured Shorthold UNLESS otherwise notified in a prescribed form or are outside the scope of the Housing Act..

This form of Assured Tenancy guarantees that you, as a Landlord can regain possession of your property at a later date if the correct procedures are followed. Although a comparatively simple form of tenancy, proper legal advice is still essential as any mistake may mean that you will lose entitlement. If the Shorthold provisions are not correctly followed the tenancy may be a simple Assured tenancy and you will lose your guaranteed right to recover possession.

The requirements are:

- * you must give formal and proper legal notice in the Agreement that it is an Assured Shorthold Tenancy and that it can be recovered under Section 21
- * you can create a Shorthold for less than six months, however, the Landlord can only reclaim possession after the initial six months..

All other rules relating to assured tenancies apply.

If you initially create a Shorthold Tenancy it will remain in force unless you serve specific notice on the tenant stating that the Shorthold provisions no longer apply. It therefore follows that a Landlord cannot accidentally lose the right to use the Shorthold provisions.

This is a good safeguard for any landlord who wants to let the property in the medium term but may want vacant possession in the future

If you grant a tenancy for a fixed term, say six months; the tenancy is just that, six months. The tenant can hand the keys back on the last day of the tenancy without any need to give you notice. There can be no penalty awarded for this.

If, however, the tenancy carries on to a contractual periodic tenancy, then the tenant is required to give you notice that he/she intends to continue or vacate. There is still some confusion over the amount of notice that the tenant is required to give. It is certainly one month, but, the Housing Act does not mention any specific detail, therefore, can be open to ambiguity.

Common Law Tenancy

This type of tenancy is created for use with a "Company Let" or a tenancy that cannot be an Assured or Assured Shorthold. It may be for a fixed term, or a periodic basis. The Agreement gives the Tenant the right to occupy the property for a given period, but does not give the tenant any security of tenure. It is always better to have the agreement in writing to avoid any misinterpretations.

The Landlord would need to give the tenant a Notice to Quit, which would have a minimum period of four weeks or one calendar month, under the Protection from Eviction Act 1977. If the tenant does not vacate at the required time, the Landlord would have to make legal representations through a Court to gain possession.

The Need for Possession of the Property

Once a tenancy is in place, possession can normally only be obtained in two ways.

Firstly if the tenant gives up possession of the property. Secondly, you need to re-gain possession of the property.

We will concentrate on the Assured and Assured Shorthold, as they are the most common used agreements. These bind the landlord and tenant to certain time. If the tenant wishes to leave the property, he/she can only do so by giving the required notice.

On the other hand if a landlord wishes to re-gain possession he/she has to give a required amount of notice to the Tenant and even then would have to take County Court action against the tenant if he/she will not vacate at the end of the notice period.

Most tenancies end amicably by arrangement, but how can a Landlord ensure vacant possession can be obtained when required. Planning ahead is crucial.

When the Landlord grants a tenancy, he or she may be required to serve a particular Notice on the tenant, such as a "Ground 1 Notice", this would entitle him or her to possession of the property at a later date. In the Case of an Assured Shorthold Tenancy a Section 21 Notice to formally end the agreement.

A landlord must allow enough time for the proper procedures to be followed in all cases.

There are situations where a tenant during the fixed tenancy period just vacates the property hands the keys back to the landlord or landlord's agent without any notice.

This is an "Offer of Surrender" and a landlord does not have to accept this surrender and choose to hold the tenant to the contractual term. This often occurs when a tenant is on a periodic basis and instead of giving a month's notice, just surrenders the keys.

The landlord can hold the tenant to the required notice from the next period due (if this occurs during the month). Thereby, the tenant is required to pay a further month's rent to the landlord under the contractual obligation of the tenancy (case Law : Lane v Cadwallader).

The tenant however, will question the actions of the landlord, if they withhold the deposit for Rent. The landlord, would have a legal right to the amount of rent outstanding if the surrender of the keys is not agreed.

Grounds for Possession

Set out below are the "Grounds" for possession that give reason for the Landlord to re-gain possession of his or her property let on an Assured or Assured Shorthold Tenancy. They do not apply to "Common Law" tenancies.

The first 8 "Grounds" are Mandatory, this means that subject to fulfilling the criteria, the Court must order possession of the property so long as procedures have been followed to the letter.

- Ground 1** Prior occupation by Landlord and that he or she require possession for his or her use
- Ground 2** Prior mortgage and required for sale by mortgagee
- Ground 3** Prior holiday letting and now required for holiday letting
- Ground 4** Prior student letting and now required for student letting
- Ground 5** Required for occupation by a minister of religion
- Ground 6** Demolition or reconstruction or major works. This ground carries an entitlement for removal expenses
- Ground 7** Death of former tenant
- Ground 8** More than 2 months are in arrears at the time of notice and at the time of the court hearing

The next set of "Grounds" are Discretionary, this means the Judge will decide if there is enough reason behind the application to give the Landlord possession of the property.

