

Linda Saunders | Lettings

"Because it's got our name on it!"



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1. INTRODUCTION

Welcome to '**A Landlord's Guide to Letting**', an informative reference tool for Landlords looking to let out their property. Designed to help Landlord's consider the consequences of letting, how today's legislation may affect them, what measures can be taken to reduce risk, the different types of tenancy and what to consider/carry out prior to going to the market. If you should have any queries in relation to the content of this brochure please do not hesitate to ask.

2. CAN I AFFORD TO RENT OUT MY PROPERTY?

Before you proceed down the route of letting your property, Landlord's should evaluate whether it is financially viable to let their property. When making a financial plan, Landlord's should take into account: -

- Any works required to the property to make it habitable i.e. decorating, purchase of furnishings and appliances (dependent on the level of furnishings provided)
- Making the property safe in relation to Gas Safety, Electrical Safety and the Fire & Furnishings Regulations (see Section 11. Landlord Safety Obligations)
- The charges made by the Letting Agent
- Factoring in 'void periods' where the property may possibly be vacant between tenancies
- Any potential upward change to your mortgage rate and/or insurance premiums
- Added insurance premiums for protecting against 'lost rent' where tenants fail to pay
- Any tax implications investigating all potential avenues carefully will protect you from possible cash shortfalls later on.

3. RENTAL ASSESSMENT

The level of rent that can be justified for a furnished or unfurnished property will be determined not only by the size of the property and its location but also by the condition of both the property & the furnishings. A well presented property with a high standard of furnishings and equipment will attract a higher rental amount and a tenant with higher standards, than those not as well presented or equipped.

With an increase in property available to rent, Landlords need to be careful that they do not overprice their property whilst at the same time achieving maximum possible rent. Similarly, each 'offer to rent' should be considered on its own merits, looking not only at the monthly rent offered but also at the quality of the Tenant(s). A Tenant with a credible, long standing and impressive credit history can often be better than a Tenant offering you your asking price but with a less than impressive record.

4. CONSENT TO LET

4.1 Mortgagee.

Where the property is subject to a mortgage the consent of your mortgagee **MUST** be obtained before you enter into a letting agreement. We would advise you to apply for this consent at the earliest opportunity to avoid delays or the possibility of losing a Tenant due to the mortgagee taking time in issuing the consent.

Where a mortgagee requires sight of a draft agreement then this will only be issued direct to them. Many of the banks and building societies will levy an administration charge to the borrower, these vary widely. Letting your property may also affect the mortgage rate you presently benefit from. If you do not inform your mortgagee you will be in breach of your mortgage conditions and your insurance may be invalidated.

4.2 Leasehold Property

If the property you intend to let is Leasehold it is very likely that you will require a letter of consent from your Landlord. If your property is in a block of flats, it is also advisable that you inform the management company of the block.

4.3 Buildings & Contents Insurance

It is essential that you advise your existing insurers of your intention to let as your existing policy may be invalidated. As a Landlord you are still responsible for buildings insurance on the property, as well as your own contents, fixtures and fittings. **LSL** are able to provide Landlords with a quotation for both buildings and contents insurance. An incoming Tenant(s) will also be advised to arrange suitable insurance cover for their own possessions.

5. LEASEHOLD PROPERTIES

5.1 Ground Rent & Service Charges

It is the ongoing responsibility of the Landlord to continue paying for any Ground Rent or Service Charges.

5.2 Restrictive Covenants

Landlords should also refer to their Lease Agreement to check for any restrictive covenants. Should you be aware of any such covenants you must inform us at the earliest opportunity and certainly before agreeing a let with a prospective Tenant – a copy of the lease will be required by us.

6. TAXATION

6.1 UK Resident for the purposes of Tax

Letting residential investment property is treated as running a business - even if you only let out one property. And if you let out more than one property in the UK, they'll all be treated as a single business. Whether you let one or several properties, you will be taxed on the overall 'net profit'.

You work this out by:

- adding together all your rental income
- adding together all your allowable expenses
- taking the allowable expenses away from the income

Calculating your net profit like this means that you can offset any loss from one property against the profits from another. Your net profit counts as part of your overall taxable income.

Letting all or part of your home

If you let your home while you live somewhere else, your profits from the rent are worked out and taxed in the same way as for residential investment lettings.

