The Bulletin

SWLA
South West Landlords Association

December 2019

A BUMPER YEAR

MEMBERSHIP The new membership year commenced 01 November 2019 and the annual subscription remains at only £45. If you have forgotten to renew, you will be unable to access the members area of the website to download documentation and the like. Membership for the year increased to almost 900, doubling since the purchase of our offices 10 years ago.

TRAINING SWLA continue to give prominence to training. All accreditation and ancillary courses for the year have been oversubscribed. We have been approached by Torbay and Teignmouth Councils to arrange landlord training, funded by central government. We continue to work with Bristol, Cornwall, Exeter and Plymouth Councils. Landlord accreditation courses are £65 for SWLA members. It's a one-day course and accreditation can be awarded at no extra cost. Venues are provided by local authorities and therefore the cost is subsidised. If it has been sometime since you last completed a course, or if you are a new member, feel free to check our upcoming course dates and contact the office to book on.

REPRESENTATION The chairman, vice chairman, policy officer and office manager have attended meetings with local authorities, MPs and other agencies. SWLA are part of the coalition against the abolishment of Section 21s. This coalition of 18 associations are campaigning for Section 21s to remain until a fit for purpose 'Section 8' is introduced.

FINANCE The association remains on a firm footing with funds in hand sufficient to meet all current needs. The Treasurer will distribute financial statements at the AGM. SWLA has sufficient capital reserve to enable annual subscriptions to remain as is for a further 12 months.

DISCOUNTS/LOYALTY CARD Our two preferred Building Insurance providers continue to give a comprehensive and competitive service.
Trago Mills, B&Q, Howdens, Wickes and others are all offering discounts to SWLA members. Please contact the office for instructions on how to obtain these discounts. Some of our Website Trade Listing companies also offer SWLA discount.

INSURANCE; Hot off the press. New Landlords Insurance launched by Excaliber – specifically for SWLA members. See page 9 for their full page advert and contact details should you wish to get a quote.

Wishing our members a Merry Christmas & Happy New Year!

Possession Reform - Abolition of Section 21

On 15 April 2019 the Government announced planned changes to the eviction process and the launch of the consultation on these changes. It will put an end to so called 'no-fault' evictions by repealing section 21 of the Housing Act 1988. The consultation; 'A New Deal for Renting: Resetting the balance of rights and responsibilities between landlords and tenants' closed on 12 October 2019. The government are currently analysing feedback.

The consultation proposed the removal of Assured Shorthold Tenancies (ASTs) from the Housing Act 1988. This would mean that assured tenancies would become the only type of tenancies available to private landlords. Therefore, would also mean the end of Section 21. The Government is proposing that landlords and tenants can agree either a fixed-term assured tenancy (meaning both landlord and tenant are committed to a set period), or a periodic assured tenancy. A fixed-term tenancy which is not ended by the tenant, or by the landlord using Section 8, could either be renewed to a new fixed term, or automatically become an assured periodic tenancy.

The changes are being consulted on, after which the Government will need to respond, and if they wish to take forward, legislate through discussion in Parliament. The Government has proposed that – once the law has been passed by Parliament and approved by the Queen – there is a six month 'transition period' before the law comes into force. However, they are consulting on the length of this. It's unlikely any changes will come into force before late 2020/early 2021.

Section 21 has been the cornerstone of the private rented sector since its introduction in 1988. It has provided landlords in England and Wales with a reliable mechanism that allows them to regain possession of their property with certainty.

While Section 21 is often referred to as 'no fault eviction', the evidence from RLA's research shows that landlords do not go to court without good reason. Instead the majority only use Section 21 for legitimate purposes, such as tenant rent arrears or anti-social behaviour. They do this because Section 8, the notice that should be used where the tenant is at fault, is often ineffective and the court process around it is too slow. Section 21 masks these inadequacies and landlords must have confidence that any new system or restrictions will not leave them using an alternative that is not fit for purpose.

