

SWLA Goes From Strength to Strength

November 2014

November is the start of our Financial Year and Your Membership so all those of you unable to access the member's area need to renew membership now. The annual membership fee remains unchanged at £40 (tax deductible).

2014 has been a successful year for the Association with an overall increase in membership. We have seen older members retire from the business and not renew but every month bought new members. These new members have come to us via the web-site, from Local Authorities and the Citizens Advice Bureau recommendations, from training courses and many from just driving or walking past our offices in Dale Road.

Our Association has been actively involved with the British Property Federation and the Residential Landlords Association in lobbying central government on Private Rented Sector matters. At a more local level we have helped local authorities with Rogue Landlord Training in Torbay, the preparation of the Rent with Confidence Scheme in Plymouth, the Responsible Landlord Scheme in Cornwall and have given seminars to landlords on behalf of Teignbridge District Council. We have recently been approached by Exeter Council to arrange landlord training days on their behalf.

Over the year we have run six Landlord Training days and four half day courses. All of the courses were fully subscribed from landlords throughout the South West and further afield. We had members travel from as far as Kent, London and The Channel Islands. All found the courses useful and informative and many attendees became accredited. Torbay Council and Plymouth City Council both funded courses and we received a free venue and refreshments from Teignbridge District Council.

SWLA goes from strength to strength

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SWLA Goes From Strength to Strength

In addition to our landlord training courses we ran two courses for Letting Agents. Again, both courses were fully subscribed and the participants grateful for the knowledge imparted by our professional trainer from Training for Professionals.

Our accreditation scheme, Landlord Accreditation South West (LASW) continues to grow and is recognised by Local Authorities as meeting National criteria. As an Association, we have never been busier and our office staff are dealing with more telephone helpline queries and personal visitors than ever before. We continue to be supported by both our recommended insurance companies who offer competitive premiums for comprehensive landlord cover. All in all your Association represents exceedingly good value for £40 per year so if you know of any landlords who are not members, please encourage them to join.

Immigration Act Update

This new legislation is being introduced first in the West Midlands on 1st December 2014 as part of a phased introduction across the country.

Landlords will be required to carry out “right to rent” checks for new tenancies to determine whether tenants have the right to live in the UK legally.

In the majority of cases, landlords will simply need to check the tenant’s passport or resident’s permit.

For more complicated and complex cases, there will be an on-line form and telephone number for the Home Office which is **0300 069 9799**.

Landlords’ Duties to Assess Legionella Risk

We have been advised that letters have recently been sent out to landlords from risk assessment companies and/or management agencies advising that they should commission a written risk assessment of their water supplies from a specialist supplier.

There has been no change in the legislation covering landlords and the action you need to take to manage the risk of Legionella. The Health and Safety Executive (HSE) produced a revised, simplified version of the Approved Code of Practice (ACOP) “Legionnaires’ disease. The control of bacteria in water systems: The control of bacteria in water systems L8”, in November 2013, although the responsibilities placed on landlords remain the same as the previous version of L8 ACOP published in 2001.

Landlords who provide residential accommodation (or who are responsible for the water system in their premises) have a duty to assess the risk from exposure to Legionella to their residents, guests, tenants and customers. In most residential properties where smaller domestic water systems are installed and there is regular water usage, a simple assessment should be carried out and where this shows the risks are low, no further action is required.

Don't assume no fault possessions are retaliatory evictions

Speaking at the RESI Conference 2014 Brandon Lewis MP today outlined measures to give private tenants a fairer deal, and supported provisions within Sarah Teather MP's Tenancies (Reform) Bill to end the practice of retaliatory evictions and change the system of no fault possessions.

A National Landlords Association (NLA) representative said: "Retaliatory eviction, if and where it does happen, is an unacceptable and completely unprofessional response. Tenants should be able to raise issues with their landlords without the fear of losing their home.

