

LANDLORD AND TENANT NEWSLETTER

April 2016

RIGHT TO RENT IN ENGLAND

Over the past few months there have been many changes to the way residential landlords operate in England. Of importance are the right to rent checks brought in by the Immigration Act 2014. As of 1 February 2016, residential landlords in England must satisfy themselves that any tenant aged 18 or over has a right to rent if they are renting for a term of less than 7 years. The checks must be made 28 days before the start of a tenancy. The right to rent checks do not apply to existing tenants occupying a property pre 1 February 2016.

Tenants that sub-let or take in lodgers must also check the status of their sub-tenant or lodger.

Documentation must be produced to support the tenant's status from one of two lists of documents. The landlord must obtain one document from list A or two documents from list B. If no documents are available the landlord can request that the Home Office carry out checks.

Agents and landlords must be clear as to who will be responsible for conducting right to rent checks and we suggest this should be incorporated into any terms of business.

Where a landlord is unable to carry out a right to rent check because, for example, the tenant lives abroad, a landlord can enter into a conditional tenancy agreement. This is where the landlord agrees to rent a property to the tenant but the conditional tenancy agreement will provide that occupation cannot take place until the right to rent evidence has been provided.

Landlords must obtain and check a tenant's proof of their right to rent, and keep copies for 12 months after the tenancy ends. Landlords must be vigilant where a visa is due to expire for example and keep diary notes where possible. In relation to company lets, landlords will need to put in place procedures for checking all intended occupiers.

A failure to carry out right to rent checks may result in financial penalties to landlords of up to £3,000 per tenant.

COURT FEE INCREASE

As of 21 March 2016, landlords will be charged £355 to issue a claim for possession rising from £280.

For possession claims lodged online through the PCOL system, the fee will increase from £250 to £325.

There are further increases to applications made on notice, which has increased from £155 to £255. For general applications made without notice, and for applications made by consent, the fee will increase from £50 to £100.

These fee increases will clearly impact upon civil court users' access to justice and landlord's will face a heavy burden in evicting tenants, particularly where no rent is being paid in the interim.

THE HOUSING AND PLANNING BILL

This Bill is currently in its final stages and is a step away from receiving Royal Assent.

Several parts of the Bill will affect landlords, for example a local authority will have the ability to apply to the First Tier Tribunal in order to ban rogue agents and landlords from letting in England or from engaging in letting agency work or property management work. Offenders will be banned from letting property and fined up to £5,000.

The Bill includes an obligation on the Secretary of State to create a database of rogue agents and landlords for this purpose, which will be maintained by local authorities themselves.

The Bill also extends the circumstances when a local authority or tenant can apply to the First Tier Tribunal for a rent repayment order and this includes if a landlord fails to comply with an improvement notice issued under the Housing Act 2004, or if a tenant has been evicted unlawfully in breach of the Protection from Eviction Act 1977. The Bill gives the Tribunal the power to order a rent repayment of up to 12 months.

Also dealt with in detail in the Bill is abandonment of a property and the ability for a landlord to end a tenancy without a court order. The Bill gives a landlord the right to serve a notice bringing an assured shorthold tenancy to an end on the date the notice is served if there is unpaid rent, if the tenancy relates to premises in England, if warning notices have been given by the landlord and given in certain ways specified by the Bill, and if no response has been received to those warning notices.

The Bill is not yet in its final form but it is clear that the Bill aims to give wider powers to local authorities and to landlords and tenants but whether these provisions will be of practical importance is yet to be seen.

LEGIONELLA and LANDLORD'S RESPONSIBILITIES

Landlords must keep a property free and safe from health hazards by ensuring that a tenant is not exposed to risks to his or her safety.

Landlords do have a duty to assess the risk of exposure to Legionella but this does not mean an in-depth, detailed assessment is required.

Simple control measures can be implemented, for example by keeping the hot water hot and the cold water cold and by keeping the water moving. Where combi-boilers and electric showers are installed the risk is lowered further because there is no water storage.

Health and safety law does not require landlords to obtain or produce a Legionella test certificate, which can sometimes be mistaken as a requirement for letting a property. In all cases however, we suggest that terms of business are clear as to whether it is landlord or agent that has the requirement to assess the risk of exposure to Legionella.

NEW SECTION 8 NOTICE

A new prescribed section 8 notice must be used from 6 April 2016.

The amendments are minor and include correcting previous drafting errors and ensuring reference is made to the prescribed section 21 notice. Any old notices used on 6 April 2016 onwards will be invalid so please ensure your precedents are updated.

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