For further information see: - <https://www.gov.uk/guidance/income-tax-when-you-rent-out-a-property-working-out-your-rental-income>

It is recommended that an accountant or suitably qualified person be appointed to act on your behalf.

6.2 Non-Resident Landlords (NRL) i.e. Overseas Landlords

The Non-Resident Landlords (NRL) scheme is a scheme for taxing the UK rental income of Non-Resident Landlords. The scheme requires UK letting agents to deduct Basic Rate Tax from any rent they collect for Non-Resident Landlords. If Non-Resident Landlords do not have a UK letting agent acting for them, and the rent is more than £100 per week, their Tenants must deduct the tax. When working out the 'amount to tax' the letting agent/Tenant can take off deductible expenses.

Letting agents and/or Tenants do not have to deduct tax if HM Revenue & Customs (HMRC) tells them not to. HMRC will tell an agent/Tenant not to deduct tax if Non-Resident Landlords have successfully

applied for approval to receive rents with no tax deducted. But even though the rent may be paid with no tax deducted, it remains liable to UK tax. So Non-Resident Landlords must include it in any tax return HMRC sends them. Non-Resident Landlords can apply for approval to receive rental income with no tax deducted where: their UK tax affairs are up to date, or they have not had any UK tax obligations before they applied, or they do not expect to be liable to UK Income tax for the year in which they apply, or they are not liable to pay UK tax because they are Sovereign Immunes (these are generally foreign Heads of State, governments or government departments).

Non-Resident Landlords must apply to HMRC for an Exemption Certificate using one of the following: -

- **Form NRL1** – application by an Individual
- **Form NRL2** – application by a Company
- **Form NRL3** – application by a Trustee

For further information see: - http://www.hmrc.gov.uk/cnr/nr_landlords.htm

6.3 HM Armed Forces personnel and other Crown Servants

The Non-Resident Landlords Scheme applies to members of HM Armed Forces and other Crown Servants - for example, diplomats - if they have a 'usual place of abode' outside the UK. They are treated no differently from any other Non-Resident landlords, even though their employment duties overseas are treated as performed in the UK for the purpose of charging their salaries to tax. So if their absence from the UK is for more than 6 months, they are within the scheme.

6.4 Deductible Expenses

If you let out property you can deduct certain expenses and tax allowances from your rental income to work out your taxable profit (or loss). If you have several UK residential lettings you pool the income and expenses together. Allowable Expenses The expenses you can deduct from letting income (unless it's under the Rent a Room scheme) include: -

- letting agent's fees
- legal fees for lets of a year or less, or for renewing a lease for less than 50 years
- accountant's fees
- buildings and contents insurance
- interest on property loans
- maintenance and repairs (but not improvements)
- utility bills (like gas, water, electricity)
- rent, ground rent, service charges
- Council Tax
- services you pay for, like cleaning or gardening
- travel costs from the Landlord's home to the property, only if the purpose of travel is exclusively to do with the rental property
- other direct costs of letting the property, like phone calls, stationery, advertising
- fair 'wear & tear' for furnished residential property (10% of the net rent or the net cost of replacing the item)

Non-allowable Expenses

When you work out your profit, you cannot deduct: -

- 'capital' costs, like furniture or the property itself
- personal expenses - costs that aren't to do with your letting business

- any loss you make when you sell the property But you may be able to claim some allowances instead.

For further information see: - <https://www.gov.uk/guidance/income-tax-when-you-rent-out-a-property-working-out-your-rental-income>

Page | 7 **7. TENANCY AGREEMENT**

The Tenancy Agreement is the contract between the Landlord and Tenant. The Letting Agent is not a party to the agreement. The Terms of the Tenancy Agreement are known as the Landlords and Tenants Contractual Obligations. The prime contractual obligations for the Landlord are: -

- To pay ground rent and service charges (where applicable)
- To maintain the structure of the property
- To insure the building and the Landlords contents, fixtures and fittings
- To allow the Tenant to quietly possess and enjoy the property
- To provide warranties regarding the Landlords statutory responsibilities

The prime contractual obligations of the Tenant are: -

- To pay the rent
- To pay council tax, gas, electricity, oil, water and telephone
- To pay for a TV licence
- To pay interest on late payment of rent
- To look after the property, keep the property clean and in good repair
- To maintain the garden (if applicable)
- To observe the covenants of any Head Lease
- To allow access to Landlord/workmen/letting agent
- To take reasonable precautions in relation to burst water pipes, leaks, freezing and burglaries
- To notify the Letting Agent of any damages
- To leave the property at the end of the tenancy properly cleaned – carpets, curtains, furnishings etc
- To NOT assign or sub-let the property
- To NOT use the property for business purposes
- To NOT remove the contents
- To NOT interfere with the structure of the property
- To NOT redecorate the property
- To NOT cause or permit a nuisance