The Government has suggested improvements to the Section 8 process. These include:

- Introducing a new ground when the landlord wants to sell the property and widen the current ground for use when landlords, their spouse or partner, or their families want to move into the property
- Amending the current mandatory ground 8 (rent arrears) so that landlords need two months' arrears on notice, and one month's arrears at the time of the hearing (and that if there are three instances of the tenant paying down and then re-accruing arrears, the ground becomes mandatory)
- Possibility of strengthening antisocial behaviour grounds – although no specific proposals yet
- Domestic violence ground is made available to private landlords, and that it is amended to give the victim more rights and protections
- Strengthening ground 13 to allow landlords to use this if tenants routinely refuse access to the property for repairs / safety checks.
- Introducing an accelerated process for possession (which would remove the need for a court hearing, unless the tenant challenges it) for mandatory grounds.

The Government is working to introduce reforms to the court process – but this is not being consulted on. The Government is due to respond to the earlier call for evidence on a housing court separately. Also, in order to maintain existing protections for tenants, the Government wants to include the prescribed information requirements that currently exist via the Deregulation Act for the valid use of Section 21 (e.g. Gas Safety certificate, deposit certificate and information, EPC, How to Rent) in the Section 8 process, as a way to encourage health and safety standards in the sector.

SWLA are members of the Fair Possession Coalition representing landlords and letting agents, we are united in warning that plans to abolish Section 21 repossessions without a new system in place would undermine investment in the sector at a time when private landlords are relied upon on to provide homes for one in five households in England.
Article abridged from gov.uk & RLA

Upcoming SWLA Training Courses

Landlord Training Course - Intermediate Law; Friday 17th January 2020
Of particular interest to letting agents and portfolio holders.
A more in-depth coverage of important areas of legislation and practice. Topics will include;
Tenancy Agreements and special clauses, grounds for possession, accelerated possession, overseas landlords, instructing contractors, tenants compensation rights, abandonment and surrender, deposit protection, latest news and updates.

Landlord Accreditation Course – Monday 27th January 2020
Course covers ASTs, Deposits, Section 21s, Sections 8s, HMOs, Gas & Electrical Safety, Inventories and more. The course will provide the knowledge to start, manage and finish a tenancy. Can lead to accreditation if required.

Places secured upon receipt of payment, please contact the office to book. All courses £65.00 for members. £75.00 for non-members. Courses taking place at Plymouth Guildhall, 9.30am-4.30pm. See the SWLA website for further courses.

Important Dates

06 April 2017 – 06 April 2020 - Mortgage Interest Relief; New BTL Tax System Phased In
01 April 2018 – MEES (Minimum Energy Efficiency Standards) E or above for new tenancies
06 April 2018 – Rogue Landlord Database Introduced
25 May 2018 – GDPR Introduction
01 October 2018 – Extension of Mandatory HMO Licencing
20 March 2019 – Homes (Fitness for Human Habitation) Act 2018
01 April 2019 – Letting Agent Mandatory CMP (Client Money Protection) Membership
01 June 2019 – Tenant Fees Act (tenant fees ban and cap on deposits)
01 April 2020 - MEES E or above for all tenancies with a valid EPC
Date to be confirmed – Mandatory 5 Year Electrical Safety Checks
Date to be confirmed – Making Tax Digital will apply to most landlords earliest 2021

Tax Changes Affecting Landlords' Confidence

A majority of private landlords say they are less confident about the market than they were three months ago, according to the Residential Landlords Association (RLA). Figures highlighting the gap between the percentage of landlords planning on selling up and those planning to buy reflect this result. The gap has increased sevenfold in the last two years from 4% to 21%.

There is one positive outcome for tenants to be mentioned: many landlords are now not increasing rents. The RLA has reported that two-thirds have frozen rents over the last year.

The figures, which are contained in the RLA's latest Confidence Index, show that in the third quarter of 2019, 55.1% of private landlords were less confident about the market. 34% of landlords are planning to sell property over the next year. This is compared with 22% two years ago. Just 13% plan to purchase at least one property to rent out compared with 18% two years ago.

The main reason that has been provided by landlords for this 'drop' in sector confidence is the recent tax changes. Many have stated that the fact that this has been adding to increased costs has led them to the conclusion that selling up is the best option.