- Ground 9** Suitable alternative accommodation
- Ground 10** Arrears at the date of notice seeking possession
- Ground 11** Persistent delays in paying rent
- Ground 12** Obligation of tenancy (other than rent) broken or not performed
- Ground 13** Deterioration of dwelling house, common parts, owing to waste by, neglect or default of tenant or lodger or sub tenant.
- Ground 14** Nuisance or annoyance or use of the dwelling house for immoral or illegal purposes, by tenant, or person residing with him/her, or visitor.
- Ground 15** Deterioration of furniture, owing to ill-treatment by tenant or lodger or sub-tenant
- Ground 16** Determination of employment or service tenant
- Ground 17** The tenant giving false or misleading information to secure the tenancy

Applications for possession on discretionary grounds may result in a judge giving a suspended court order rather than an absolute court order. This would mean that a tenant, so long as they stick rigidly to the court's ruling would be allowed to still reside in the property. Such a case could be Ground 12 – Obligations of the tenant not performed – gardening etc. Applications made to the Court are very costly, and therefore are only taken as a last resort.

Possession can also be obtained at the end of an Assured Shorthold Tenancy, by serving the tenant a Notice under Section 21 (1) – within a fixed term agreement ;(4) – on a periodic basis. This gives the tenant two months notice of intention to re-gain possession of the property.

Again, as with all of the above, Court action will be necessary, should the tenant decide not to vacate when required.

There is a procedure known as an Accelerated Possession Procedure or APP. This procedure is available for use with Grounds 1-5 or use with possession relating to Section 21 Notice has been served upon the tenant in the correct manner and timescale, there should be no need to have a Court hearing.

However, should the tenant have a defence or the judge request a hearing, then this would take preference.

An application form, together with copies of the tenancy, Section 21 Notice or other possession Notice and any other relevant documents are sent to the Court. The Court issue the tenant will the application and give the tenant 14 days to reply with a defence. If no defence a decision is made for possession.

The court normally give an order for possession in 28 days. However, the court has the power to give up to 42 days. After the date for possession as set out in the Court Order the tenant must vacate. Failure to do so can give rise for the landlord to instruct a Court Bailiff to execute a warrant for possession and formally evict the tenant

This process is a great deal cheaper, time length is cut to a minimum. However, you cannot use this process to recover arrears of rent (if any), a separate hearing or Small Claims Court hearing would be needed for this.

It is recommended that you should seek advice from a solicitor who has knowledge of Housing Law on all possession matters **BEFORE** attempting to take action yourself in any way.

You must not in any circumstances force the tenant to leave, without going through the Court process.

Deposits

You should always ask a deposit/bond from your tenant; this will help towards any unfair wear and tear made by the tenant or towards any rent arrears – a suitable clause must be inserted in the tenancy agreement on how the deposit will be held and the use of it should the need arise. Neither the Benefits Agency nor the Housing Benefit Department can help with this payment.

It is normal to take an amount equal to one month's rent as a deposit/bond, but each case is taken on its own merits. An excessive amount of deposit requested could be termed as a premium and therefore advanced rent.

The deposit must be held in a separate account, and cannot be used for any personal finance. This sum should then be refunded at the end of the tenancy **PROVIDED** that there are no unfair wear and tear with the property. Should it be necessary to deduct monies out of the deposit at the end of the tenancy, the tenant should have sight of receipted accounts.

You must allow for fair wear and tear on the property throughout the term.

You cannot expect to make the tenant pay of a new item of furniture that has been in the house for many years. This is called "**Betterment**" and is deemed to be unfair by the Office of Fair Trading. Allowances must be made for depreciation before the damage costs are assessed.

It is highly recommended that an inventory of all fittings effects and furniture is made before a tenancy is granted, making a note of any current damage/stains etc, in order that the tenant is covered from wrongful damage claims. Remember that the deposit is the tenant's money, which you are holding on trust.

It is recommended that photographs be taken on valuable items and/or certain areas of the property, such as gardens, kitchens etc.

The Housing Act 2004 made provisions for the Government to implement a safeguard for tenant's deposits and has set up two methods of this.

All landlords and letting agents who take deposits for Assured Shorthold Tenancies in England and Wales must join a Government-authorised tenancy deposit protection scheme. Within 14 days of receiving the deposit, the landlord must provide the tenant with details of the scheme chosen by him to safeguard the deposit. Details of the 3 schemes and further information can be found at:

- The Deposit Protection Service (The DPS) at www.depositprotection.com
- Tenancy Deposit Solutions Ltd (TDSL) at www.mydeposits.co.uk
- The Dispute Service* (TDS) at www.thedisputeservice.co.uk

The Custodial scheme is a free scheme for landlords to place the tenant's deposit into a fund. At the end of the tenancy, so long as there is no dispute, the landlord would have to apply to have the money released to the tenant.

If there is a dispute there will be a mechanism for the tenant to obtain an independent assessment of the dispute by an arbitrator who would be appointed to mediate between the parties and when agreed the deposit be apportioned accordingly.

