



GROSS & CO.
S O L I C I T O R S

A LANDLORD'S OBLIGATIONS

A Guide for Buy to Let Investors



Gross & Co
83/84 Guildhall Street
Bury St Edmunds
Suffolk
IP33 1LN
Tel. 01284 763333
Fax 01284 762207
www.gross.co.uk

INTRODUCTION

In recent years it has become very popular for private individuals to invest money in the purchase of a second home which they have rented out under a tenancy agreement.

A lot of obligations are now placed on the Landlord of such property to ensure that the tenant is living in a safe environment.

The purpose of this brief guide is to provide some advice which will be useful for such landlords especially those embarking on this type of investment for the first time and is managing the property themselves rather than through an appointed Managing Agent.

This guide will look briefly at the following:

- The Tenancy Agreement
- The Tenancy Deposit Scheme
- Unfair Tenancy Terms
- Landlords Safety Obligations
- Energy Performance Certificates

This guide is intended for the use of Clients of Gross & Co. It provides a summary of recent developments in Landlord & tenant law but not specific advice on individual cases. We would of course be pleased to provide more detailed advice on these matters.

TENANCY AGREEMENTS

The Housing Act 1988 introduced the concept of Assured and Assured Shorthold Tenancies, allowing Landlords to grant tenancies with limited security of tenure.

Since 28th February 1997 any tenancy agreement which qualifies as an assured tenancy under the 1998 Act will almost certainly be an Assured Shorthold Tenancy (AST) and we would certainly recommend that clients use this form of agreement for letting their property.

The main advantage of an AST is that under Section 21 of the Housing Act 1988 a Landlord can obtain notice at the end of the fixed term of the tenancy by giving the tenant not less than two months notice to quit in writing. The big advantage is that the landlord will automatically be able to gain possession without having to give any reason. If the tenant does not vacate the property and court proceedings are commenced the court must give an order for possession and there is an accelerated possession procedure that can be used.

In addition when the fixed term has expired the tenancy can continue on the same terms as a statutory periodic tenancy on a month by month basis. It does not have to be renewed and the rent can be increased by following the procedures set out in Section 13 of the Housing Act 1988.

THE TENANCY DEPOSIT SCHEME

Part 6 of the Housing Act 2004 came into force on the 6th April 2007. This legislation controls the ability of private Landlords to hold deposits as security against breaches of the terms of their tenancy agreements by tenants.

The three main points of such a scheme are that:

- it safeguards deposits paid in connection with assured shorthold tenancies
- it facilitates the resolution of disputes arising in connection with such deposits
- it is either a custodial scheme or an insurance scheme

It is illegal to require the payment of a tenancy deposit in an AST which is not protected by one of the two schemes.

Custodial Scheme

The deposit is paid into a designated account and held by a scheme administrator. The deposit is paid back by agreement or court order when the tenancy ends. Most of the interest is kept by the administrator to fund the scheme.

Insurance Scheme

The landlord retains the deposit unless there is a dispute with the tenant. When the landlord must transfer the deposit into a scheme to be held until the dispute is settled. The scheme maintains adequate insurance coverage to pay the deposit to the tenant if the landlord fails to do so.

Dispute Resolution

Both types of scheme have to provide dispute resolution services so if a dispute occurs and no agreement between the parties can be reached about how much deposit should be returned to the tenant they provide a free Alternative Dispute Resolution Service to help resolve such disputes.

What are the requirements?

A landlord must:-

- deal with a deposit in accordance with an authorised scheme
- comply with the initial requirements of the scheme within 14 days of payment
- give the tenant the appropriate information relating to the deposit within 14 days of payment

Sanctions for non-compliance

Failure to comply can result in quite severe penalties:

- the landlord will be unable to obtain possession of the property under Section 21 of the Housing Act 1988
- the tenant can apply to the court for an order for the landlord to repay the deposit to them or pay it into a custodial scheme
- the court must make such an order and order the landlord to pay to the tenant an amount equivalent to three times the deposit within 14 days

Scheme Providers

The Government has awarded contracts to three companies to run these schemes:

Tenancy Deposit Solutions Limited – insurance based scheme (www.mydeposits.co.uk)

The Deposit Protection Service – the only custodial deposit scheme (www.depositprotection.com)

The Tenancy Deposit Scheme – insurance based scheme aimed at letting agents
(www.thedisputeservice.co.uk)

UNFAIR TENANCY TERMS

The general law governing unfair contractual terms in a tenancy agreement is the Unfair Contract Regulations 1999 which can be applied to protect tenants from onerous contract terms.

It would be far too exhaustive to try and list all such terms but examples can include excluding or limiting liability for death or injury, no refund terms of pre-contract deposits, excessive interest or penalty charges or binding tenants to hidden terms.

The Office of Fair Trading has issued guidance on what would be considered unfair terms in tenancy agreements at:

http://www.of.gov.uk/shared_of/consumer_leaflets/general/oft381.pdf

A LANDLORD'S SAFETY OBLIGATIONS

Good management of a tenanted property by a landlord is critical especially on safety issues. A well managed property minimises the risks but if badly managed, the risks are extremely high, both in terms of damage to the property as well as criminal prosecutions and civil liability.

