

# The Bulletin

SWLA

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## DEPOSITS

A landmark Court of Appeal case was released on Friday 14th June 2013. The judgement was on *Superstrike vs Rodrigues* (a case concerning tenant's deposit has resulted in the potential for literally hundreds of thousands of pounds in penalties if landlords have not followed the right procedures. The consequences of not following the correct procedures can result in not being able to issue Section 21 notices and the return of all deposits. The full details of the case can be read on the SWLA website news items.

## TRAINING

Increase your knowledge of all landlord matters by attending a SWLA training day. Training will be held at regular intervals in Plymouth, Newton Abbot and Torbay.

## ACCREDITATION

Demonstrate your commitment to better landlord awareness and improving housing standards. Stand out from the crowd and following a landlord training day, become an accredited landlord with the nationally recognised Landlord Accreditation South West (LASW).

## INSURANCE

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## **DEVON TENANT SELLS LANDLORD'S HOME ON-LINE FOR £90,000**

A tenant who sold his landlord's property on the internet for £90,000 has been jailed. Brian Kiddell, 75, of Topsham Road, Exeter, posed as the owner of the Newton Abbott property.

The owner of the Devon house only found out when he drove past the "For Sale" sign after the deal had been completed.

At Exeter Crown Court Kiddell faced nine charges of fraud, theft, and dishonest use of a dead man's passport. He was jailed for six years. The court heard that Kiddell rented the house in Prince Rupert Way, Heathfield, Newton Abbott in the name of Paul Stevenson, who had died in 2004, but whose passport he had obtained. He posed as owner David Ayton, to put the house up for sale.

Mr Gareth Evans, prosecuting, said: "Kiddell had been renting the house for four months when the owner happened, purely by chance, to be driving past and noticed there was a "For Sale" sign outside the address. He contacted his own letting agent and the estate agent and found it was being sold."

By the time he raised the alarm, Kiddell had completed the sale and made off with the money. The court also heard that Kiddell had tried to access a bank account under a false name to transfer £18,000 after saying the account holder had died and presented a fake death certificate. He claimed to be the dead man's brother but the bank blocked the transfer when the real customer was found alive.

Kiddell carried out several other frauds but was caught after applying for a £25,000 loan in the name of Anthony Russell at Barclay's Bank in Launceston, Cornwall.

When Kiddell, posing as Mr Russell, turned up for an appointment he was arrested by plain clothes police.

Mr Stephen Mejnzer, defending, said Kiddell was forced to take part in the frauds by an organized crime gang to whom he owed money.

From BBC News Devon via CRLA

## **CUSTODIAL SENTENCE FOR LANDLORD IN MORTGAGE FRAUD**

A landlord in Huddersfield has been jailed for 2 ½ years after being found guilty of defrauding mortgage providers of over £1m. Shazad Arshid gave fraudulent applications for mortgages, using false income and employment details and using colleagues to pose as purchasers. As well as the jail term he was banned from being a company director for 5 years. He also pleaded guilty to defrauding Kirklees Council of £26,000 in benefit by claiming housing benefits for people not living in the houses or paying cash rents.

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## **DANGEROUS NEGLECT BY LANDLORD LEADS TO COURT**

A private landlord was fined for a series of safety breaches that left a Sheffield family at serious risk from a dangerous boiler fitted by an unregistered gas fitter.

Sima Yaqub appeared before the Sheffield city's Magistrates on 25th March charged with five breaches of gas safety regulations following an investigation by the Health and Safety Executive (HSE).

Their investigation found that Ms Yaqub:

- never provided her tenant with a landlord's gas safety record
- used an unregistered gas fitter to install a boiler, leaving it in a dangerous condition
- ignored a warning notice from the National Grid after they capped the gas supply to the appliance
- sent the same unregistered fitter back to reconnect the boiler without fixing the faults
- allowed the family to use the boiler for several weeks after it was illegally reconnected until it was capped for a second time and again classed as dangerous
- ignored repeated warnings from HSE to check the safety of the boiler
- failed to provide information to HSE to identify the unregistered fitter despite numerous requests.

