

This manual is a guide for landlords and agents with some experience. Although it will also be useful for the inexperienced, every reader should be aware that the laws and procedures applicable to housing are complex and this guide is not a substitute for taking professional advice from a suitably experienced person before making important decisions.

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Acknowledgements

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4. During the Tenancy

In managing a house, and providing a service to the tenant in exchange for rent, the landlord should make every effort to establish a good working relationship with the tenant. This is particularly important when dealing with access to the property or when undertaking repairs. Part of that relationship will be good communication with the tenant and ensuring that their expectations are both reasonable and accurate about the level of service that will be delivered.

4.1 Periodic and Other Visits

Landlords have a common law obligation to maintain a let property reasonably free from disrepair. The Local Authority may take enforcement action if they identify risks including, but not limited to, items of repair under the Housing Health and Safety Rating System (HHSRS) under Part 1 of the Housing Act 2004. Letting/renting a house in multiple occupation (HMO) adds specific management obligations for landlords and occupiers. These obligations have been detailed in part 2 of this manual.

The landlord, or some responsible person acting on the landlord's behalf, should visit the house regularly. Visits can also be carried out at any other reasonable time if the tenant reports a problem. This is to both identify and prioritise repairs and other works which may need doing and to ascertain whether the tenancy conditions are being met. It is good practice to visit at least quarterly. As conditions within residential premises are now risk-assessed under the HHSRS the person undertaking the visits should also be looking out for hazards.

Some visits will need to be undertaken by a qualified and competent person, for example, a suitably qualified gas engineer for annual gas safety checks or a competent electrician for periodic fire alarm checks. Tenants must have a means of contacting the landlord or letting agent at all times and there must be a procedure in place to deal adequately with emergencies. Any works, however identified, need to be resolved within a reasonable time period depending on their seriousness.

It is good practice to keep a record of all visits and/or referrals from the tenant including the proposed solution and outcome. Some landlords have a standard checklist, which provides a useful prompt of things to look for and a record of what was found. Some landlords give a copy to their tenant.

Receipts should be kept when repairs are undertaken for which the cost may be recovered through any of the tenancy deposit schemes and for tax purposes.

It's important to note that: unless the tenant agrees otherwise, a landlord must give adequate, at least 24 hours, written notice of any visit and its purpose. Some landlords include a note saying they will change the appointment to a mutually convenient date if requested and that unless the tenant objects they will let themselves in to conduct the inspection. If this procedure is used it should be incorporated into any tenancy agreement.

Any visit must not be intrusive. This could constitute harassment. Any terms in the tenancy agreement regarding access must be reasonable.

These conditions apply only to areas where the tenant or tenants (in the case of a joint tenancy) have exclusive possession. Landlords can access communal areas which remain under their control at all reasonable hours. It is normally courteous to give tenants notice of any works in these communal areas that may cause them inconvenience.

4.2 Tenant Obligations

Landlords may impose reasonable obligations on the tenant which affect their behaviour (including anti-social behaviour), and that of their visitors, through the tenancy agreement.

In addition, occupiers of HMOs have specified legal obligations under the regulations referred to above.

4.3 Entry and Refusal

Tenants have a right to quiet enjoyment of their accommodation.

Even if the landlord gives proper notice of a visit, the tenant may still legally refuse access. If a tenant refuses access the landlord should try and find out why before resorting to legal action. It may simply be the timing of the appointment and the fact that the tenant is unable to get time off work - in which case an evening or weekend appointment could be arranged.

A formal letter before any legal action may be useful. A letter should also advise that costs would be awarded against the tenant in the event that the court made an order for access. An order would be made for an inspection on a given time and date.

Only if the tenant will not make alternative arrangements or where persistent delays occur that can compromise the ability to fulfil legal obligations should a landlord consider terminating the tenancy using the prescribed legal process or seek a court order to secure access.

4.4 Emergencies

There are times when the property may have to be entered as a matter of urgency. Statutory bodies are able to do this in appropriate circumstances.

- Gas: contact the National Grid emergency number 0800 111 999;
- Water: sewer and/or flooding - contact the utility company responsible for water in the area if closing the stopcock is ineffective;
- Suspicious circumstances relating to criminal activity: liaise with the police.

Landlords who enter without the consent of the tenant or against their wishes must be able to demonstrate, if challenged, that it was reasonable to enter under the circumstances. If there was any on-going dispute between the parties a landlord should be very careful about securing a forced entry.

4.5 Changing the Terms of an Assured or an Assured Shorthold Tenancy and Tenancy Renewal

The landlord can only change the terms of the tenancy, within the contractual period of the tenancy, if the tenant agrees. It is best to agree any changes in writing.

Normally any changes are made by getting the tenant to sign a new tenancy agreement, incorporating the new terms and conditions.

If the tenancy is an assured shorthold tenancy (AST), and the tenant refuses to co-operate there is the option of serving a section 21 notice [see Chapter 5] and ending the tenancy at the end of its initial term. New terms can then be written into any new AST.