The Housing Act 1996 states that a Tenancy Agreement (provided it meets the necessary criteria*) will automatically be an Assured Shorthold Tenancy (AST) unless the Agreement states otherwise. * The necessary criteria are: -

1. The Tenant must be an individual – therefore it follows that an AST cannot be granted to a company
2. The Tenant must occupy the property as their principal home
3. The annual rent must not exceed £25,000 – this is the actual rent only and does not include an amount paid for services (cleaning, gardener etc)
4. There must NOT be a Resident Landlord

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NB a property with more than 2 acres of land cannot be subject to an AST or Assured Tenancy.

The Housing Act provides for two types of Tenancy Agreement, these are; -

7.1 Assured Shorthold Tenancy (AST) – the default Agreement and most commonly used

This Agreement can be for any length of time up to a maximum of 3 years – leases over 3 years should be created by Deed. The Court will not make an Order for Possession until 6 months have expired. Consequently most AST's are for periods of 6 or 12 months, with the common option to renew by the same period again. Provided the Landlord and/or his Agent serve the required Notice, then the Tenants have NO right to remain in the property at the end of the Tenancy period and must leave. Similarly, if the Tenancy Agreement is for 12 months, the Tenant is contractually committed for 12 months – unless optional Break Clauses have been added. A Landlord must give at least two month's notice on the tenant, whereas the Tenant only needs to give one month's notice of their intention to quit at the end of the Tenancy.

An extension to the Tenancy can be agreed between Landlord and Tenant for either another Fixed Term. If Agreement is not reached and notice is not served at the end of the Tenancy, the Tenancy will automatically become a 'Periodic Tenancy'. Periodic can be, for example, on a monthly basis dependant on the original rental payments, which will continue for further periods of that length until either party serves notice.

THIS IS THE MOST COMMONLY USED TENANCY AGREEMENT AND THE ONE THAT LINDA SAUNDERS LETTINGS STRONGLY RECOMMENDS AS IT PROVIDES BEST PROTECTION TO THE LANDLORD – GUARANTEED PERIOD WITH POSSESSION AT THE END. WE WILL ALWAYS ARRANGE AN ASSURED SHORTHOLD TENANCY UNLESS OTHERWISE INSTRUCTED OR IF THE TENANCY FALLS WITHIN ANOTHER CATEGORY SUCH AS A COMPANY LET.

7.2 Assured Tenancy

This Agreement can be for any length of time, but the main difference is that the Landlord cannot bring the Tenancy to an end at the end of the period without a Court Order and to do this he must satisfy the Court of one of the 17 Grounds for Possession under the Housing Act. In addition the Tenant can give notice to leave at any time by giving one month's notice. The Tenant does NOT have to stay for the fixed term.

Not as common, this type of Tenancy affords the Landlord very little security as (a) he will have to apply to the Court to gain Possession and (b) the Tenant can leave at any time giving just one month's notice.

7.3 Non Housing Act Tenancy (Contractual Tenancy)

When you are unable to establish all of the 4 criteria to establish an AST, you create a Non Housing Act (NHA) Tenancy. This is just like any other contract. The Landlord decides the terms of it and provided it does not contravene the Unfair Contracts Terms Act, the parties are bound by it. The most common type of Contractual Tenancy is the Company Let.

The terms of the NHA Tenancy almost mirror those of the AST, however, any references to the Housing Act are omitted as clearly they do not apply. The Landlord does not have the same protection as with a Housing Act Tenancy but can still sue for Breach of Contract where the Defendant is in breach of the terms of the contract i.e. he does not pay his rent or fails to leave at the end of the fixed term. Our recommendation to Landlords is to always use an Assured Shorthold Tenancy (AST) for the reasons stated already.

7.4 Military/Diplomatic Lets

Occasionally a Landlord may receive an offer to rent from someone working for the Military or employed by our Government or a foreign Government. In these cases the Tenant (the Military Service or the relevant Government) may wish to use its own Tenancy Agreement or adapt our standard NHA Agreement. This is not uncommon and in most instances will differ in relation to a Break Clause. As these Tenants often require their personnel to relocate at short notice, it is not unusual to have a 3 year NHA Agreement with a 1 month notice Break Clause, to allow the occupier to relocate almost immediately.

