The Bulletin

SOUTH WEST LANDLORDS ASSOCIATION SWLA

June 2015

Alan Shennan – Office Manager

Our office manager, Alan has taken retirement as from April 2015.

Alan joined SWLA over 10 years ago having spent a career in the airline industry serving in the Middle East and Indian sub-continent. His time at SWLA was probably less onerous but provided him with a challenge and complete change of circumstance. Alan oversaw the relocation from Radnor Place to Dale Road and the rapid expansion in membership. He assisted in the training of the present staff and set up the office computer administration systems.

A leaving lunch was held for Alan and his wife, Evelyn at the Tanner brothers, Barbican Kitchen. Past and present Chairmen attended and presented Alan with amongst other things, Life Membership of SWLA. Although retired Alan has agreed to assist the office staff as and when his expertise is required. Alan has served the Association with outstanding loyalty and dedication throughout his 10 years employment. His retirement is well deserved and we thank him for his service and wish him well.

Iain Maitland – Vice Chairman

Deposits – Deadline for Protecting ALL Deposits is Approaching

Please note that all deposits, regardless of when taken or the amount taken must be protected in one of the authorised deposit protection schemes by 23rd June 2015. All deposits, including those taken before April 2007 now need to be protected and the grace period ends on 23rd June. Penalties for failing to protect a deposit can be a fine of up to three times the initial deposit (plus the deposit), in addition to problems evicting tenants.

Abandonment and Surrender of a Property

The Housing Act 1988, Section 5 (2) states that's an Assured Shorthold Tenancy (AST) can only be brought to an end by a court order or an act of surrender on the part of the tenant. Where the landlord accepts the keys to the property back from the tenant and the intention of both parties is to bring the tenancy to an end, and then surrender of the property has occurred. Surrender can take place, if agreed by the landlord and tenant at any point in the AST. The tenant must remove his possessions before vacant possession can be given to the landlord. It is prudent to evidence the surrender in writing, preferably with a witness.

Abandonment

The more difficult situation for a landlord is where a property appears to have been abandoned. There has been no contact from the tenant for some time. There may be serious rent arrears. The landlord is unsure whether or not the tenant has vacated the property. The first very important legal point is that **if there is any doubt as to whether the tenant has genuinely gone, always apply for a court order**. Under the Protection from Eviction Act 1977 Section 1 (2) it is a criminal offence to deprive a residential occupier access to the property. There is a statutory defence if the landlord could show he/she reasonably believed that in the circumstances the tenant has vacated the property. A tenant may also make a claim in the county court for civil damages.

If a landlord believed that the property may have been abandoned the first thing to do is to continue to attempt to contact the tenant by phone, text or email. Write to the tenant, visit the property, check with neighbours and contact anyone else who may know the whereabouts of the tenant such as next of kin. Remember the tenant may be on holiday, in prison or in hospital. It is also advisable to inform the local authorities if you suspect abandonment.

If after all of these checks, what do you do if there has been no contact? Provided the landlord attends the property and sees clear evidence of abandonment (see below), the landlord can enter the property. This limited right of re-entry is allowed under the doctrine of "agency of necessity". In other words it was reasonable and necessary in the circumstances. A witness should be taken and evidence gathered. Photographs should also be taken and the state of the property noted. It should be noted that this is not normally allowed except in these circumstances.

Abandonment and Surrender of a Property

Evidence of Abandonment

The following is not exhaustive but evidence of abandonment could include: Keys left behind, a note left by the tenant, mail piling up by door (check the date), final demand letters, all furniture and personal possessions removed from the property, key meters expired, food rotting in the fridge, black plastic bin bags full of rubbish left inside property, smell of gas or the sound of running water, physical damage to the property or even a neighbour who confirms that they have seen the tenant leave the property and not seen the tenant for two months. If there are obviously decent possessions left such as large flat screen televisions, clothes in the wardrobe, a good computer etc the landlord should withdraw immediately and apply to the court for a possession order.