David Smith, Policy Director for the RLA, said: "We warned the government that the tax increases they have imposed on landlords would be counter-productive and these figures show how right we were. All they are achieving is driving landlords to leave the market, damage investment and so making it more difficult for tenants to find somewhere suitable to live. Whoever is in government following the election needs to completely change the approach and start to support good landlords to encourage them to invest to meet the rising demand for rented housing."

Buy-to-Let Remains One of the Best Investments

Buy-to-let continues to deliver solid returns that beat many other types of investment. Even with reduced tax breaks, and the addition of new legislation, the market appears to be very profitable. Many investors are seeking to add to their portfolio in the near future.

Property investment is a buyer's market right now, with the average price of property coming onto the market dropping by 1.3%, or £3,904 over the last month. This fall can be attributed to political uncertainty stemming from Brexit and the general election.

Unfortunately for sellers, this uncertainty has led to many of them abandoning plans to sell into a more certain time.

However, investors looking for a bargain are currently able to get more property for their money. Prospective landlords can use the savings on buying cheaper property to mitigate the effects of Section 24 tax changes and other increased costs around letting that have cropped up in the last year.

Miles Shipside, Rightmove director and housing market analyst, commented: "I've seen lots of unusual events affecting the property market in my 40-year career, but a Brexit deadline followed by a snap general election six weeks later is obviously a new combination for me and for many thousands of buyers and sellers. Elections normally dampen activity as uncertainty causes a degree of hesitation, but this one is being called to try to break the deadlock after three years of uncertainty. A more certain outlook, whatever it may be, would be a welcome change for those who are contemplating moving."

The uncertainty seems to be a positive for buyers, which may explain why the number of sales agreed remains largely unchanged, at only 2.9% lower than this time last year. This suggests that there are still a lot of buyers looking to take advantage of those opportunities.

Article abridged from Landlord News

TRADE POINT

SWLA
South West Landlords Association

LOYALTY UPGRADE!

By being a member of the South West Landlords Association **YOU HAVE BEEN UPGRADED!**

Congratulations your **5% DISCOUNT** is now live!

SHOP NOW TO START SAVING ›

SAVE MORE!

Double your discount by spending the **£500** threshold and earning **10% OFF***

* Excludes delivery, gift cards, concessions, clearance, Amazon products, supplier quoted and selected made to measure products. Cannot be used in conjunction with any other voucher or customer discount card. Discount does not apply to the initial qualifying spend. Discount will be applied within 7 days of the qualifying spend.

SAMS ACCOMMODATION

TOP QUALITY PROPERTY MANAGEMENT

- *Private Residential Lettings*
- *Student Rentals*
- *Tenant Finder Service*
- *Comprehensive Landlord Service*
- *No Set up Fees*

For further information please call us on

01752 481382

www.samsaccommodation.co.uk

The Tenant Fee Ban – Are you compliant?

The Tenant Fee Ban came into force on 01 June 2019. It currently affects tenancies signed on or after 01 June 2019, including renewal tenancies. You cannot require a tenant (or anyone acting on their behalf or guaranteeing their rent) to make certain payments in connection with a tenancy. You cannot require them to enter a contract with a third party or make a loan in connection with a tenancy.

Examples of banned fees:
- Charging for a guarantor form
- Credit checks
- Inventories
- Cleaning services
- Referencing
- Professional cleaning at the end of the tenancy
- Having the property de-flead as a condition of allowing pets in the property
- Admin charges
- Requirements to pay for an insurance provider
- Gardening services

Agents and landlords do not have to pay back any fees that have been charged to a tenant before 01 June 2019.

If a tenancy agreement was entered into before 1 June 2019, you can continue to require a tenant to pay fees written into that agreement (e.g. check-out or renewal fees) until 31 May 2020. After 1 June 2020, the term requiring that payment will no longer be binding. Should you, in error, ask a tenant to make such a payment, you should return the payment immediately (must be within 28 days). If you do not return the payment within 28 days, you will be treated for the purposes of the Act as having required the tenant to make a prohibited payment (a payment that is outlawed under the ban).