Ms Yaqub did not have a landlord's gas safety record for the boiler when the tenant moved into the property in July 2011. After the boiler broke down several times, she had replaced it with another used one just before Christmas that year using an unregistered fitter. In early January a National Grid engineer visited the house and classed the boiler as immediately dangerous and advised the tenant it needed to be repaired by a Gas Safe registered engineer. The tenant informed the landlord while the engineer was still there. Ms Yaqub, however, failed to rectify the dangerous faults and didn't respond to contact and letters from the HSE. A registered engineer examined the boiler and found it had been reconnected in an immediately dangerous condition. It was again capped.

Ms Yaqub was fined a total of £17,000 and ordered to pay full costs of £6,915 after pleading guilty to five offences under the Gas Safety (Installation and use) regulations 1998 committed between 15th July 2011 and 15th March 2012.

"Landlords have clear duties to ensure that gas appliances in properties are maintained in a safe condition and to use Gas safe registered engineers. She exposed a family to a dangerous appliance that could have caused serious injury or death. HSE will not hesitate to prosecute any landlord who falls short of acceptable standards."

From HSE via CRLA

## **TENANTS PROSECUTED FOR BARRING GAS ENGINEER ACCESS**

Tenants of a housing association in Lancashire have been handed 14-day suspended prison sentences two years after they would not allow gas engineers into their home. Two tenants of New Progress Housing Association were sentenced at Preston County Court for failing a second time to allow gas engineers to make compulsory gas safety checks.

They breached an injunction made at the County Court in 2009 ordering them to allow the 4,000-home housing association's engineers access to their property every year for the annual gas service on the boiler and an appliance. In the case, at the end of last year, the judge also handed the pair an £836 fine to cover the housing association's court costs. The housing association warned that if they breached the injunction again it would return to the court to ask for the 14-day suspended prison sentences to be imposed.

The housing association said: "As a landlord we have a legal duty to carry out an annual service of gas appliances in all our properties. These inspections are provided free of charge to our tenants and are scheduled at a time to suit them. If a tenant refuses our engineers access to their home, they are not only in breach of their tenancy agreement but they are placing their lives and anyone else living in the property at risk from carbon monoxide poisoning and faulty gas appliances."

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## **HULL LANDLORD HIT HARD FOR GAS OFFENCES**

A private landlord in Hull is facing the threat of jail after ignoring repeated warnings about gas safety and exposing tenants to a risk of carbon monoxide poisoning.

The court heard that he had "blatantly and deliberately disregarded" laws designed to protect tenants. The landlord had failed to respond to the HSE requests to provide a landlord's gas safety certificate for a house he let. He ignored the warning of having three weeks to have the gas check done. A visit to the property by a Gas Safe registered engineer found an immediately dangerous defect on the gas fire in the lounge. The tenant had not been given a safety record in more than 2 years, nor had any work or servicing been carried out by a registered engineer.

The landlord was handed a 16-week jail sentence suspended for 12 months, and was ordered to do 260 hours of unpaid work and told to pay £500 towards the prosecution's costs.

From the NLA UK Landlord

## **Landlords want more advice according to latest survey**

Landlords across the country are hungry for help and advice according to a survey commissioned by specialist buy-to-let lender Paragon Mortgages

The Q1 BDRCLandlords Panel has shown that 78% of those surveyed have a significant requirement for advice on landlord matters rising to 89% for those owning more than 11 properties.

According to the report, recent changes to legislation and tax have only fuelled landlords' desire for more help and advice, with 46% saying they were finding it difficult to keep up with changes to legislation and a further 43% saying they were worried about the impact of Universal Credit on the Private Rented Sector (PRS).

Almost all (90%) of those surveyed said that they believe taxes and regulation, coupled with the recent announcements in the Queen's Speech which charge landlords with the need to check the immigration status of their tenants, will make being a landlord tougher in the coming months. Of those surveyed, 54% predict that additional licensing will hit them hardest, along with 53% believing Capital Gains Tax will have the biggest impact and 49% concerned about Council Tax.