The Abandonment Procedure

If, and only if, the landlord believes that the property has been genuinely abandoned and the tenant is not coming back the Abandonment Procedure should be used. There are two parts to the Abandonment Procedure. Firstly a notice should be placed on the door stating that unless the tenant contacts the landlord within 14 days (contact details should be given on the notice), the landlord will begin to take action to repossess the property. If there is no contact after 14 days a formal Abandonment Notice should be put on the property and the locks changed. The notice should stipulate that the landlord believes that the property has been abandoned, the locks have been changed and that if the tenants contact the landlord a key will be provided. However, unless the landlord hears from the tenant it will be assumed that the property has been abandoned and the landlord will repossess the property.

If there are any personal possessions, other than obvious rubbish, go for the court option. If there are serious rent arrears and a Section 21 has not been served it would be better to serve a Section 8 because proceedings can begin within 14 days. If the tenant has gone then it will be an undefended claim.

From NLA

A Ticking Clock

In one of the final sessions of Parliament before the General election, the regulations on energy efficiency measures for privately rented homes in England and Wales was enshrined in Law.

This is important for landlords as although the law does not come into effect until 1st April 2018, there is now a clearly defined legal obligation with which landlords must comply. Potentially, the new regulations will have the most far reaching effect yet on improving the energy efficiency of the nation's privately rented stock. The new regulations confirm that all rental properties must meet a minimum EPC rating of Band E. That means that properties with a current EPC of F or G will become illegal. Government figures estimate that some 10% of the 4.2 million privately rented homes in England and Wales currently fall below the E banding level. The figures also state that up to one million tenants could be paying as much as £1,000 per year more than the average heating bill of £1,265 for the average three bedroomed semi. If your property does not meet the new EPC target by 2018 your rental property cannot be leased either to a new tenant or re-let to an existing tenant. There will be some exemptions to the new regulations but most landlords will have to make their properties compliant. The most important exemption is for landlords who have done everything they can to improve their energy performance of their property in terms of Green Deal Standard but the home still falls short. For landlords who have not made the effort and whose properties are still regarded as cold and damp there will be stiff penalties. These are £10,000 or 20% of the rateable value, whichever is greater with a maximum penalty of £150,000. Another date which landlords should be aware of is 1st April 2016, when tenants will be able to request energy efficiency improvements to their homes and no such request may be reasonably refused. The tenant can ask for consent from their landlord for the tenant themselves to effect such improvements. This must be at no cost upfront to landlords and costs must be financially met by the tenant although the landlord can contribute voluntarily. The landlord cannot unreasonably withhold consent to such requirements. This extends to superior landlords, such as freeholders of blocks of flats.

From RLA

Roll Out of Universal Credit Starting in 2015

Based on encouraging results from its pilot studies in the North-West, the Department for Work and Pensions is now planning to roll out the Universal Credit scheme across the country.

The scheme will merge six working-age benefits and tax credits into a single payment as a means to simplifying the welfare system, reducing fraud and encouraging more people into work. Ian Duncan Smith, the Secretary of State for Work and Pensions, announced the roll-out of Universal Credit to job centres which began in February 2015.

The department of work and Pensions claim that 30,000 single people and couples have made a claim to Universal Credit which will now be extended to families. By the end of 2014, Universal Credit was available in almost 100 job centres. Those on Universal Credit find the system easier to understand and a better reward for additional work. There is also evidence that those on Universal Credit do more to find work. The Government intends to establish Universal Credit across Great Britain with new claims to legacy benefit closed from 2016. The Government also plans to test an enhanced digital service which will enable households to report changes using a secure on-line system.

Local Housing Allowance Plymouth, Exeter, Teignbridge

Please go to the relevant link to see the current rates

http://www.plymouth.gov.uk/homepage/benefits/localhousingallowance/lharates.htm

http://www.exeter.gov.uk/index.aspx?articleid=12575

http://www.teignbridge.gov.uk/CHttpHandler.ashx?id=43447&p=0

Condensation and Mould Problems

The major cause of tenant complaints during winter months will always be mould. Mould growth is listed as a Category A hazard under the Housing Health and Safety Rating System (HHSRS). The majority of tenants' homes now have some form of kitchen or bathroom extractor fan. However, problems can occur when these basic systems become blocked, or in some cases disconnected or switched off by the tenant. In addition, the installation of energy efficient measures such as double glazing and cavity wall insulation are helping to make homes warmer and more airtight, however a provision must be made to provide adequate ventilation to allow the property to breathe.