Gas Equipment

Section 36 of the Gas Safety (Installation and Use) Regulations 1998 imposes the following duties on landlords:

- to ensure gas appliances, fittings and flues are safe and are maintained in a safe condition.
- to have a safety check completed on each appliance and flue EVERY 12 months and maintain records of such check including who it was carried out by, for at least two years.
- ensure works are carried out by an approved contractor.
- give copies of safety reports to any new tenants and existing tenants within 28 days of the annual check.

In practice we would recommend a landlord instruct a reputable firm of CORGI registered heating and gas engineers to carry out these checks on an annual basis, as they can be easy to overlook, and they will then diarise when the checks are due. A useful idea is to ask to keep a copy of their CORGI registration certificate on your file.

It is a criminal offence to use or allow the use of a gas appliance which is unsafe or know to be unsafe. The maximum penalty for non-compliance is £5000 but note that where death or injury occurs due to non-compliance an unlimited fine or custodial sentence can be imposed.

Furnishings

Landlords supplying furniture as part of a tenancy must make sure it complies with current fire resistance standards (BS5872) and ensure that both coverings and fittings pass ignition resistance tests as required by the Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended in 1989 and 1993).

All furniture sold since 1990 must meet fire safety regulations and must carry an appropriate permanent label to show that they comply. However, any furnishings that do not comply must be removed before the start of the tenancy.

Again the penalty for non-compliance is a £5000 fine or 6 months imprisonment or a greater penalty if a fire results and furniture is found not to comply.

In practical terms landlords need to be careful about the use of second hand and inherited furniture.

Electrical Safety

There is no statutory requirement to have annual safety checks on electrical equipment. However, under the Electrical Equipment (Safety) Regulations 1994 and The Plugs and Sockets etc. (Safety) Regulations 1994 there is an obligation to ensure that all portable electrical equipment is safe and that such equipment is correctly fitted with a standard plug. These regulations cover items such as kettles, toasters, washing machines and televisions but not built in electrical appliances and central heating systems.

We would recommend that supplied portable electrical goods are kept to an absolute bare minimum but to comply with this duty we would suggest that a landlord:-

- undertake annual visual inspections checking all supplied appliances for defects e.g. frayed wiring, badly fitted plugs.
- undertake inspections on tenant change-over recording electrical equipment and its condition.
- undertake periodic inspection of electrical equipment by a qualified electrician.
- undertake inspections every five years by a qualified electrician of all electrical systems to ensure safety and that they comply with current regulations.
- keep records of all such inspections.
- supply instruction booklets to electrical equipment to tenants to ensure safe usage.

Local Authority Trading Standards Service enforce these regulations and contravention is an offence punishable on summary conviction with imprisonment of not more than 6 months or with a fine not exceeding level 5 on the standard scale which is currently £5,000.

Housing Health and Safety Rating

Part 1 of the Housing Act 2004 introduced a new system of assessing and enforcing housing standards which came into force on the 6th April 2006. The principle is that residential premises should provide a safe and healthy environment for any potential occupier or visitor.

We do not propose to go into detail here about how the rating system works but briefly it assesses the risk associated with certain home hazards and if the likelihood of harm is significant. Local Authorities can take action to ensure the risk is removed or reduced if brought to their attention and must act where serious hazards are brought to their notice. The most likely action is to issue an enforcement notice requiring improvements to be carried out and failure to comply could result in fines of up to £5000.

We recommend that landlords should assess their properties to determine whether there are any hazards that could cause a health and safety risk to tenants and then carry out any changes to their property to reduce this risk.

A suggested process a landlord could adopt is to:

- carry out a thorough room by room inspection of the property
- identify any deficiencies and hazards
- decide what remedial work needs to be done to reduce risks and work out a timetable for work to be done
- keep a record of the programme of works and the date when finished
- re-inspect the property depending on age and type as some elements may need to be checked more frequently than others or when required by law e.g. gas appliances

HHSRS Guidance for Landlords and Property Professionals can be found at:

<http://www.communities.gov.uk/publications/housing/housinghealth>

Categories of the 29 defined hazards are:

- physiological requirements e.g. damp or mould
- psychological requirements e.g. crowding and space
- protection against infection e.g. domestic hygiene
- protection against accidents e.g. structural collapse

ENERGY PERFORMANCE CERTIFICATES

As from the 1st October 2008 landlords will be required to supply Energy performance Certificates (EPC) when buildings are rented out under the Energy Performance of Buildings (Certificates and Inspections) England and Wales Regulations 2007. The purpose of the regulations is to supply energy performance information to owners and tenants to encourage them to choose energy efficient buildings and improve the performance of existing buildings.

All landlords will be responsible for ensuring a valid certificate is made available to all prospective tenants although there is no obligation to carry out any recommendations made. The certificates are valid for 10 years.

The EPC and associated report must be made available free of charge by a landlord to a prospective tenant at the earliest opportunity and no later than:

- when any written information about the building is provided
- when a viewing is conducted
- if neither of the above occur, before entering into the contract to let

They do not have to be supplied if the landlord believes the prospective tenant is unlikely to have sufficient funds to rent the property or is not genuinely interested in renting it, the landlord is unlikely to rent to that type of person (although this does not permit unlawful discrimination) or for any lettings off plan before construction is complete.

Enforcement is again through Local Authority Trading Standard officers who will have powers to require production of the EPC and can issue a Penalty Charges Notice for breaches and may result in a fine of £200.