Permitted payments

The only payments you can charge in connection with a tenancy are:

a) The rent.
b) A refundable tenancy deposit capped at no more than five weeks' rent where the annual rent is less than £50,000, or six weeks' rent where the total annual rent is £50,000 or above.
c) A refundable holding deposit (to reserve a property) capped at no more than one week's rent.
d) Payments to change the tenancy when requested by the tenant, capped at £50, or reasonable costs incurred if higher.
e) Payments associated with early termination of the tenancy, when requested by the tenant.
f) Payments in respect of utilities, communication services, TV licence and council tax.
g) A default fee for late payment of rent and replacement of a lost key/security device, where required under a tenancy agreement.

From 1 June 2020, the ban on fees will apply to all applicable tenancies and licences to occupy housing in the private rented sector. You will not be able to charge any fees after this date (apart from those fees which are expressly permitted under the ban – see above).

Deposits and the Tenant Fee Ban – Important

You do not need to return any amount of tenancy deposit that is over the cap for tenancy agreements that were entered into before the Tenant Fees Act came into force (01 June 2019). The gov.uk landlord guide states; 'Landlords and letting agents are not obliged to immediately refund part of a tenancy deposit that is above the cap but was paid before 1 June 2019. If a tenant signed a tenancy agreement before 1 June 2019 (and that tenancy is continuing or is a statutory periodic agreement) then the tenant will be bound by the terms of that contract until it is either renewed or terminated.'

However, if you renew a tenancy agreement on a fixed term basis post 01 June 2019, any deposit amount over the cap will need to be refunded.

The deposit protection schemes have a deposit calculator and can easily refund tenants the amount that is over the cap upon instruction from the landlord. See the scheme's website for further information.

This is the current advice from gov.uk and may change in the future, therefore SWLA encourage landlords with pre 01 June 2019 tenancies to be proactive and think about refunding parts of tenancy deposits that are held that are over the cap.

Pets
Landlords and agents cannot ask for a higher Tenancy Deposit for renting with pets, but landlords and agents can charge higher rent for a tenant with a pet. This must be made clear in how the property is advertised, so the tenant can make an informed decision.

MEES Energy Efficiency Ratings in the Private Rented Sector

01 April 2020 will see many more private rented properties having to be brought up to at least an E rating on their Energy Performance Certificate.

Since 1 April 2018, new tenancies, renewals or extensions require the property to have a minimum "E" energy rating. From 1 April 2020, all existing tenancies with a valid EPC must comply.

Since 01 April 2019, landlords are expected to make energy improvements costing up to £3,500.00 (including VAT) to bring properties up to the required energy efficiency standard. Prior to this date, improvements would have to have been made only if there was no cost to the landlord. If there were costs, the landlord could register an exemption. (The cost cap includes monies spent since 01 October 2017 on energy efficiency improvements).

Exemptions can still be registered in certain circumstances, including if £3,500.00 is spent and the property still falls below the expected standard.

For further information, please see the government guidance titled 'The Domestic Private Rented Property Minimum Standard'.

https://www.rla.org.uk/landlord/guides/minimum-energy-efficiency-standards.shtml

When registering an exemption from the regulations, on the PRS Exemptions Register, landlords must ensure that it is a valid exemption and that the details provided are correct. Where false or misleading information is recorded, the Local Authority may impose a financial penalty of up to £1,000, and may still then impose the publication penalty in addition.

Right to Rent: Government Appeal Date Set

Under 'Right to Rent' landlords are responsible for checking the immigration status of their tenants with the prospect of prosecution if they know or have "reasonable cause to believe" that the property they are letting is occupied by someone who does not have the right to rent in the UK.

The government's appeal against a ruling by the High Court that the Right to Rent breaches human rights law will be heard in January 2020.

Following a Judicial Review of the policy secured by the JCWI, the presiding judge concluded that discrimination by landlords was taking place "because of the scheme." In his judgment he said that discrimination by landlords was "logical and wholly predictable" when faced with potential sanctions and penalties for getting things wrong.

The government confirmed it was to appeal the decision, with the case scheduled to be heard on 14th and 15th January 2020. The views of landlords are to be at the centre of the case.

Landlords must carry out a Right to Rent check on every tenant regardless of their nationality. It's a very simple check and copy of tenant's identification. There is a gov.uk guide with pictures which aids landlords and agents to get it right. There is also an advice line to call if you have queries or concerns about tenant's right to rent in the UK.