The benefit of a Military or Government let is the security of rent being paid on time and in full, whilst the negative (albeit very small) is the potential that the Tenant may serve notice at any time. We will advise Landlords accordingly when such a situation occurs.

7.5 Special Clauses

The needs of Tenants and the flexibility of Landlords cannot always 'fit' into a standard Tenancy Agreement. Consequently, there are Special Clauses which can be added into a Tenancy Agreement to suit specific needs. Examples of these are: -

- **No Smoking** – prohibiting the Tenant and any visitors from smoking within the property
- **Smoking** – allowing Tenants to smoke within the property but requiring them to redecorate all walls & ceilings and professionally clean all upholstery at the end of the Tenancy at their expense
- **Consent to Keep Pets** - consent to keep pets and the conditions attached i.e. cleaning of the property professionally at the end of the tenancy and/or the tenant indemnifying the Landlord against any related infestation treatment required, all at the Tenants expense
- **Break Clauses** - for either the Landlord or the Tenant or both i.e. a 12 month AST is entered into but a Break Clause is entered in month 9 for the Tenant to break early should they wish
- **Changing Locks** – permission for the Tenant to change door and/or window locks to the property as long as they provide spare keys to the Landlord and their Agent, at the Tenants expense
- **Sharers** – adding additional clauses to prohibit the subletting of any part of the property and to prohibit other persons residing at the property except for visitors staying (eg) for less than 10 days
- **Death of Landlord** – bringing the Tenancy to an early end should the Landlord die
- **Removing Furniture** – agreement to the Tenant removing, storing furniture and insuring, from a furnished let as they have their own, at the Tenants expense
- **Redecoration** – allowing the Tenant to redecorate but, for example, only in certain colours
- **Waiving of Diplomatic Rights** – where a Diplomat agrees to waive his Diplomatic Rights, therefore allowing his contractual obligations under the Tenancy Agreement to be enforceable
- **Pre-Agreed Continuation** - A pre-agreed continuation of an AST i.e. if the initial let is for 6 months, a clause can be added pre-agreeing an extension for a further 6 months. A pre-agreed rent increase can also be factored in for the extension i.e. by the increase in the Retail Price Index These are a just a few examples of Special Clauses available to tailor Agreements to the needs of all parties.

7.6 Stamp Duty Land Tax

Tenants are liable to pay the Stamp Duty Land Tax for tenancies with a rental value of £125,000 or more including any renewal or extension of the initial term. The Stamp Duty Land Tax may not be applicable in the first year of a Tenancy but may well be in subsequent years if the combined total value exceeds £125,000.

Page | 10 8. PREMIUM LEASES

A Premium Lease is a hybrid of a Tenancy Agreement and a Residential Lease, which conforms to HMRC's (Her Majesty's Revenue and Customs) rules for Premium Leases.

A Premium Lease is a lease that is granted for a minimum period of 15 months. The Lessee (the Tenant) is buying a legal interest in the property for a fixed period. The Lessor (the Landlord) lets the property to the Lessee for a premium, which is the rent, paid in advance in one lump sum (i.e. no monthly payments).

There is no possibility of a refund of the premium in any circumstances. In addition to the premium the Tenant will have to pay ground rent at a nominal amount per annum. Please note: -

- The Lessee must always be a Company
- The Lease is a deed and must be signed as a deed and witnessed

Why would a Tenant want one?

- By offering to pay the whole rent in advance the Tenant may be able to negotiate a discount
- The Tenant may have tax reasons to why they would wish to make such an expenditure in one tax year
- The Tenant would have security for the length of the lease
- To provide the Tenant a home as soon as is practicable in the most tax efficient manner The downside to the Tenant is lack of flexibility, no break clause and therefore they are committed to the fixed term. Why would a Landlord want one?

- Guaranteed rent for the whole term
- No 'void' period's over the term
- Lessee is not able to break or terminate the Lease The downside to the Landlord is that he will be receiving all of the rent in one tax year and will therefore only be able to offset expenditure for that year. It is highly probable that the Landlord will have expenditure in the following years but will have no income to offset this against.

Premium Leases are very rare and usually arise when a Company approaches a Letting Agent with this specific request.