The insurance based scheme. The Landlord or agent pays a premium to one of the awarding bodies appointed by the Government, one being The Dispute Service, to enable the landlord or Agent to hold the deposit during the tenancy.

Again, if there is no dispute, the landlord or agent would apportion the amounts between the parties. If there is a dispute, this triggers the appropriate process of settling the dispute through the registered scheme.

*The Dispute Service is now only available to Regulated Agents (ARLA, NAEA, RICS & NALS).

Tenants Rights

Quiet enjoyment

The Tenant has the legal right to live in the property as his or her home. You must ask the tenant's permission BEFORE you enter the property, even when wishing to gain access for repairs, or undertaking gas or electric safety checks. If the tenant does not allow access, then you cannot go in.

You would then have to write to the occupier informing them of your statutory right to gain access and that you would be applying to the court for this.

You cannot evict the tenant without a court order.

If you sell the freehold of the property, the tenant will retain any rights to remain in the property, as the tenancy will be binding on any purchaser.

Matters such as whether or not the tenant can keep pets and so on, should be negotiated and included in the terms of the tenancy agreement

Landlord's Rights

Access

You, or your agent, have the legal right to enter the property at reasonable times of the day to carry out repairs for which you are responsible and to inspect the condition and state of repair of the property. You must give at least 24 hours' notice in writing to the Tenant of such inspection. It is also helpful to set out the arrangements for access and procedures for getting repairs done in the tenancy agreement.

You should seek legal advice if the tenant does not give you access. Although you have a statutory right to access the property to undertake repairs, this would have to be sort through the courts if the tenant refused access. This could result in legal action being taken to evict the tenant for breach of tenancy agreement if they did not comply..

Housing Benefit

Local Housing Allowance (LHA) is a new scheme for the way in which housing benefit claims for privately rented properties are treated.

When will the scheme be introduced?

This is currently being piloted by Councils such as Blackpool and Leeds. The scheme will be introduced nationally from 7th April 2008.

Who can get LHA?

If you have a low income and pay rent for your property to a private landlord you may be able to claim LHA. You can't claim if you have savings over £16000, unless you are aged 60 or over and receive the guaranteed element of pension credit. There are special rules if you are a full time student or live abroad.

How much LHA will I get?

The LHA is set each month by the rent service and gives allowances for households who need up to six rooms. Most tenants receive the LHA based on the number of rooms their household needs not the number of rooms in the property they rent or the rent that they are charged. If the LHA is more than the rent then the tenant can keep the difference (upto a maximum of £15.00 per week). The LHA awarded when you make a claim lasts for one year unless your household circumstances change. After one year it is updated.

How many rooms am I allowed?

You are allowed one bedroom for

each adult couple
any other adult (aged 16 or over)
any two children under 10
any two children of the same sex aged 10 to 15
or for any other child.

We do not take any other rooms into account when this is worked out.

Single people over 25 years old and couples with no children:

If you are single and over 25 or a couple with no children you will get the two room LHA but you must rent a property with at least two rooms or less than two rooms if it is self contained. This means that the accommodation has its own bathroom/toilet and kitchen. If the property has less than two rooms and is not self contained you will be entitled to the shared room LHA only.

Single people under 25:

If you are single and under 25 you get the shared room LHA no matter what size of property you rent.

Joint tenants

Joint tenants are people who are not a couple but share a property and are named on the tenancy agreement. Joint tenants will get the LHA for their own household not including the family of the other joint tenants.

Local housing allowance rates

These figures will be published prior to 07th April 2008 when the scheme is introduced.

The rates are set each month by the Rent Service which is part of the Department for Work and Pensions. Your rate will only be updated every 12 months unless there are any changes.

Payments of local housing allowance

Local housing allowance will usually be paid directly to yourself by cheque. Payments can only be made 4 weekly in arrears. Its up to you to make sure your rent is paid to your landlord.

Bank accounts

You should be able to open an account either at a bank or building society to get your local housing allowance. If you are having difficulty opening an account please let us know as we may be able to help.

Safeguards

Some people may have difficulty getting the local housing allowance and paying their rent. Payments of local housing allowance can be made direct to a landlord if:

- we consider that a tenant is unlikely to pay their rent
- we think that a tenant cannot handle their own affairs
- we can also make payments directly to landlords where a tenant is more than 8 weeks in arrears with rent

If someone else looks after your money for you, or there is a power of attorney, payments can be made to the person who looks after your money or the person with the power of attorney.

What to do if your circumstances change?

You must tell your local council if:

- any of your children leave school or leave home
- anyone moves into or out of your home (even on a temporary basis)
- you or anyone living with you becomes a student or goes on a training scheme
- your income, or the income of anyone living with you, changes
- your capital or savings change
- your rent changes
- you move
- you or your partner or civil partner are going to be away from home for more than a month
- any other changes

It is an offence not to tell us about any change of circumstance that affects your benefit. We may take court action against you and if we pay you too much benefit you will probably have to pay it back.