As landlords, we need to educate tenants in ways to reduce condensation in their rented property by

- Drying clothes outside
- Putting lids on kitchen pans
- Ensuring extractor fans are kept on when taking a shower

For the past 20 years, Positive Input Ventilation (PIV) has been growing in popularity with home owners and landlords. They work by drawing in fresh, filtered, clean air from outside the building and gently ventilating the home from a central position usually the loft, above a landing in a house or a central hallway in a flat or bungalow. The PIV dilutes moisture laden air, displacing it to control humidity levels to between 45% and 60%. By doing this the condensation problems in the home are reduced and therefore mould is unable to grow.

Lots of landlords have noticed the benefits fitting of these systems. As a landlord, this form of ventilation gives you more control, so the indoor air quality is not dependant on the lifestyle choices of your tenants. Investing in this system can help to ensure a healthier home and reduce your maintenance and decorating costs.

For further information—please see *www.southwestventilation.co.uk*

Landlord News

Ministry of Justice statistics show number of landlord possession claims down 21% from previous year

The Ministry of Justice have released their report showing the number of mortgage and possession statistics.

The statistics reinforce the issue that repossession is always the last resort for landlords. Landlords will always want good, stable tenancies and repossession makes poor business sense. Repossession is an additional expense for landlords, in respect of court costs, loss of rental income, possible letting agent charges and local empty property charges. For these reasons only 7% of tenancies are ended by the landlord.

The Ministry of Justice figures expose the myths that often are ignorantly circulated about the private rented sector.

Letting Agent Transparency

From 27th May 2015, letting agents will be required to display prominently in their offices and on their website:

Publicise a full breakdown of their fees.

State whether or not they are a member of a client money protection scheme

Which redress scheme they have joined?

As lawyers can act on behalf of a landlord or tenant, for example to draft a tenancy agreement, the broad definition of a letting agent includes members of the legal profession carrying out lettings-related work. Secondary legislation excludes legal professionals from the requirement to publicise their fees when they engage in lettings-related work. Requiring full transparency of agent fees is aimed to deter double charging and enable tenants and landlords to shop around, encouraging letting agents to offer competitive fees. Linking fees to level of service provided enables landlords and tenants to make more informed choices.

Which fees must be displayed

All fees, charges or penalties (however expressed) which are payable to the agent by a landlord or tenant in respect of letting agency work and property management work carried out by an agent in connection with assured tenancy.

This includes fees, charges or penalties in connection with an assured tenancy of a property or a property that is, has been or is proposed to be let under an assured tenancy.

The legislation only will apply to letting agents and their chargeable activities.

The requirement is for a comprehensive list of everything that a landlord or tenant would be asked to pay by their letting agent at any time before, during or after a tenancy. Letting agents should ensure that in addition to publicising fees and service details as required by the Consumer Rights Bill they also adhere to other consumer protection regulations.

An agent does not need to publicise the following as part of this legislation:

Rent payable to a landlord

A tenancy deposit which is taken as security against damage or violation of the tenancy agreement

Any fees, charges or penalties which the agent receives from a landlord under a tenancy on behalf of another person, For example should an agent recommend a gardener and arrange to pass the fee from the landlord to the gardener without taking a cut or adding a fee for this service there would be no requirement to publish the fee charged by the gardener. The letting agent in this example is providing a more convenient way for the landlord to pay the gardener.

Continued next page

Letting Agent Transparency cont.

Where the fees must be publicised

The agents must display a list of the fees at each of their premises at which the agent deals face to face with persons using or proposing to use services to which the fees relate. The list must also be such that it is likely to be seen by customers. Ideally someone walking past an agent's office should be able to see the list without having to ask for it. If an agent has a web-site they must publish a list of their fees on the site.