Although many of the landlords surveyed were greatly experienced, having owned buy-to-let properties for a considerable time, there is still a need across the board for information, help and advice. Of course the buy-to-let landscape never stays the same, and new regulations affect professional landlords just as much as they do those who are relative newcomers to the market.

Landlords, experienced or otherwise, should do their homework before they commit to buy a rental property - research the market, the area and also their obligations as landlords.

Buy-to-let isn't a short-term investment – many of our customers have been landlords for more than two decades, and see their portfolios as an alternative to a pension when they retire.

We would always advise landlords to join membership organisations which provide a wealth of information, support and advice for new and existing landlords on running a successful rental portfolio, as well as local support groups."

Abridged from Landlords & Lettings 13th May 2013

**If you know of any landlords who are NOT members of the SWLA please give them our telephone number.**

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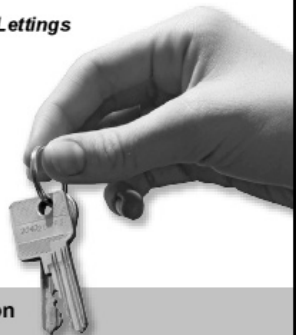
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## **Landlords' representative attack Shelter for launching a scaremongering campaign.**

The charity's "Growing Up Renting" campaign argues that families with children are bearing the brunt of insecure tenancies, high rents, and constant moves that it asserts are standard in today's market.

In dismissing this allegation, the RLA contests that the reality is that nearly all tenancies are ended by tenants. Just 9% are ended by landlords, usually as a result of tenant rent arrears or anti-social behaviour. It demonstrates that contrary to popular myth, most landlords would prefer to keep tenants rather than being left with an empty property. On rent levels, figures in the English Housing Survey for 2011-12 show that over the 3 years between 2008/2009 and 2011/12, average rents in the private rented sector increased by an average of just 2.4% per year, less than half the rate of 5.6% in the social sector over the same period.

The Housing Survey also notes that tenants who have remained in their property for ten years or more face much lower rents, on average £123 a week compared with the average £173 paid by those resident for less than three years. This amounts to an average 28% discount in rents. Private tenancies have also reached a record average length of 20 months, showing that landlords are responsive to tenants needs.

The RLA condemns the scaremongering that Shelter is engaged in. Whilst we agree that a small minority of landlords ruin the lives of tenants and should be banned from renting property, the reality is that the majority of landlords in the country provide a good service. At a time when increasing numbers of people are depending on the private rented sector for their housing, Shelter should act more responsibly and not promote inaccurate generalisations which only serve to frighten families into thinking that a majority of landlords can't wait to throw them out which is nonsense.

The reality is that landlords will do all they can to keep tenants in their properties rather than face an empty property.

Whilst landlords agree with the need for longer tenancies where needed, Shelter's calls for universal five year contracts with index linked rent rises would be bad news for families who are presently seeing average rents increase by less than inflation.

"Shelter are playing a dangerous game by frightening off investors from increasing the supply of much needed private rented housing."

Abridged from RLA News



## The SWLA supports the RLA views on criminal landlords

As Shelter launches research into the effect of criminal landlords on the health of children and families, the Residential Landlords' Association is calling on Shelter to stop referring to "rogues" and call a 'spade a spade' by declaring them criminal landlords that should be rooted out of the sector altogether.

Commenting on the launch of the research, the RLA said: "The RLA remains concerned that though in a minority, some families are having to face the prospect of living in sub-standard accommodation that is bad for their health. We all share a desire to see this dealt with. However, whilst it is easy to highlight stories of bad practice and poor accommodation, little is said about the 84 per cent of tenants who are satisfied with their accommodation, a larger proportion than the social sector.

With RLA research showing that there are over 400 individual regulations affecting the sector, why would any more have any discernible impact?