"However, it should not be confused with using the no fault possession procedure to end a tenancy, which in the vast majority of cases is the final resort, not a response to a request for repairs or because landlords are out for revenge. We don't talk about any other service provider seeking revenge from their customers and there is no reason to suspect landlords are any different.

"Sarah Teather's private member's Bill is aimed at tackling a perception of the 'worst case scenario', which is not the experience of the majority of renters who rely on private housing. There is a lack of hard evidence to support a need for the changes proposed and as such landlords are yet to be convinced that it is a fair or balanced approach to help end the issue of so-called 'revenge evictions'.

"Courts are already at bursting point and unable to deal with the volume of housing issues we have and this will only add to that burden. Any substantial changes to the landlord's ability to end a tenancy risks exacerbating the housing crisis by unnerving lenders, and will jeopardise much-needed investment in providing more homes for the future".

The reasons for the rise in tenant evictions is, however, less than clear: rents have risen, but only marginally. Across the UK, private rents rose by just 1% last year, well below inflation.

Form 77

A reminder for all members who have recently joined and also those who have been members for many years that we have an exclusive list of less desirable tenants called Form 77.

Your association is run by landlords for landlords and we are here to help one another and although we are all competing for good tenants, none of us will knowingly take on a tenant with a bad track record. In the office we monitor stationery downloads. Downloads of Section 8 notices far exceeds the downloads of our Form 77 register, so please support your fellow members by forwarding the relevant details **BEFORE** evicting your bad tenant.

What to do if your tenant fails to remove property following expiry/termination of lease (AST)

In circumstances where your tenant vacates, whether by way of an agreed surrender or following a possession order being granted, the case of *Campbell v Redstone Mortgages Ltd* [2014] EWHC 3081 has provided some clarification as to how you should deal with any property your tenant leaves behind.

In such a situation, a landlord will become an involuntary bailee of the tenant's property and consequently must follow certain procedures set out in the Torts (Interference with Goods) Act 1977 before it can sell or dispose of the property.

A well-drafted lease will often include a clause governing how the parties should conduct themselves at the end of the tenancy and how the tenant's property should be dealt with if it is left behind.

Campbell involved a mortgagee in possession that had made numerous efforts to facilitate the clearance by the mortgagor of its belongings. In consideration of its efforts, along with the low value of the items and the high level of arrears involved in this particular case, the High Court decided that the mortgagee had done everything it could do in the circumstances. The Court confirmed that an involuntary bailee must do what is right and reasonable to enable the mortgagor to collect her belongings and in this case the mortgagee had satisfied that test. It was therefore appropriate for it to dispose of the items rather than put them into storage or sell them.

As a landlord or management agent, it is important to approach this type of situation with caution so as to avoid a potential claim for damages from your tenant. However, the High Court has now clarified that as long as you do what is right and reasonable in the circumstances, you should be safe from such a claim. This will hopefully make it easier for landlords in the future.

Record number of evictions in 2013

A record number of tenants in England and Wales were evicted last year after court action. A total of 37,739 had their homes repossessed by court bailiffs in 2013, according to figures from the Ministry of Justice. That is the highest number since records began in the year 2000. According to the Ministry of Justice, the number of landlord possession claims in county courts was 170,451 – up 26% from 2010, while the number of mortgage possession claims over the same period fell by 29%. In cases that involved court action, 12,147 owner occupiers had to hand back the keys to their home between October and December last year. According to the Council of Mortgage Lenders (CML), a total of 28,900 owner occupiers had their homes repossessed in 2013, the lowest annual figure since 2007. The Ministry of Justice put that down to low interest rates and a “proactive approach from lenders in managing consumers in financial difficulty”. The reasons for the rise in tenant evictions is less clear: rents have risen, but only marginally. Across the UK private rents rose by just 1% Marginally. Across the UK, private rents rose by 1% last year well below inflation.