If the tenant has a low wage or is claiming benefits he or she can get help from the Council will all or part of the rent under the Housing Benefit Scheme. It is useful for you to check with the tenant to see if he or she is entitled to claim. There are three things you need to clarify -

- * will the Housing Benefit meet the rent charged
- * how long will it be before the first payment is made
- * can Housing Benefit be paid directly to you as landlord and landlady

Claw Backs

If the Council has paid LHA to a tenant that he or she is not entitled to. Then they will stop the benefit until the overpayment has been "Clawed Back". Similarly, if the Council has paid LHA direct to the landlord or agent, that the tenant is not entitled, any overpayment will have to be paid back to the Council and then, of course, this amount would have to be recovered from the tenant.

A tenant who is on a low income may not be able to afford this. Hence the caution over LHA claims.

If you are a landlord of a number of properties, and are being paid LHA on some or all of them (including houses in flats). The council can claw back the rent from any of the payments you receive, **up to six year later**.

Claims

It can take several weeks before the first payment of LHA is made. It is therefore advisable to obtain at least some monies from the tenant until the allowance is paid. This will help keep any shortfall to a minimum.

Tenants that move from one property to another will have to make a fresh LHA claim.

Remember the tenant is responsible at all times for the payment of rent. The council may assist the tenant to pay the rent through the LHA Scheme, but the Council is not itself responsible to you.

Repairs



Under **Section 11 of the Landlord & tenant Act 1985** as a landlord, you have a statutory obligation to keep in repair "the structure and exterior of the dwelling-house (including drains, gutters, and external pipes)", and "to keep in repair and proper working order the installation in the dwelling-house for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths, and sanitary conveniences), and to "keep in repair and proper working order the installations for space heating and water heating". All furniture, fixtures and fittings supplied by the landlord must be kept in safe and proper working condition.

You are also required to keep the exterior decoration of the property in an acceptable condition. This would mean the periodic repainting and repair of walls, woodwork and cleaning of uPVC products.

Safety Regulations and Acts

Fire and Furnishing (Fire) (Safety) Regulations 1988

Fire and Furnishings (Fire) (Safety) (Amendment) Regulations 1993

The Regulations basically apply to all upholstery and upholstered furnishing, loose fittings; permanent or loose covers which we will refer to as "Furniture" in this note, but the technical criteria are beyond the scope of this note.

All furniture supplied, whether new or old must comply with these regulations. Failure to comply could result in a six months imprisonment and or a fine maximum currently of " level 5" being £5,000.



You cannot give, sell, lend or supply in any other way furniture that does not comply with the Regulations.

Labels must be attached to the Furniture to say that the article complies. If no label, it will be deemed NOT to comply and must be removed from the property. In certain circumstances, if document can be produced to confirm the article complies, this may be acceptable. On mattresses, if there is no label, there may be a BS number, this should be BS7177 and is acceptable.

The Label should have the wording as follows:



**To comply with the Furniture and Furnishings (Fire) (Safety) Regulations 1988
This item does not require a Schedule 3 interliner.**

All foams, fillings and composites have been tested to ensure compliance with the relevant ignitability test.

Covers and fillings are cigarette resistant.

Covers are match resistant. Further details available from your retailer

There are exclusions to these Regulations, and are as follows: -

Carpets, Curtains, Duvets, sleeping bags and antique furniture. Furniture manufactured before 1950 and Furniture manufactured after 1991.

Any Furniture manufactured within these dates will **NOT** comply.

ACTIONS

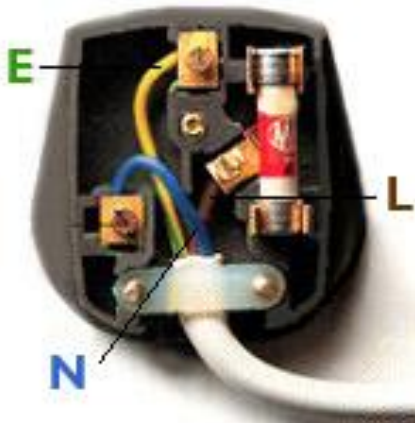
All offending Furniture must be removed from the property **TOTALLY** (you cannot store it in any part of the property i.e. Attic, locked room).

Consumer Protection Act 1987 & Health & Safety At Work Act 1974

These two Acts of Parliament deal with all aspects of the letting. All other Acts and Regulations come under these Acts. Therefore, if you feel that the Furniture, Gas, Electric, Water and structure of the property are sound, and it comes to light that there are defects, you will fall foul of these Acts, so there is no escaping the fact that all areas of the property, whether structural or fitments, must be in safe working condition.

The consumer in this circumstance is deemed to be the Tenant.

Electrics



Low Voltage Electrical (Safety) Regulations 1990

Electrical Equipment (Safety) Regulations 1994

Plugs Sockets etc (Safety) Regulations 1994

There is plenty of guidance available for Gas ([see appropriate section](#)), but little is publicised over the above which came into force in January and February 1995 respectively.