After the fixed term of a tenancy has ended, assured and assured shorthold tenancies will automatically run on as a statutory periodic tenancy, on the same terms and conditions as the preceding fixed term tenancy. The

'period' will normally be either weekly or monthly depending on how rent is paid.

There is also a procedure whereby the landlord or the tenant can propose new terms, including a new rent. This can be done, within a year of the statutory periodic tenancy starting, using a special procedure under the Housing Act 1988. There is a special form, called a section 6 notice, which needs to be used, and which has to be served on the tenant. This procedure may include a change in rent (up or down) but should not be used simply to change the rent alone (for rent-only changes, see section 13 Housing Act at section 3.6 above). Landlords can obtain the forms from law stationers and from some of the online services for landlords.

Although rarely exercised, the landlord and the tenant both have the right to apply for an independent decision by a Rent Assessment Committee if the new rent cannot be agreed.

4.6 When and If the Tenant Can Leave During the Tenancy

A tenant in a fixed term tenancy can only end the tenancy before the end of the term with the landlord's agreement (accepting the tenant's offer to 'surrender' the tenancy), or if this is allowed for by a 'break clause' in the tenancy agreement.

Where a 'break clause' exists the tenant must follow any requirements for giving notice specified in the tenancy agreement. Break clauses are comparatively rare.

If the agreement does not allow the tenant to end the tenancy early and the landlord does not agree that the tenant can surrender the agreement, the tenant will be contractually obliged to pay the landlord the rent for the entire length of the fixed term.

If the tenant wishes to surrender the property (end the letting before the end of the agreement), the landlord should try to mitigate their loss (future rent) by re-letting the property. Quite often a landlord will reach an agreement with the tenant to accept their surrender if they find a suitable replacement tenant which will ensure that the landlord suffers no loss of income.

Reasonable re-letting costs can be charged, but these and any other conditions attached to the landlord's agreement to accept the surrender should be recorded in writing before the surrender takes place.

Once a new tenant is found, the landlord cannot re-let without first accepting the surrender of the first tenancy and so there must be no 'double charging' of rent for the same period.

If the tenancy has no fixed term, the tenant must give the landlord notice in writing of their intention to leave. The tenant must give at least four weeks' notice where rent is paid on a weekly basis and at least a month's notice where rent is paid on a monthly basis. Periodic notices should end at the end of a rent period for both landlords and tenants.

4.7 Preventing, Controlling and Recovering Rent Arrears

Proper and reasonable enquires before letting will reduce the risk of arrears. These are dealt with in Chapter 3 of this manual.

It is the tenant's responsibility to make sure rent is paid in full, on time and in the manner agreed in the tenancy agreement.

Although it is not the landlord's responsibility to issue reminders or chase payments, effective procedures for managing arrears should be established because late payment is not unusual.

Landlords letting to a tenant who claims housing benefit as a means of helping them pay their rent should make themselves familiar with the housing benefit system and particularly the new system of Local Housing Allowance, and its effects on new tenancies. Arrears can occur where a landlord and/or tenant fail to complete paperwork properly and on time and claims may then not be back-dated.

In times of hardship, tenants not initially claiming benefits may need to resort to housing benefit (HB) to help pay their rent. The landlord should be sensitive to such situations and offer support to the tenant to help them submit a valid HB claim. Help may also need to be given to vulnerable tenants who lack the ability to submit a claim unaided. Offering productive support can help to reduce arrears, even though this is not a legal requirement. Landlords may wish to gain some knowledge of local advice services that can assist a tenant with housing issues.

Arrears can occur for a variety of reasons and sometimes this can be resolved between the landlord and their tenant. If the tenant is unable or unwilling to pay, or is habitually late in paying, then the landlord may terminate the tenancy using the most appropriate legal method for that particular type of tenancy. These methods are dealt with in chapter 5 of this manual.

Unless trained and skilled in the procedures to terminate a tenancy early legal assistance should be sought. Failure to follow procedures properly may mean any action will fail in court and it is important not to inadvertently harass or illegally evict the tenant as both are criminal offences.

Section 8 of the Housing Act 1988 can be used to recover possession and claim arrears owed. In general, if landlords make an error, the courts will be entitled to reject the application and sometimes the court does not have to agree with a landlord's request to terminate a tenancy, even if they agree the facts claimed are true.

Arrears may also be recovered through the County Court including the 'small claims' procedure and the court will be able to give details on how to do this. Further information is available from www.hmcourts-service.gov.uk

A county court judgment (CCJ) can affect a tenant's credit rating which in turn can affect their ability to rent in the future and can act as a deterrent to running up arrears. Obtaining a CCJ against a tenant does not mean that the landlord will automatically receive what is owed. If the tenant does not pay, the judgement (or order) can be enforced but this will involve further costs.

In incurring any court or enforcement costs landlords need to consider how likely they are to be able to recover any monies owed. Bailiffs cannot take possession of tenant's belongings if they are on hire purchase, so a tenant's apparent life-style may not be a true reflection of their ability to pay. As an alternative to using bailiffs, the judgment can be enforced by means of an attachment of earnings order where the tenant is employed, or by a third party payment order where someone else who owes the tenant money pays it to the landlord instead. A CCJ can also be used to recover money from a bank account when it is in credit.