Landlords Obligations

Landlords are reminded of the importance of understanding their obligations as its latest research shows that more than a quarter of landlords have been letting for less than five years. Research conducted by the NLA showed that 27% of landlords have been letting for less than five years, with 14% per cent letting for just two years. One in five landlords has been letting for between six to ten years and just over half have been letting for more than ten years. Landlords should be aware of their obligations towards their tenants and the importance of ensuring good standards within the private rented sector (PRS) are maintained. A spokesman for the NLA said: "These findings tell us that a significant proportion of landlords have only been letting for a relatively short period of time. Even the most seasoned landlords experience problems, so it is crucial that anyone new to the industry is aware of their obligations and understands that being a landlord involves much more than simply purchasing a property." "Landlords should make sure they educate themselves as to what is expected of them, legally and professionally, especially if they plan to manage the properties themselves. Not knowing your obligations as a landlord could result in serious problems, financial as well as legal. A tenant should be safe and comfortable in their home and ignorance is no excuse." "In order to ensure good standards in the sector, anyone who is thinking of becoming a landlord should do their research first and make sure they continually keep up-to-date with legislation and good standards of practice." SWLA run various Landlord Training Courses – some which lead to Accreditation - throughout the year. If you are interested in attending a course please see our web-site **www.landlordssouthwest.co.uk** or telephone the office on **01752 510913** (*adapted from NLA information*)

New Contact Numbers for my deposits

My Deposits has changed its call centre number across all three regions. The changes have been implemented to comply with the consumer legislation which aims to ensure that consumers are not charged premium rates when calling to raise questions or make complaints about a product or service.

Please note the following numbers:

my deposits – England & Wales 0333 321 9401

my deposits – Scotland 0333 321 9402

my deposits Northern Ireland – 0333 321 94703

Warning – HMRC turns up the heat on Landlords

The tax office has stepped up its scrutiny of landlords and will send letter to thousands of buy-to-let investors whom it suspects of bending the rules to lessen their tax liability. Some 40,000 letters will be sent out over the next few months asking the recipients to make contact with the HMRC to arrange their affairs. The consequence of not doing this will be risk of a large fine or a criminal investigation. It is estimated that 5,000 landlords have already been sent letters and have 30 days to respond. HMRC calculate that £500million tax is underpaid by landlords annually. It also believes that thousands of landlords pay little or no tax on rental income and capital gains made on second properties. In October 2013 the taxman began a campaign to encourage landlords to “come clean” and will target also target landlords who have filed inaccurate tax returns.

Fewer than 500,000 taxpayers are registered with HMRC as owning second properties whilst the taxman estimates the figure to be much higher, around 1.5 million. The HMRC have set up a campaign website called Let Property (gov.uk/let-property-campaign) which offers training in tax matters via an online tutorial. The HMRC refuse to disclose how many landlords have come forward “voluntarily” since the campaign started but stated “All rent from letting out a residential property or holiday home has to be declared for income tax purposes - the message for all landlords owing tax is simple, it is better to come to us before we come to you”. The letter will state “HMRC has data related to landlords and is comparing this with what individuals have not told us. This letter is the first stage following that process as HMRC is aware you are a landlord who is letting a property and that you may be liable for tax on any income”. Landlords need to call HMRC within 30 days of the date of this letter-so if you receive one please act and respond. HMRC state that if you do not and their information indicates you have not declared or paid the correct amount of tax they will take action which could result in you paying a higher penalty or you could face criminal investigations. HMRC have contacted many Letting Agents requiring them to provide details of Landlords, properties and the amount of rents collected.

Be aware that the above may well affect you, if you have not declared Rental Income.

Council Tax Material Interest Contractual Periodic Tenancy

Putting aside tenancy deposit schemes for a moment, by far the next biggest problem for landlords is the recent council tax changes particularly affect landlords where a tenant fails to give proper notice or abandons.