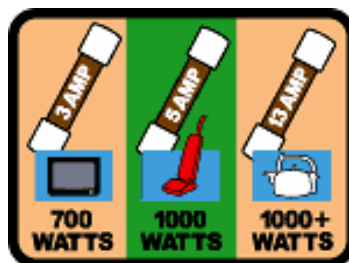
The first set applies to the electrical wiring installation in the property, while the second deals with plugs, sockets and flexible leads to the domestic appliances supplied with the property as part of the furnishings or fitments.

One should ensure that people and domestic animals are adequately protected against danger of physical injury or other harm which might be caused by electrical contact, direct or indirect.

A flexible cable with damaged insulation produces a risk of the cable overheating and catching fire. There is also a risk of a person receiving an electric shock. An undamaged, correctly-rated electrical cable ensures safety.

The installation and all electrical equipment should be tested by a qualified NICEIC or ECA contractor on a regular basis.

Remember to check that the correct fuses are fitted to plugs for the appliance in use



The NICEIC recommends that socket-outlets and other accessories should be located at least 300 mm, measured horizontally, from a sink or draining board, where they are unlikely to be splashed.

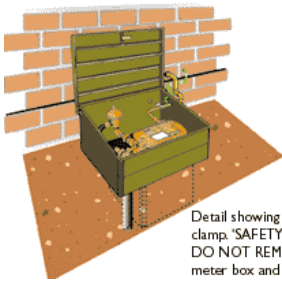
The consequences for not making adequate provisions to ensure the safety of such installations and equipment could be very serious and is a criminal offence.



There should be adequate power points in each room to avoid the use of trailing leads and overloading sockets.

The recommendation is at least three double sockets per room and more in a kitchen.

All electrical installation work should comply with **BS 7671** Known as the IEE Wiring Regulations 17th Edition **BS7861:2008** . This is the national safety standard for electrical installations. Our advise and company practice is to instruct a qualified electrician to undertake an electrical safety check on the property. A report is then issued and any defects will then need to be rectified before a tenancy commences. Regular checks should be made, due to damage by tenants or alterations on the property. www.niceic.org.uk



Detail showing main bonding conductor: BS 951 clamp. 'SAFETY ELECTRICAL CONNECTION - DO NOT REMOVE' label and holes in the gas meter box and the wall.

Regulation 547-02-02 requires the connection of a main bonding conductor as near as practicable to the point of entry of a gas service pipe to premises. The main bonding conductor is required to connect to the consumer's hard metal pipework before any branch pipework and, where practicable, within 600 mm of the meter outlet union or at the point of entry to the building if the meter is external.

It is also part of the gas regulations that the gas pipe is bonded.

Gas safety (Installation and Use) Regulations 1998 and amendments



These Regulations makes it a legal obligation to ensure that ALL gas appliances, whether fixed or portable, be maintained and checked every 12 months. A record should be kept of these checks and any maintenance undertaken.

The appliances should be checked and maintained only by qualified GASSAFE registered installers. The checks also apply to flues, pipe work and ventilation.

Information must be supplied to the tenants of such checks and any previous maintenance work records must be made available to them.

A copy of the Gas Safety Certificate **MUST** be given to the tenant on occupation of the property at the commencement of the Tenancy.

These are seen to be as vital safeguards, as more than 50 fatalities a year have occurred through carbon monoxide poisoning due to gas appliances that have not been correctly installed or maintained.

Any breach of the Regulations could result in prosecution - with fines now up to £20,000 or even imprisonment for severe non-compliance where death or injury is caused.

Glass in Windows and doors

To comply with the HHSRS, Health & Safety at Work Act 1974 and the Consumer Protection Act 1987 all glass in windows and doors should be fitted with toughened glass.

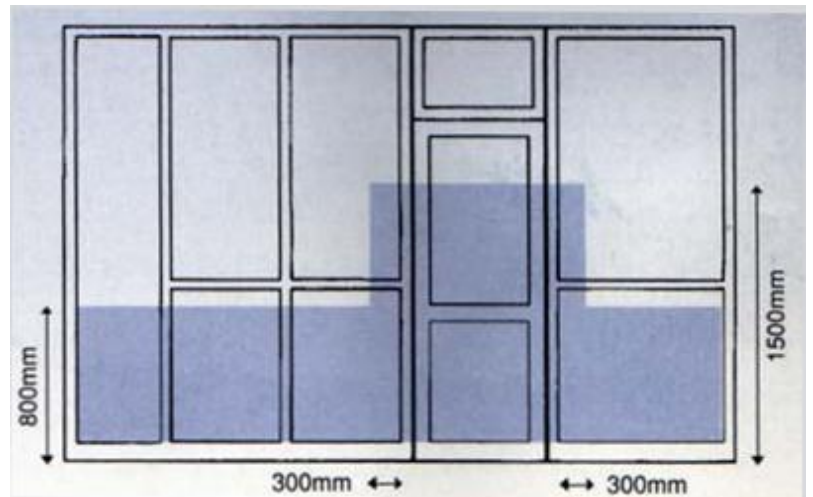
CRITICAL SAFETY AREAS

The areas of internal and external walls which are considered "critical locations" in terms of safety are :

1.1 Between the finished floor level and 1500mm above that level in doors, and in side panels which are within 300mm of either edge of the door.