Right to Rent and Brexit

The government has issued guidance for landlords on 'Right to Rent' checks for EU citizens in post-Brexit Britain.

Landlords and letting agents have been told they should continue to conduct right to rent checks on EU, EEA and Swiss citizens in the same way as now, usually by checking and making a copy of an EEA national's passport or identity card, until 1 January 2021. (If the prospective tenant does not have a passport or identity card there is a list of approved documents which are also valid).

The arrangement remains the same if the UK leaves the EU with or without a deal, with the government also confirming landlords will not need to check if new EEA and Swiss tenants arrived before or after the UK left the EU, or if they have status under the EU Settlement Scheme or European temporary leave to remain.

There will also be no requirement to retrospectively check the status of EU, EEA or Swiss tenants or their family members who entered into a tenancy agreement before 1 January 2021.

Irish citizens will continue to have the right to rent in the UK and prove their right to rent as they do now, for example using their passport.

As is currently the case, in order for a landlord to obtain a statutory excuse from a civil penalty when letting to the non-EEA family member of an EU, EEA or Swiss citizen, the prospective tenant will need to show Home Office issued documentation as set out in the legislation and guidance.

The government plans to introduce a new single immigration system from 1 January 2021 and the Home Office said new guidance on how to carry out 'Right to Rent' checks after this date will be issued in due course.

Article Abridged from Gov.uk and RLA

SWLA
South West Landlords Association

MEMBERS
LET
PROPERTY
INSURANCE

Exclusive Offer for SWLA Members:
We'll beat your existing renewal premium

Let us save you 10% off your existing landlords insurance renewal.

As your local landlord insurance specialist, Excaliber Insurance Services have over 10 years experience arranging insurance cover for most property and tenant types and can offer you terms 10% less than your current insurance renewal!*.

A few reasons why you should use Excaliber

- All tenant types considered including students, housing benefit & asylum seekers.
- Cover for single lets, houses converted to flats, HMO's & portfolios.
- **60** days unoccupancy full cover on the SWLA scheme.
- **Quote & Buy Online** – go to www.landlordssouthwest.co.uk/insurance/
- Optional malicious damage by tenants & legal expenses cover.

(*subject to the price beat acceptance criteria on the reverse of this leaflet)

01752 340183
149 Ridgeway, Plympton, Plymouth, PL7 2HJ

Excaliber
Insurance Services

Rent Increases

When you need to raise the rent, there are various ways in which you can do so;
- By agreement with the tenant
- By notice under Section 13 of the Housing Act 1988
- By way of a rent review clause in the tenancy agreement
- By creating a new Assured Shorthold Tenancy agreement

Agreement with the tenant
The vast majority of rent increases are done by the tenant signing a new fixed term tenancy agreement giving the new rent. This is the best method of increasing the rent as it cannot be challenged by the tenant. You can also increase the rent by getting the tenant to sign a document (such as a copy letter sent to the tenant suggesting a new rent) confirming their agreement. If you wish to do this, it's best to speak to your tenant first to see that they are happy with the proposed increase. Then send a formal letter to them in duplicate proposing the new rent, asking them to sign and date one copy and return it to you to confirm their agreement. However, if they fail to return the letter or to pay the increase then the rent will not have been validly increased.
Note- you cannot increase the rent unilaterally by just sending a letter to the tenant telling them that their rent will be increased from a specific date. If the tenant agrees to this and starts paying the rent, the increase is agreed, but if the tenant does not agree he is entitled to refuse to pay the increase.

Notice under Section 13 of the Housing Act 1988
If the tenancy is an assured or assured shorthold tenancy the landlord can use a formal procedure in section 13 of the Housing Act 1988 to propose a rent increase. To do this you need to use a special form, which can be downloaded from the SWLA members area or collected from the office. The form must be completed fully and served on the tenant. At least one months' notice must be given to the tenant. If the tenant does nothing during this period, then the rent increase will take effect. However, if the tenant feels the rent increase is too high then he can refer it to the Rent Assessment Committee for review. The application must be made not later than the last day of the month period or it will be invalid, and the increased rent will stand. If the rent is challenged the matter will be considered by the Rent Assessment Committee who, if they consider the rent is not a market rent, will substitute what they consider is a market rent for the rent proposed. This is not always in the tenant's favour as it is not unknown for them to consider that the proposed rent is too low!
The rent can only be increased by Section 13 after the fixed term has ended and can only be used once every 12 months.