4.8 Nuisance and Anti-Social Behaviour

Anti social behaviour (ASB) is any behaviour which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household. Examples include, but are not limited to, noise, violence, abuse, threats and use of the property for illegal drugs. Adequate checks prior to letting should minimise the risk of letting to someone who is likely to behave anti-socially and the tenancy agreement should include appropriate clauses about anti-social behaviour. Some local authorities include a licence condition for premises which require a licence under the Housing Act 2004 stating that landlords must take reasonable action to prevent and, where necessary, to remedy anti-social behaviour.

Tenants may be the perpetrator or the victim.

In all cases there is a risk of repercussions and landlords should consider their actions carefully and take advice before acting. Sometimes the police or the local authority may contact the landlord if there is a problem in one of their properties and it is important to try to work with them to resolve the situation.

A range of measures can be used including mediation, Closure Orders, Anti Social Behaviour Order (ASBO) and/or eviction depending on the circumstances and seriousness of the situation. Some councils offer mediation services but all parties have to agree to co-operate for it to work and it tends not to be appropriate in all cases, particularly in circumstances involving drugs or violence.

In cases of noise from the property contact the Environmental Health Department as they may be able to take enforcement action against the perpetrator including prosecution and seizing equipment.

If a landlord is aware of or suspects violence or drug-related activity, seek advice from the local anti-social behaviour team/coordinator or the police before acting. They may be able to assist by taking action themselves, for example by making an Anti-Social Behaviour Order on an individual or a Closure Order on the premises where anti-social behaviour is associated with Class A drugs. The latter does not terminate the tenancy but it can last for three to six months giving an opportunity to terminate the tenancy and stop the perpetrator moving back in. If a tenant is at fault, and it is safe to do so, landlords may wish to discuss the situation with them or write to them.

If evidence of the anti-social behaviour is needed, the police or the Anti Social Behaviour Coordinator may be able to help.

4.9 Smoking and the Health Act 2006

From the 1st July 2007 it has been illegal to smoke or allow smoking in enclosed public areas of properties. The Health Act 2006 provides the framework for smoke-free legislation and also creates a number of criminal offences for those who choose to ignore or break the law.

Tenants of individually let rooms (and their guests) are only permitted to smoke in those rooms with the door closed. Smoking is not permitted in the common areas of a private dwelling where the individual bedrooms are individually let. Such public areas include kitchens/living rooms, corridors, halls, stairwells, lifts or shared toilets or bath/shower rooms. It does not matter if all the tenants and guests agree that smoking in the common areas is acceptable, it is still not legal, because the shared areas are not part of any individual tenant's "dwelling". The "dwelling" is confined to the room that has been let to them.

Where tenants are renting the entire dwelling (including tenants who are renting on a joint tenancy and jointly renting the entire premises) then there are no “public areas” within their premises. The Health Act 2006 allows smoking in their shared living space, because it forms part of their dwelling. However, it would be reasonable to expect occupants to negotiate and agree arrangements for permitting and restricting smoking.

Common stairwells and entry lobbies serving flats are public areas. Where public areas are involved appropriate ‘no smoking’ signs should be clearly displayed at the entrances to and within premises in required areas. Signs must meet a number of minimum requirements. They must:

- be at least A5 size;
- display the international no-smoking symbol;
- contain, in characters that can be easily read by persons using the entrance, the words:
“*No smoking. It is against the law to smoke in these premises*”.

Inside buildings with public areas, for example at an entrance to smoke-free premises which do not form part of the public areas, signs can simply show the no-smoking symbol. This might be the case at the doorway where a person leaves the landing of a block of flats and enters the hallway of a shared flat that has been let room by room.

More detailed information about required smoke-free areas and exemptions for private dwellings can be found in the LACORS publication, Implementation of Smokefree Legislation in England and downloaded at: www.cieh.org/uploadedFiles/Core/Policy/Public_health/Smokefree_work_places_and_public_places/LACORS_guide_MAR07.pdf

Enforcement

Can be difficult. People smoking tobacco products in prohibited areas should be politely asked to desist. Tenants who refuse to desist from smoking in a public area after being asked politely to do so should be provided with a letter from their landlord advising them that their failure to adhere to this policy is a criminal offence, and that, unless the tenant complies with the law, action may be taken against them.

Some landlords have a short clause in their tenancy agreement referring to the need to comply with the requirement to have smokefree areas as defined in The Health Act 2006.

If a tenant continues to smoke then they may be in breach of their tenancy agreement and legal advice should be sought. Your Local Authority may also be able to advise you.

If no positive outcome is forthcoming and other tenants continue to complain then the landlord should take legal advice about the possibility of initiating repossession proceedings. The landlord can face criminal proceedings if they have not taken reasonable steps to stop smoking in smoke free premises.