How the fees should be displayed

The list of fees must be comprehensive and clearly defined; there is no scope for surcharges or hidden fees. Ill-defined terms such as administration cost must not be used and all costs must include tax.

Examples of this could include – individual costs for marketing the property, conducting the viewings for a landlord, conducting tenant checks and credit references. Drawing up a tenancy agreement and preparing an inventory. It should be clear whether the charges relate to each dwelling unit or each tenant.

Where a fee cannot be reasonably determined in advance, the list should describe how a cost will finally be calculated. The intent of this legislation is that both tenants and landlords are able to understand what a service or cost is for and why it is being imposed.

Letting agents often have a range of charges based on the level of service provided; costs must identify charges for the level of service provided. For example – fee for a let only service 8.4%; fee for a let and rent collection service 12% and fee for a full management service 18%.

There is no legislation on the level of fee set by a letting agent; as this is a commercial decision for each individual letting agent to make. For some services, it is perfectly acceptable to split the charges between tenants and landlords where both receive benefit from the service for example the cost of drawing up a tenancy agreement. This is not double charging as the cost is split not duplicated.

In addition to the fees letting agents should publicise whether or not they are a member of a client money protection scheme and which redress scheme they have joined. Letting agents who are not members of a client money protection must make this clear, silence on this subject is a breach of the legislation. As with the fees this information should be prominently displayed in every office and on the web-site.

From Improving the PRS and tackling Bad practice-A Guide for Local Authorities.
The Guide could be found at *www.gov.uk/government/publications/improving-the-private-rented-sector-and-tackling-bad-practice-a -guide-for-local-authorities.*

How to Ensure The Lowest Penalty After Deposit Protected Late

Since changes made by the Localism Act 2011, section 214—Housing Act 2004 now provides that where the court is satisfied that the deposit was not protected within 30 days (or prescribed information not given in that time-scales), the court must order the payment of between 1 and 3 times the deposit – (4) the court order the landlord to pay to the applicant a sum of money not less than the amount of the deposit and not more than three times the amount of the deposit within the period of 14 days beginning with the date of the making of the order. The order may also order the deposit to be repaid.

In the case of Okadigbo & Anor v Chan & Anor (2014 EWHC 4729 (QB), the tenancy commenced on 1st August 2012 and a deposit of £1,520 should have been protected within 30 days. However, the deposit was protected during the tenancy on 5th March 2013 and the prescribed information was provided on 8th July 2013. The tenant made an application for the penalty as a counter claim to possession and rent arrears where at the first hearing it was held.

"Finally, the Defendant seeks a penalty pursuant to Section 213 to 215 of the Housing Act 2004. Section 214 (4) provides that in the event of a breach, and here the breach is admitted. I, must award the Defendant a sum of money not less than the amount of the deposit and not more than three times the deposit. The Defendant contends for the maximum sum which would be three times £1,520-a sum of £4,560. The Claimant contends for one month's rent in the sum of £1,520. I find the Claimants are not experienced landlords, that this is the first time that they had let out any property and that they were letting out their home. That they quite properly put the matters in the hands of professional managing agents who let them down by not complying with the terms of the Act. I find this case to be at the lowest end of the scale of culpability for non-compliance. And for those reasons I award the sum of £1,520".

The tenant appealed submitting that the lack of experience as landlords and the fact that they put the matter in the hands of agents were matters of little weight when set against what was described as a serious failure to comply with the requirements of the Act for a considerable period of time. The tenant then sought two times the deposit as penalty accepting that – there was a degree of mitigation in that the breach had been admitted and there was in the event full compliance, albeit only after a period of delay.

The tenants appeal was dismissed by the High Court where it was held –

"In my judgement however, the judge was entitled to regard the question of culpability as the most relevant factor in determining what order to make and was entitled to find that the culpability in this case fell at the lowest end of the scale for the reasons which she gave. It is not as if the breach was uncorrected and therefore although the appellants were lacking the protection for a period of some months, in the end matters were put right".