Rent review clause in the tenancy agreement
If you wish to be entitled to increase the rent during the fixed term of the tenancy this must be done by way of a properly drafted rent review clause. The clause can also be effective to increase the rent after the fixed term has ended. The clause must comply with the provisions of the Unfair Terms in Consumer Contracts Regulations and be fair. The increase must be referable to someone or something independent, such as the retail price index. Most standard tenancy agreements do not include rent review clauses as most rent is increased by the tenant signing a new agreement.

Creating a new AST
After a fixed term period has come to an end, you can ask your tenant to sign a new AST agreement with new terms and/or new rent. The tenant would need to agree to sign the new contract for it to take effect. If they do not agree/sign, the original fixed term will automatically roll on to a Statutory Periodic Tenancy (or Contractual Periodic Tenancy depending on what the original AST states). If the tenant doesn't want to create a new tenancy agreement, rent would need to be increased by the other mentioned means.
Note - SWLA tenancy agreements roll onto a Statutory Periodic Tenancy.

CALL US NOW TO SEE HOW WE CAN HELP YOU

If you've tried the usual high street letting agents try a different approach. Here at Landlord Services we offer the complete package.

- Full Management of your rental property
- Management of repairs and maintenance
- Finding and dealing with tenants
- Regular property inspections
- Compliance with all legal issues
- Collection and forwarding of rent

CONTACT US NOW...

T: 01752 291843
M: 07596 161361
E: admin@landlordservicesmanagement.co.uk
W: www.landlordservicesmanagement.co.uk

Landlord Services Management Ltd

Plymouth Homes Lettings are a Multi Award Winning Company for Landlords and Tenants

Rent Paid...Guaranteed

For landlords who want peace of mind knowing that their rent is guaranteed to be paid the day it is due

Tenant Find Only

For landlords who would like the best possible choice of tenants and manage the property themselves

THE ESTAS LETTING AGENT LANDLORD AWARDS 2017 GOLD WINNER SOUTH WEST (Cornwall, Devon)

THE ESTAS LETTING AGENT TENANT AWARDS 2017 GOLD WINNER SOUTH WEST

PLYMOUTH HOMES

Call us on

01752 772846

www.plymouthhomes.co.uk

Electrical Safety Standards on the way for England

Sections 122 and 123 of the Housing and Planning Act 2016 (electrical safety standards) came into force on 25 October 2019. This means we are one step closer to the introduction of mandatory electrical safety checks in the private rented sector.

An enabling power was contained in the Housing and Planning Act 2016 under Section 122 to allow the Secretary of State (through regulations to impose duties on private landlords) to ensure that electrical safety standards are met in a property under their ownership, while a tenancy is in place. The Section also allows the Secretary of State to specify obligations that may be required of the landlord with regards to the frequency of checks and the expertise expected of any persons who undertake such checks.

Section 123 provides for the enforcement of any responsibilities introduced under Section 122 including the use of financial penalties and rights of appeal.

Following Royal Assent of the Housing and Planning Act on 12 May 2016, a working group that included, electrical and tenant bodies was established to provide recommendations on what the requirements for electrical safety in the private rented sector should look like.

Now the Commencement Order is in place, the Secretary of State has the power to lay actual regulations, which we expect to be laid before Parliament shortly.

Summary of Electrical Safety Working Group recommendations:

Recommendation 1: Five yearly mandatory electrical installation checks should be set out in secondary legislation.

Recommendation 2: Visual checks of the safety of the electrical installation by landlords at a change of tenancy should be encouraged as good practice and set out in guidance.

Recommendation 3: A report should be issued to the landlord which confirms that an EICR has been completed along with confirmation that any remedial work necessary has been undertaken satisfactorily. A copy should be issued to the tenant at the beginning of the tenancy and should be made available to local authorities on request.