Under the RLA's plans, criminal landlords would be rightly hounded out of the sector by local authorities freed up to target those operating under the radar. All responsible landlords would be members of an industry-run accreditation scheme, based on a single set of national standards. Tenants would also be empowered to better hold their landlords to account.

By freeing landlords up from much red tape we would increase the chances of them investing in much needed new homes, boosting supply and thereby giving tenants far greater choice over their accommodation. It is that which will best improve standards."

Abridged from RLA News

SWLA endorses all of the above.

### **Be ahead of the game and become accredited with LASW our own ANUK recognised scheme**

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Q As a landlord do I have a legal responsibility to prevent an infection of Legionnaire's Disease on my premises? Do I need a health and safety expert for this? It seems a bit over the top!

A You can bring in an expert but you don't need to. There is some common-sense guidance here at [www.hse.gov.uk/legionnaires/what-you-must-do.htm](http://www.hse.gov.uk/legionnaires/what-you-must-do.htm)

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thing.

But there are also bad landlords whose  
properties are poor quality, hard to heat and  
who charge high rents. And that's why we  
are considering practical steps to deal with  
them and ensure that all homes are of the  
right standard."

## **Rent in advance is not a deposit, the Court of Appeal rules**

Rent paid in advance is not a deposit, the Court of Appeal has ruled in a case with significant implications for landlords. It means that landlords are not obliged to treat rent paid in advance as a deposit which would require protection. Had the court ruled in the opposite way, it could have affected many landlords who take rent in advance and then wish to start possession proceedings.

The ruling was in the long-running case of Johnson v Old, where the tenant was offered a six-month tenancy and asked for six months' rent in advance. The agreement provided a muddling factor, because it said the rent should be paid monthly in advance, but also that it should be paid six months in advance. The agreement was renewed on the same terms before becoming a periodic tenancy where the rent was paid monthly in advance. When the landlord tried to serve a Section 21 notice the tenant, Anne Old, countered by saying that a Section 21 could not be served because she had paid rent in advance which should have been treated as a deposit and protected. The tenant's argument was successful at the first hearing but was challenged successfully by the landlord. The case went to appeal and the Court applied the test of asking how the tenant would have responded when asked to make a further payment of rent for one of the months covered by the six months. It was decided that she would have said that she had already paid it. had the Court ruled against the landlord the penalty would have been return of the six months' rent plus a penalty of up to three times the amount and loss of ability to serve a Section 21. What this case shows is that landlords and their agents need to take care when drafting their tenancy agreements.

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## **Gas checks survey**

One in ten private tenancy households has not had a mandatory gas check carried out in the last year, Shelter has claimed.

A study of 4,300 private tenants in England carried out by YouGov in conjunction with British Gas asked when was the last time their landlord or agent carried out a gas safety check. Landlords are required by law to carry out annual gas safety checks and issue current certificates to their tenants.

The study also found that one in seven (15%) of landlords were ignorant of their legal responsibilities, despite the possibility of fines, or even prison.

Abridged from the RLA News

**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.

**Greg Yates solicitor**

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**Richard Gore solicitor**

Richard is with Greg Latchams in Bristol and will support initial telephone calls to discuss your problem. 0117906 9400

**WBW solicitors of Torquay**

Will support initial telephone calls to discuss your problem. 01803 202404

**Rory Smith, Enigma Solicitors**

SWLA are now working with a new solicitor in the Area. Rory Smith at Enigma Solicitors 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 initial advice to SWLA members in other specialist areas.

You can contact Rory for free initial advice on any matter on 01752 600657 or by email. Enigma is located 5 minutes away from SWLA's office at Farrer Court , 77 North Hill PL4 8HB next to Stratton Creber Commercial. The office is open 8:50 a.m. until 5:00 p.m. weekdays but the firm regularly also works additional hours whenever needed.

The Association provides assistance and advice. However, the Association does not hold itself out as providing specialist legal advice and therefore whilst written and oral advice is given in good faith, no responsibility can be accepted by the Association, its officers or members for the accuracy of its advice, or shall the Association be held liable for the consequences of reliance upon such advice.

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