Comment

It is clear therefore the action of the landlord at least doing something with the deposit as soon as they became aware of a problem assisted.

Guild of Residential Landlords

Future Landlord Training Courses

Landlords Training Course – Newton Abbot

Thursday 25th June 2015 – 9:15 - 4:30pm

Venue – The Long Room, Old Forde House, Teignbridge District Council, Brunel Road, Newton Abbot TQ12 4XX.

Price – SWLA members £65 for one day course. Non SWLA members £75 for one day course.

½ Day Landlord Training Courses

Thursday 2nd July 2015

Venue – Charter Room, Plymouth Guildhall, Royal Parade, Plymouth PL1 1HA

Price for SWLA members - £35 per half day or £65 for both courses.

Price for non SWLA members - £40 per half day or £75 for both courses.

First session - 9:30 – 12:30 – Legionella and health and safety.

Second session - 13:30 – 16:30 – Inventories.

½ Day Landlord Training Courses

Thursday 22nd October 2015

Venue – Astor Room, Plymouth Guildhall, Royal Parade, Plymouth PL1 1HA

Price for SWLA Members - £35 per half day or £65 for both courses.

Price for non SWLA members - £40 per half day or £75 for both courses.

First session – 9:30 – 12:30 – Section 21's & Section 8's.

Second session – 13:30 – 16:30 – Repairing Obligations.

Landlords Training Course – Some Subsidised Places

Date – Thursday 3rd September 2015

Venue – Plymouth

Price - £45 for subsidised places (subsidised by Plymouth City Council, PATH, CAB and SWLA)

Non-subsidised places £65 for SWLA members, £75 non SWLA members.

SWLA Members B&Q Trade-Point Card

Members are still able to request a SWLA B&Q Trade-point members card.
These cards have more competitive terms than the standard trade-point cards.
If you would like a card, please contact the office on telephone number: 01752 510913 and the office staff will arrange for the card to be ordered.

HMRC Launches a New Crackdown on Landlords

HMRC has launched another taskforce aimed at people trying to avoid property-related tax. The taskforce are focusing on property owners in the South West and South Wales who have sold one or more properties and not paid capital gains or disclosed rental income.

Using intelligence from the Valuation Office Agency, the taskforce has anticipated it will recover five million and the HMRC has already recovered more than 12 million as a result of its property rentals taskforce operations in London, South East England and Yorkshire with over 80 cases currently under criminal investigation. The Director General of Enforcement and Compliance said “HMRC taskforces are deployed in sectors and areas where we have detected a high risk of tax evasion”. Anyone targeted by HMRC taskforces could end up facing a heavy fine or even a criminal conviction.

How to Comply with Smoke and CO Alarm Proposals

From the Deregulation Act 2015 – date of proposed implementation - 1st October 2015.
INSTALLATION OF ALARMS – Regulation 4 contains the main requirements and provides that a landlord must ensure that –

A smoke alarm is equipped on each storey of the premises on which there is a room used wholly or partly as living accommodation. However it is not specified which type of alarm landlords must fit—hard wired or battery. This will be up to the discretion of the landlord. The fire minister announced on 19th March that 3 million of funding will be made available to support the delivery of working smoke alarms and CO alarms at privately-rented homes across the county.
A carbon monoxide alarm is equipped in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

When determining a storey or a room, a bathroom or lavatory is to be treated as a room used for living accommodation. As a result, a half landing containing a bathroom or toilet alone would be counted as a storey and require a smoke alarm. The duty will apply to any new tenancy from 1/10/2015 and so existing tenancies are unaffected. The duty is not triggered by a statutory periodic tenancy arising nor if a renewal is done between the same landlord and same tenant in the same property. The duty will apply to all tenancies or licenses with a very limited number of exclusions. One exclusion is where there are lodgers in a landlords own home.