Recommendation 4: Landlord supplied electrical appliance testing and visual checks of electrical appliances by landlords at a change of tenancy should be encouraged as good practice and set out in guidance.

Recommendation 5: The installation of Residual Current Devices (RCDs) by landlords should be encouraged as good practice and set out in guidance.

Recommendation 6: A Private Rented Sector electrical testing competent person's scheme should be set up which would be separate from existing Building Regulations competent person's scheme.

Recommendation 7: DCLG should commission the Electrotechnical Assessment Specification (EAS) management committee to consider the most effective method of recognising 'competent PRS testers' to carry out electrical inspections and tests.

Recommendation 8: Legislative requirements should be phased in, beginning with new tenancies, followed by all existing tenancies.

We will update all members when we have confirmation of the legislation change and the implementation date.

Article Abridged from ARLA

Asbestos:Your duties as a landlord

Asbestos is a potentially harmful mineral fibre that was used extensively in buildings between the 1950s and 1980s. Use of asbestos was banned in the UK in 1999 but you can still find it in many properties. Landlords should assume that asbestos is present in all pre-2000 buildings. If it's in good condition and not damaged or disturbed, then it shouldn't present a risk. But if the fibres become loose, they might be inhaled, which could result in diseases of the lungs and chest lining.

A landlord's duty

Under Regulation 4 of the Control of Asbestos Regulations 2012, landlords have certain duties towards their tenants to minimise the risks of exposure to asbestos. The landlord has responsibility for the maintenance or repair of the premises through a tenancy agreement or contract. The extent of the landlord's duty will depend on the nature of the agreement.

This regulation is relevant to the common areas of certain domestic premises, such as purpose-built flats and houses converted into flats. Common areas might include:

- Foyers
- Corridors
- Lifts and lift shafts
- Staircases
- Boiler and plant rooms
- Store rooms
- Roof spaces
- Gardens
- Yards
- Outbuildings
- Garages
- Sheds
- Bike shelters

For all residential premises, whether houses or flats, a landlord may, depending on the circumstances, be liable to be prosecuted if anyone such as a tenant, resident, workman or visitor, is put at risk of being exposed to asbestos or is actually exposed to it. The landlord is under a duty to ensure that a risk assessment to assess the presence of asbestos and how to deal with it is carried out before any work is carried out or repairs are undertaken.

In addition to making sure that a risk assessment is carried out before any work starts, a landlord must use a competent contractor to carry out repairs or other work. Landlords cannot simply leave matters to contractors. A landlord still has his/her own responsibilities relating to asbestos. Any information about the presence of asbestos known to the landlord must be passed onto the contractor.

Landlords can instruct an asbestos surveyor to carry out an asbestos risk assessment which will include a detailed report. The surveyor should be qualified to the P402 qualification from the British Occupational Hygiene Society or similar. Call Tom Haddy from the SWLA Trade Listing on the number below if you wish to discuss asbestos risk and surveys.

Article provided by Tom Haddy, TDH Asbestos Surveying - 01752 561579 - 07966 576198

Holding Deposits – Be Careful!

From 1st June 2019, if you take a holding deposit (which must not exceed one week's rent) ahead of a new letting, the Tenant Fees Act 2019 says it must be repaid if you go ahead with the tenancy agreement. If you complete the tenancy, you are supposed to repay the holding deposit. That obligation may not apply if, as it almost always the case, the holding deposit is set off against the tenancy deposit or the first instalment of rent due on completion. The problem is that the duty to repay is only removed if the holding deposit is applied towards the tenancy deposit or first instalment of rent "with the consent of the person by whom it was paid".

Consider the following scenario. A prospective tenant pays a holding deposit of £200 in respect of a proposed rental at £1,000 per month. The tenancy is to be completed ten days later. The landlord sends the tenant a completion statement showing £1000 tenancy deposit and £1000 for the first month's rent with £200 set off against the total. The tenant pays £1800 and moves in.

Unless the tenant consents to the £200 being applied towards the rent deposit, the legal position is that the landlord is in breach of the Act. He should have repaid the £200 and the tenant should have paid the full £2000. If the landlord does not obtain the tenant's consent the payment of the holding deposit has become a prohibited payment. The landlord becomes liable to a fine of up to £5,000 for a first breach and up to £30,000 for a second offence within 5 years.