When a property is unoccupied and unfurnished, the person liable for council tax is the person who has the material interest. That includes whoever has a tenancy but only if that tenancy was granted for a term of six months or more. If the tenancy is for less than six months, the liability will pass to the freeholder owner in most cases.

In *Genevieve Macatram v London Borough of Camden*[2012] EWHC (Admin,) 1033 [2012] RA 369 it was held that after a contractual tenancy has ended (not an assured shorthold tenancy) and the payment of rent is made and accepted, a new periodic tenancy is granted between landlord and tenant based on the terms of the earlier fixed term tenancy. This tenancy is a brand new tenancy and not a continuation. As a result, the tenant does not have a material interest as this new tenancy was not granted for a period of at least six months.

In *CT v Horsham District Council (HB)*[2013] UKUT 617 (AAC) was held that where an assured shorthold tenancy becomes statutory periodic after an initial fixed term (of whatever length), that new statutory periodic tenancy will not be a tenancy of six months or more and will only be a new tenancy of the period of the tenancy (e.g. one month where the rent is monthly).

However, it has been often discussed *CT v Horsham DC* relates to a statutory periodic tenancy. However, if the tenancy is like ours and does not actually end but instead continues as a contractual periodic tenancy, it has been submitted that *CT v Horsham DC* not apply because the tenancy does not end and therefore the tenancy in its continued form was granted for a term of six months or more. If that is right, the tenant will remain liable for council tax whilst the tenancy exists even without occupation agreed.

Valuation Tribunal – Contractual Periodic Tenancy Case

In the case between Trustees of the Berwick Settlement and Shropshire Council, appeal number 3245M131738/176C, the Valuation Tribunal have agreed.

A tenancy was granted from 23 July 2010 to 22 July 2011. After the expiry of the initial twelve month term, the tenancy contracted to continue from month to month. The tenants gave notice to leave on 22 July 2013 but actually left on 26 June 2013. The landlord was billed for the period 26 June 2013 (when the tenant left) until the property was re-let sometime in August. The landlord appealed in relation to the period between the tenant vacating and the tenancy actually ending (26 June to 22 July 2013).

The landlord argued that as the tenancy continued upon expiry of the initial term and did not actually end, the tenant continued to have a material interest during this period because there was a tenancy granted for a fixed term of six months or more. The billing authority's argument was that the tenancy agreement had an initial fixed term and after the expiry of the fixed term, it continued on a month to month basis. As a result, during the period in dispute, the tenants no longer possessed a material interest in the appeal dwelling, because they were monthly periodic tenants only. At paragraphs 22 the tribunal said:

The key difference between this case and Macatram is that in this case the tenants had been granted a leasehold interest for a term of six months or more and the contractual term of that lease had not ended, being extended from month to month as part of the term. The fact that they no longer held under the initial term is not, in the judgment of the Panel, a relevant consideration: the leasehold interest "was granted" (applying the words of section 6(6) of the 1992 Act) on 23 July 2010 for a term of six months or more and they continued to hold the appeal dwelling under the extended contractual term until it was agreed their notice expired. They continued to have that material interest in the whole of the dwelling. In Macatram there was no contractual provision for the original term to continue: a new tenancy had arisen by the demand and acceptance of rent.

This is only the first stage of an appeal but does agree with what has been thought for some time that tenancy agreements which do not go statutory periodic (mainly to avoid Superstrike) should ensure that the tenants remain liable for council tax even if they don't occupy until the tenancy is properly ended either by valid notice or some other way.