1.2 Between the finished floor level and 800mm above that level in the case of walls, partitions and windows.

1.3 Mirrored doors and panels



Taxation for non U.K. Residents

Taxes Management Act 1970 / Finance Act 1995

Where the landlord or landlady of the property resides abroad, the Commissioners for the Inland Revenue will hold the person collecting the rents responsible for the payment of any tax liability which arises on rents collected by that person on behalf of the landlord, unless an exemption certificate has been obtained. If you do not have an exemption certificate and you are resident abroad it will be necessary for the person collecting the rents, whether an individual or an agent to deduct Income Tax currently at the rate of 22% (but changing to 20% from 6th April 2008) of the net rents and pay such sums to the Collector of Taxes on quarterly basis.

There are however, allowances that can be set against the tax liability:

- * Agent's fees & VAT
- * Depreciation on furniture (if the letting is furnished) then 10% of the gross rent can be allowed
- * Expenditure, such as cleaning etc
- * Insurance
- * Legal or professional charges
- * Repairs
- * Replacement furniture
- * Service charges
- * Utility charges that the landlord or landlady is responsible for

Difficulties in Letting

Occasionally tenants fall into arrears, and will need to be reminded of their obligation to pay rent on time. You can serve a notice on the tenant if he/she is in arrears, but unless it is two months or more in arrears the ground is discretionary and you may be wasting money in trying to obtain possession.

A Court may "Set aside" or suspend a judgment in some circumstances, so Legal advice is highly recommended before any court action is taken.

Occasionally a tenant may cause a serious nuisance to neighbours or may deliberately damage the property; again, Notice must be given before any court action can be taken.

There are, of course other lesser problems that a tenant may cause, and these can normally be sorted without the need of court action. A fair approach to an individual may all that may be required. It is quite easy to upset someone and this may only compound a situation. Always keep a slight distance; after all you are letting the property for income!

A tenancy is the mechanism for control of occupation and a means to legal action should the tenant fail to meet the obligations, but there is a Due Process to endure, in order to evict a tenant, this can be long winded and result in further debt or damage. Until the Government change the way in which landlords can be better legally represented – this is the only way to tackle "Rogue" Tenants!!

There is always a risk with letting, but start is will good referencing to begin with, and this potentially save you a lot of hassle in the future. No referencing is fool-proof, but it will give you a good indication of what's to come!!!

Houses in Multiple Occupation

What is a House in Multiple Occupation

The Housing Act 2004 now defines an HMO in three key parts, 'House', 'Occupied' and 'Not A Single Household'.

This definition of a HMO comes under sections 254-258 of the Housing Act 2004

Section 254

(1) “ For the purposes of this Act a building or a part of a building is a ” house in multiple occupation “ if:

- a it meets the conditions in subsection 2 (“the standards test”)
- b it meets conditions in subsection 3 (“ the self contained flat test”)
- c it meets conditions in subsection 4 (“the converted building test”)
- d an HMO declaration is in force in respect of it under section 255
- e it is a converted block of flats to which section 257 applies

(2) A building meets the standard test if

- a it consists of one or more units of living accommodation not consisting of self contained flats
- b the living accommodation is occupied by persons who do not form a single household (section 258)
- c the living accommodation is occupied by those persons as their only or main residence or they are to be treated as so occupying it (section 259)
- d their occupation of the living accommodation constitutes the only use of that dwelling
- e rents are payable or other consideration is to be provided in respect of at least one of those persons’ occupation of the living accommodation
- f two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities

Section 257

(1) For the purpose of this section a “converted block of flats” means a building or part of a building which-

- a has been converted into, and
- b consists of,

self contained flats

(2) This section applies to a converted block of flats if-

- a building work undertaken in connection with the conversion did not comply with the appropriate building standards and still does not comply with them; and
- b less than two thirds of the self contained flats are owner-occupied.

(3) In subsection 2 “appropriate building standards” means-

- a in the case of a converted block of flats-
on which building work was completed before 1st June 1992 or which is dealt with by regulation 20 of the Building Regulation 1991 and which would not have been exempt under those Regulations

Section 258

HMOs: persons not forming a single household

This section sets out when persons are to be regarded as not forming a single household for the purposes of section 254

- (2) persons are to be regarded as not forming a single household unless-
 - a they are all members of the same family, or
 - b their circumstances are circumstances of a description specified for the purposes of this section in regulations made by the appropriate national authority.
- (3) For the purpose of subsection 2(a) a person is a member of the same family as another person if-
 - a those persons are married to each other or live together a husband and wife (or an equivalent relationship in the case of persons of the same sex);
 - b one of them is a relative of the other, or
 - c one of them is, or is a relative of, one member of a couple and the other is a relative of the other member of the couple
- (4) For the purposes-
 - a a "couple" means two persons who are married to each other or otherwise fall within subsection (3) (a);
 - b "relative" means parent, grandparent, child, grandchild, brother, sister, uncle, aunt, nephew, niece or cousin;
 - c a relationship of a half-blood shall be treated as a relationship of the whole blood; and
 - d the stepchild of a person shall be treated as his child

So if the criteria fits, the property, by definition is an HMO.