Local authorities are tasked with pursuing landlords. In the above circumstance, a local authority may not be interested. However, on a plain reading of the Act, the words "with the consent of the person by whom it was paid" must mean that if the consent is not obtained the payment is a prohibited payment. The result would have been what most reasonable people would consider fair, namely that the holding deposit has been applied towards the first rent or the tenancy deposit. However, Parliament has decreed that unless the tenant has consented to this the landlord is in breach. It might be argued the tenant has impliedly consented to the holding deposit being applied. However, if that is the case, the words "with the consent of the person by whom it was paid" are superfluous. If the holding deposit is applied towards the first payment of rent or towards the tenancy deposit then, by definition, accounts between the landlord and the tenant are square and the landlord has not retained the holding deposit. In what circumstances would the implied consent not apply?

In the vast majority of cases, tenants will not know there is an issue. They have suffered no injustice if they are given credit for the holding deposit. However, the tenant can bring up the prohibited payment to threaten with legal action a landlord who is trying to recover arrears of rent or possession for other breaches of covenant. He can ambush the landlord in any application under Section 21 (so-called no fault eviction) until the "prohibited payment" is repaid. Therefore, as soon as the landlord repays the prohibited payment, the tenant would owe the landlord precisely the same amount in rent arrears.

What can landlords do? First and foremost, it's easier to not take a holding deposit at all. Most landlords do not.

If you do take a holding deposit, use the SWLA Receipt for Holding Deposit document where there is an option for the tenant to decide where the holding deposit should go on completion of the agreement.

Article Abridged from Property 118

Landlord Awarded £70,000.00 in Damages Thanks to an Inventory

Thanks to an inventory check-in and check-out report, a landlord in North London was able to provide sufficient evidence for their claim against former X Factor judge Tulisa Contostavlos.
Landlord Andrew Charalambous was paid over £70,000 for damages after it was heard that the luxury home had been 'trashed' during her tenancy. The landlord claimed the three-bedroom property, located in Enfield and costing £3,466 per month to rent, was let in 'tip-top condition' but returned to him in an 'appalling' and 'unlettable' state.

Contostavlos' lawyer argued that the damage was not caused by her and that it was not above 'normal wear and tear'. However, judge David Saunders ruled against her and she was ordered to pay compensation, interest and legal costs in excess of £70,000 to Charalambous.

The inventory report that provided this evidence was undertaken by a professional inventory company 'No Letting Go' who said: "We can see from this case the importance of an independently and professionally compiled inventory. It's clear that the type of damage being reported was certainly not wear and tear, but when serious disputes between landlords and tenants like this occur, being able to prove it through evidence becomes crucial if landlords want to recover costs for repairs and replacements.' Professional inventory companies can be located on the SWLA website's Trade Directory.
Article abridged from Landlord News

NOTICE BOARD

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

E-Mail address

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

KBG CHAMBERS - Barristers – Plymouth, Truro & Exeter

We will support members with legal advice and representation through public access. KBG cover all areas of Property Law.
Call 01752221551 or email Colin Palmer, Senior Clerk, on colin@kbgchambers.co.uk

Court advocates can be booked to attend SWLA members' possession cases at a discounted rate. Contact the SWLA office for further information.

Membership Renewals were due on 1st November. If you haven't renewed and would like to, please contact the office.

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 initial advice to SWLA members in other specialist areas. Contact Rory on 01752 600567 or by email at 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 8:30 a.m. until 5:00 p.m. weekdays.

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

Did you know that SWLA have a trade listing of local businesses? Head to the SWLA website 'Trade Directory' for all of your landlord needs from Gas Safety Checks to Building Services

SWLA

South West Landlords Association

Published December 2019

Produced by Mark Price

By **The South West Landlords Association Ltd 30 Dale Road, Plymouth PL4 6PD**
You can contact our answerphone service on 01752 510913 or E-mail us at info@landlordssouthwest.co.uk, visit our website www.landlordsouthwest.co.uk
Or visit our office in Dale Road, it is open week days from 10am to 3pm