CHECKING ALARMS – There is a further obligation to ensure that checks are made by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy. The regulations propose that where a local authority has reasonable grounds that a breach has taken place, they must serve a remedial notice in the first instance requiring the landlord to take action within 28 days. Where the landlord still fails to comply, the local authority may obtain consent from the occupier to enter and install the necessary smoke or CO alarm as appropriate. The landlord will be liable to a penalty not exceeding £5,000. There are provisions for a landlord to appeal throughout the process.

Newquay Tenants Put at Risk of Gas Poisoning by Landlord

The lives of a young family were put at risk by their landlord who failed to have their boiler serviced and checked. The mother, her partner and young child moved into the property in Newquay in July 2013. They were not supplied with a copy of the Gas Safety Record by their landlords Andrew and Deborah Hopkinson. The tenants asked about a safety inspection of the boiler some months later but no inspection took place. In June 2014, the family noticed a gas smell and called in Wales and West Utilities who isolated the boiler and issued an "Immediately Dangerous" notice on the boiler. The Health and Safety Executive were alerted and prosecuted Mr and Mrs Hopkinson. The HSE investigation found six instances of the landlords' gas safety checks not taking place within the legally required 12 month period, with the dates ranging between 5 days and 15 months overdue. The gas boiler was at least 11 years old and last serviced on 19th December 2012. When it was isolated for safety purposes it was found to be producing high levels of carbon monoxide. Andrew and Deborah Hopkinson each pleaded guilty to two breaches of Gas Safety Regulations. Mr and Mrs Hopkinson were each fined £7,000 and ordered to pay £209 each in costs. An HSE Inspector, Simon Jones said after the hearing "It was fortunate that this incident did not lead to death or injury for the tenant or her young family. **Landlords must ensure annual safety checks are carried out on gas appliances at their properties and ensure they are serviced and maintained in good working order.**

New Measures to Tackle Property Fraud

A new counter-fraud security measure has been introduced by the Land Registry for companies who own registered property and are concerned it might be subject to fraudulent sale or mortgage. The new property alert service can be used to monitor any property in England or Wales that is registered with the Land Registry. Once registered, owners or other interested parties will receive e-mail alerts when activity occurs on their monitored properties allowing them to take action as necessary. According to the Land Registry, tenanted, unoccupied or mortgage-free properties are known to be particularly vulnerable to fraud. Fraudsters can attempt to acquire ownership of a property either by using a forged document to transfer it into their own name or by impersonating the registered owner. They can then use this bogus evidence to support a mortgage application. Once the mortgage is completed the offender disappears, leaving the property owner to pay the bill. Private owners and companies who feel their property might be at risk can have a restriction entered on their title register which is designed to help prevent forgery. Corporate clients affected can register up to three titles free of charge. More than three will cost £45 per title if delivered electronically.

FROM CRLA

NOTICE

SWLA stationery

SWLA stationery may change without notice so before using a document, make sure that you use the latest one on the SWLA website, by checking the issue date or check with the SWLA office at the email address or telephone number shown below. Don't forget our ability to advertise accommodation to let, property for sale in our office window

Greg Yates Solicitor

Greg Yates is with Howard & Over on 01752 556606 and will continue to support our members.

Are you regularly receiving our emails, if not, contact the office with your updated email address.

WBW Solicitors of Torquay

Will Support initial telephone calls to discuss your problem. Telephone Karen Barnard 01803 407636

Rory Smith, Enigma Solicitors

Rory Smith is a highly experienced specialist in a wide range of disputes and their resolution. Rory can also recommend to you other law firms in Plymouth who will all offer free advice to SWLA members. Contact Rory on 01752 600567 or email rls@enigmalaw.com Enigma is located 5 minutes away from SWLA's office at Farrer Court, 77 North Hill PL4 8HB. The office is open 8:50 a.m. to 5:00 p.m. weekdays.

Richard Gore Solicitor

Richard is with Greg Latchams on 0117 9069424 in Bristol and will support initial telephone calls to discuss your problems

E-Mail address

If you change your email address **PLEASE TELL US** otherwise you might miss important messages from us!

SOUTH WEST LANDLORDS ASSOCIATION

SWLA

Published June 2015

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Or visit our office in Dale Road, it is open week days from 10 to 3pm