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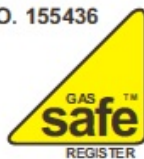
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THINK CAREFULLY BEFORE SECURING OTHER DEBTS AGAINST YOUR HOME YOUR HOME MAY BE REPOSSESSED IF YOU DO NOT KEEP UP REPAYMENTS ON YOUR MORTGAGE

New Redress Scheme

From October 1st 2014 it became a legal requirement for all letting and property management agents to be members of Government-authorised consumer redress scheme. This scheme will settle disputes between letting agents and tenants if they cannot resolve an issue between them. If agents have not joined one of three schemes which were available from October 1st they could face a fine of £5000 from the local authority or ultimately have their company shut down under the Letting Agency Work and Property management Work (Approved and Designation of Schemes) (England) Order 2013. If an agent is already a member of either the Property Ombudsman or Ombudsman Services Property, they do not need to join the Property Redress Scheme. The schemes have been set up with the aim of settling or resolving complaints made by consumers against agents, where the agent's internal complaints procedures have been exhausted and there is no other option available. The head of the new Property Redress scheme (PRS) is Sean Hooker who said that prior to the Redress Scheme there was no obligation for a letting agent or landlord to have a third party re-dress. The main purpose of redress is to deal with complaints and to act as the ombudsman. The ombudsman has the power to impose monetary compensation of up to £25,000 and also can instruct the agent to amend any mistakes they have made. The redress scheme will raise standards by helping agents to avoid complaints by putting in best practice and following codes and legal requirements. Mr Hooker also wants agents to learn from the complaints. The redress schemes will hold the letting agents accountable and help people who are not satisfied with the service they have received. Mr hooker was in Plymouth on 18th August 2014 to meet with the council and local representatives including SWLA. The redress schemes are an essential part of raising standards and creating a safe environment for landlords and tenants. Private landlords managing their own property, university owned property, people managing property on behalf of their family and council housing are all exempt. For more information on the Property Redress Scheme visit www.theprs.co.uk NOTE—If you are managing property on behalf of someone not a family member you are classed as an agent, no matter how many properties are managed.

Number of damaged properties sparks stark warning for landlords

One in three landlords (28%) have had their property damaged by tenants in the last 12 months according to the latest research. The findings estimated to affect over 400,000 of the UK's 1.5 million landlords, come as a stark reminder about the potential problems of letting property. Furthermore, the findings show that landlords in the North East were the most likely to face damage to their properties by tenants, with 46% having encountered the problem in the last year. Landlords in the South East were least likely to experience the problem with one in five (21%) having encountered damage to their properties. The survey also showed that on average one in ten – approximately 120,000 landlords in the UK have had to make an insurance claim of some kind in the last 12 months. With this in mind, SWLA is reminding all landlords to ensure they have the right protection in place to cover all eventualities and to insure their investment against the unexpected.

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We only evict as a last resort, say landlords

Landlords are reluctant to evict tenants, and when they do, it is usually for significant rent arrears or anti-social behaviour. New research by the RLA counters claims that landlords evict tenants when they ask for repairs—so-called retaliatory eviction.

According to 1,760 landlords questioned, just over half (56%) had evicted tenants. Of these, almost all were for rent arrears, followed by anti-social behaviour, damage and drug activity, while some landlords wanted possession because they needed to sell. The RLA chairman, Alan Ward said: "We have been very concerned about claims that retaliatory eviction is a widespread practice, when there is very little hard evidence. As our survey underlines, the vast majority of evictions are down to rent arrears or anti-social behaviour." Liberal Democrat MP Sarah Teather has proposed a Private member's Bill to prevent "retaliatory evictions". But landlords answering the survey overwhelmingly rejected claims that they would evict if a tenant asked for repairs.

One said: "We positively encourage our tenants to tell us about repairs needed." The RLA is particularly worried about calls for Section 21 notices to be overhauled, believing that if landlords cannot evict tenants in rent arrears or guilty of anti-social behaviour easily and cheaply, they will withdraw from the sector. There also concerns that tenants with rent arrears could put in spurious repair claims to prevent eviction. From RLA residential property investor.

SWLA working with the British property Federation contributed to the lobbying action of the RLA and wholeheartedly endorse Alan Ward's statement.