Properties

For the main, in residential letting, the properties that are generally associated with an HMO are student lets. However, properties can, in some areas be let to sharers due to necessity of costs or just because there is a lack of self contained affordable accommodation in that area, thus bringing them into an HMO classification. .

The other main area is properties being converted into self contained accommodation by landlords to maximise the rental yield on a property. Depending on when the property was converted and if planning permission was sought, then this type of accommodation may well fall into being an HMO.

Occupation

That is the critical word "Occupation" not the number of TENANTS you have on an agreement. As the law is currently, there is no legal obligation to have an agreement in writing. Of course, it is legally safer to have a written tenancy agreement for all concerned and I would not advise any landlord not to create a tenancy without a written tenancy agreement.

The Regulatory Reform (Fire Safety) Order 2005

Will be a fire risk assessment based approach where the responsible person(s) for the premises or area they have control must decide how to address the risks identified, while meeting certain requirements.

By adopting a fire risk assessment, the responsible person(s) will need to look at how to prevent fire from occurring in the first place, by removing or reducing hazards and risks (ignition sources) and then at the precautions to ensure that people are adequately protected if a fire were still to occur. Therefore the main emphasis of the changes will be to move towards fire prevention.

The fire risk assessment must also take into consideration the effect a fire may have on anyone in or around your premises plus neighbouring property. The building fire risk assessment will also need to be kept under regular review.

The Local Authority in conjunction with the Fire Authority will compile a report and schedule of works to be carried out on the property to bring it inline with HMO policies.

Housing Health & Safety Rating System or (HHSRS)



The key structure of the system is that a dwelling, including the structure and associated outbuildings and garden, yard and/or other amenity space, and means of access, should provide a safe and healthy environment for occupants and, by implication, for any visitors.

It should be borne in mind that all properties contain hazards, for example stairs, electrical outlets etc. and it is not possible (or desirable) to remove all hazards. The emphasis should be to minimise the risk to health as appropriate.

What are the hazards?

- Dampness, excess cold / heat
- Pollutants e.g. asbestos, carbon monoxide
- Lack of space, security or lighting or excessive noise
- Poor Hygiene, sanitation, water supply
- Accidents – fall, electric shock, fires, burns, scalds
- Collisions, explosions, structural collapse

Damp and mould growth caused by rising or penetrating damp should be seen as a high priority
Condensation mould should be addressed by better ventilation and ambient temperatures

Asbestos and such like need to be removed from the property by specialist firms
Carbon Monoxide detectors should be installed

Security measures should be put in place, such as 5 lever locks on main entrance doors, security lighting with PIR detectors

Better provisions for waste products, food. Provisions for storage of cleaning agents away from food storage and preparation areas.

Constant supply of clean hot and cold water

Safeguard against trips or falls due to uneven surfaces, worn carpets etc.

Safeguard against electric shock by having the installation tested by an NICEIC contractor

Safeguard against fires by installing smoke detectors as standard, fire extinguishers and blankets in kitchens.

Safeguard against structural collapse by regular and routine maintenance throughout the letting

(Above information extracted from Asset Skills essential information for landlords and agents)

The above is the “Beef” that councils have over landlords to ensure that properties are let to a suitable standard. Not only that, the Fire Reform Act 2007 above, which now makes it mandatory for fire officers to be consulted on all HMO's to decide on the best course of action to follow to safeguard against fire.

Mandatory Licensing and the Landlord

I have touched on properties that need a Mandatory License, but there is more to it than just the property. The landlord must also be “**A Fit and Proper Person**”

This is a key condition of obtaining and keeping a license – but what does it mean?

Owners or managers under Mandatory or Selective Licensing Schemes must apply. The Local Authority must grant a License IF it is satisfied that:

The HMO is reasonably suitable (etc)

The Licence holder would be a fit and proper person.

The criteria in deciding where the person is fit and proper:

The Local Authority must have regard to the statutory criteria set out in Section (66 (2) and have regard to any other facts or matters which it considers to be relevant

Matters to which the Local Authority must have regard.

- Any offence involving fraud, or other dishonesty, or violence or drugs or in Section 3 of the Sex Offences Act 2003
- Practiced unlawful discrimination of the law in connection with the carrying out of any business
- Contravened any provision of the law relating to housing or landlord and tenant law – Illegal eviction etc.
- Acted other than in accordance with any code of practice for the management of HMO's

Associates

The Local Authority may take into account evidence of any of the above conduct by a person “associated or formerly associated with”, the proposed licence holder or manager “whether on a personal, work or other basis”, if relevant.

Any “Spent” convictions cannot be taken into account. However. A lack of conviction may not mean that the incident was not relevant.

Managers

Assumption: the person having control of the property is the most appropriate person to hold the Licence. i.e. the person who receives the rents.