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ENGLISH HOUSING SURVEY 2012-2013

KEY FINDINGS

In 2012-2013, the private rented sector (PRS) overtook the social rented sector to become the second largest tenure in England. Of the estimated 22 million household in England, 65% (14.3 million) were owner occupied, 18% (4 million) were privately rented and 17% (3.7 million) were socially rented.

Some 3% of household in England were overcrowded in 2012-2013: 1% of were owner occupied and 6% of socially and privately rented.

Two-thirds of social renters had waited less than 1 year before being allocated a home. Less than 1 in 10 social renters waited for longer than 5 years before being allocated a home.

In 2012-2013, 61% of private renters and 23% of social renters stated that at some point in the future they expected to buy a property. Among social renters who expected to buy, the proportion who expected to buy their current home increased from 37% in 2011-2012 to 44% in 2012-2013.

The energy efficiency of the English housing stock continued to improve. Energy efficiency for all tenure groups increased between 2001 and 2012, with the largest increases seen in private rented and local authority sectors.

In 2012, 16.6 million dwellings (73% of the housing stock) could potentially have benefitted from at least one form of the energy improvement measures covered by an Energy Performance Certificate (EPC).

The number of non-decent homes in England continued to decline. In 2012, 4.9 million dwellings (22%) failed to meet the decent home standard, a reduction of 2.8 million homes since 2006 when 35% of homes failed to meet the decent home standard.

Between 2002-03 and 2012-13, the proportion of households with a working smoke alarm increased from 76% to 88%. In particular, the proportion of private rented and local authority households, has gone up from 66% and 71% respectively to 83% and 89%.

Half (51%) of homes built after 2002 had one or two bedrooms compared with 37% of older homes; 24% of homes built after 2002 had 3 bedrooms compared with 43% of older homes.

Spencer v Taylor Permission to Appeal Refused

The second development whilst away is that of Spencer v Taylor[2013] EWCA 1600 has had permission to appeal to the Supreme Court refused.

Therefore, the decision stands and where an assured shorthold tenancy was a fixed term and then a statutory periodic tenancy arises after the fixed term tenancy has ended, a section 21(1)(b) notice is sufficient which is just 2 clear months in writing with no need to expire on any particular day.

Spencer does not apply where the tenancy was periodic from the outset (commonly found with a verbal tenancy) and it probably does not apply to a tenancy which continues as a contractual periodic tenancy at the end of the initial term instead of ending. In these cases (including with our tenancy agreements) the old advice remains and a 21(1)(b) notice should be served during the fixed term and a 21(4)(a) should be served during the periodic part of the tenancy.

To avoid confusion, landlords could serve a section 21(4)(a) in all periodic cases if convenient (this depends on timing a little) because Spencer does not outlaw it's usage even where the tenancy is statutory periodic. However, if a 21(4)(a) notice has been done wrongly, Spencer will in most cases (where the tenancy is statutory periodic)the notice is valid regardless of the date of expiry.

When completing Section 21 Notices feel free to contact SWLA Office if in any doubt.

17 Breaches of HMO Rules by Darlington Landlord

A landlord in Darlington has been fined more than £30,000 for letting a house in multiple occupation (HMO) in highly hazardous conditions, which included a bedroom with a ceiling less than four feet from the floor. Mizan Adbin pleaded guilty to 17 failures to comply with the HMO regulations, as well as not having a licence, and was fined £32,070. Every room in the property was used as a bedroom, except for the bathroom and kitchen. There were no working smoke alarms or fire doors, fire exits were obstructed and many fittings were broken.

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.

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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 600567 or by email at rls@enigmaweb.com 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.

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!



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By The South West Landlords Association Ltd 30 Dale Road, Plymouth PL4 6PD

You can contact our ansaphone service on 01752 510913 or E-mail us at swlandlords@hotmail.com, visit our website at www.landlordssouthwest.co.uk
Or visit our office in Dale Road, it is open week days from 10 to 3pm

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.