The proposed manager, if not the Licence Holder, and all other persons involved in the management must also be fit and proper

The Decision

If the Local Authority is not satisfied – IT MUST REFUSE and make an Intermediate Management Order instead. Any proposed reasons to be given in advance. There are 14 days to make representations and the Right to appeal to the Residential Property Tribunal (RPT).

Some Local Authorities are also operating a “Zone”, so if the Landlord resides outside this zone cannot reasonably demonstrate that the property is being managed properly. The Local Authority may appoint a local management agent to be the License Holder.

For the Manager this may have a serious impact on how they act for their client, as they will now have the full weight of the obligations on their shoulders rather than that of the owner.

The same would apply if the property needs to be Selectively Licensed

Additional Licensing

The local authority can, within a registered boundary licence any property which consists of three or more individuals, who are unrelated and forming two or more households and is a two storey property. Additional licensing can also be used for properties in this area that are converted into self contained flats (converted, but not to 1991 Building Regulations and having a third of the building rented as private residential short term tenancies).

Selective Licensing

The same provisions may apply as Mandatory Licensing, but these properties may only be in one area of a town or city e.g. The Local Authority may make, say the centre of a city where there is a high population of shared accommodation, or smaller HMO's such as three person sharing a Zone for Selective Licensing where another part of the City where there is a low population of this type of property may escape.

Converted Buildings

Another type of HMO is the Converted House into Self –Contained Flats. Again these do not escape the HMO Regulations.

If a property was converted into self contained flats prior to the implementation of the 1991 Building Regulations then it will, by default become an HMO under Section 257 of the Housing Act 2004.

Therefore, the HHSRS will come into force for dealing with amenity and property standards BUT this type of property will not need to be Licensed, UNLESS one or more individual flats are occupied by five or more persons forming two or more households and the property is three storey.

If the property has been converted to the 1991 Building Regulations, there may only be upgrading of this property to meet the more stringent Regulations of Electrics, and Fire Safety Precautions, although again the Local Authority would advise the Landlord of any other works being required.

SO - Why use a Letting Agent?

The main reasons for employing a letting and/or management agent are time and knowledge. Many landlords just do not have the time to organise repairs, deal with minor queries, or even just do not want the "hassle". There are new or would be "Reluctant" landlords that do not know where to start.

Therefore agents: -

- * Find suitable tenants for the property
- * Take up credit and employers references
- * Hold deposits as stakeholders against unfair wear and tear by a tenant – subject to certain schemes criteria
- * Prepare or organise the preparation of inventories
- * Draft suitable tenancy agreements for different types of tenant
- * Collect rents
- * Deal with repairs
- * Monitor and chase rent arrears
- * Contact authorities with change of occupiers details etc.
- * Advise on legal issues, such as HMO's, eviction etc.
- * Appoint solicitors for court action

You should always (I stress ALWAYS) use the services of a Regulated Agent, as they will have the backing of a Professional Body, giving you security of knowing that you money is protected and that you have a redress scheme should there be a problem

Use an UNREGULATED AGENT – you have NO SECURITY and YOU ARE RISKING LOSING YOUR MONEY if they close down

Conclusion

This document attempts to summarise property letting and management. It does not set out to provide definitive answers or requirements to any one situation. It is strongly recommended that you seek correct information on housing law BEFORE entering into any agreement with a tenant.

It is also strongly recommended that if you are contemplating setting up an H.M.O. that you contact the Local Authority's Environmental Health and Trading Standards Dept. for their guidance.

The law is forever changing and therefore information is given as correct at the time of press. While every care is taken to obtain accurate details, the author does not accept responsibility for any incorrect statements nor for any expenses incurred by persons relying solely on the information contained in this document

The key to a long and successful letting is to start with good standard of accommodation. A defective property at the start will only get worse, and cost you more in the long run.

Of course the tenant has to play their part in the relationship, but if the property and or contents are substandard, you are more likely to have problems, such as attracting bad tenants, constant repair bills, or even unable to let the property at all!

Letting of property carries a risk. Safeguard yourself by using a professional qualified management agent, one who is a member of NAEA or ARLA. They will have Professional Indemnity Insurance, Client Money Protection and a strict code of conduct

Association of Residential Letting Agents
Arbon House
6 Tournament Court
Edgehill Drive
Warwick
CV34 6LG
Tel: 01926 496800 www.arla.co.uk

Letsure Insurance
Hargrave House
Belmont Road
Maidenhead
Berks SL6 6TB

Tel: 01628 581500 www.letsure.co.uk

Letting property in Swansea ?

Contact
Robert J. Lewis MARLA (Honoured)
Michael G. Lewis & Son
Residential Letting Agents
54 Mansel Street
City & County of Swansea SA1 5TE
Tel: 01792 651166

Email info@mglewisandson.co.uk

Web www.mglewisandson.co.uk

HMO www.houses-in-multiple-occupation.com

For paid private professional advice, contact me using details above
Free public advice is believed accurate, but I accept no legal responsibility except to clients.

Law as directed in England and Wales, Scotland and Northern Ireland have different legal framework