9. HOUSES IN MULTIPLE OCCUPANCY (HMO)

Landlords with larger properties need to consider, and seek further advice if applicable, whether their property could be classified as a HMO. The Housing Act 2004 introduced several important new provisions with regards to fitness standards (fitness to let) and licensing. Multi occupied, multi storey dwellings such as bedsits, houses and converted flats, are at the greatest risk of fire but often house the poorest and most vulnerable people.

Properties that meet the classification criteria of HMO's are required to be licensed by their local authority. Licensing, as one would expect, requires certain key standards to be achieved, such as (but not limited to): -

- Making the property suitable for habitation
- Meeting minimum standards in terms of the number of bathrooms, kitchens, washbasins, toilets etc
- Ensuring the property is managed by someone who is competent and fit to manage it
- Ensuring that the property meets the minimum standards of safety

The present Government's view is that **Mandatory Licensing** should apply to properties that are **3 storeys with 5 or more occupants which comprise two or more households**. The following are classed as households: -

- Couples married to each other or living together as husband/wife (incl. couples of the same sex)
- Relatives living together (parents, grandparents, children, uncles, aunts etc)
- Half relatives are treated as full relatives
- Foster children living with foster parents count as one household
- Domestic staff are also included provided that they are living rent free in the accommodation provided by the person for whom they are working

Therefore 3 friends sharing a property together are considered to be 3 households.

In addition to Mandatory Licensing, Local Authorities have the power to formulate Additional Licensing and Selective Licensing. Therefore, if a Landlord believes that their property might be classed as a HMO, they should always consult with their Local Authority prior to going to the market.

As a Company we operate a Policy whereby we will not let a property to more than 4 Sharers so that we do not inadvertently create a Tenancy which could be subject to HMO Licensing.

10. LANDLORD SAFETY OBLIGATIONS

Under common law, Landlords have a duty to ensure the safety of rented property and its contents so that Tenants, occupants, neighbours or the public do not suffer injury or damage.

Recent legislation has clarified and defined these liabilities in certain areas. If an accident occurs in or outside a rented property that is due to lack of maintenance or as a result of a breach of legislation, Landlords may be sued or prosecuted by the local authority; failure to comply with safety legislation is a criminal offence.

We detail below the implications and requirements of the most obvious statutory safety legislation applicable to rented property. However this information is not an authoritative statement and we can take no responsibility for loss occasioned to any person acting or refraining from action as a result of any material contained herein. Should you require further clarification we suggest you contact your solicitor.

10.1 The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (amended 1989 and 1993)

From 1st January 1997 all furniture and furnishings supplied, whether new or old (or second-hand) and whether or not incorporated in a letting, must comply with the 1988 regulations. Where a Tenancy existed prior to that date the furniture has to comply at the next change of Tenant.

The cover fabric and filling material of the upholstered furniture should be made of fire resistant material and be able to pass the "smouldering cigarette" and "match flame" resistance test and carry a label confirming this. Generally, items manufactured in the UK after 1990 are likely to meet the required standards and display the appropriate permanent label confirming its compliance.

Items the regulations apply to:

1. Three piece suites, sofas, arm chairs and children's furniture
2. Scatter cushions, seat pads, bean bags
3. Beds, padded headboards, mattresses, pillows
4. Convertible sofa beds, futons
5. Loose and stretch covers for upholstered furniture
6. Nursery furniture, garden furniture suitable for indoor use

Items the regulations do NOT apply to: -

1. Antique furniture or any furniture manufactured prior to 1950
2. Carpets, curtains
3. Pillow cases, duvets, bed linen
4. Loose covers for mattresses
5. Sleeping bags

All furniture that must comply with the regulations MUST have a label clearly showing that they are fire-resistant.

Any new or additional furniture being put into a property already on the rental market must also comply with the regulations. Any new soft furnishings purchased from 1988 had to meet the Fire regulations and should have the relevant labels attached. If these are not then alternative proof of compliance must be provided (i.e. receipt of purchase).

Display labels The Regulations contain full-size illustrations of display labels in colour. Reduced sized illustrations are shown below to explain the meaning of the labels. Appropriate to new furniture which meets the filling requirements and is cigarette resistant, that is baby nests. The word "product" may be substituted for the word "furniture" on the second side of this label.

Appropriate to new furniture which meets the filling requirements and is both cigarette and match resistant. Appropriate to new furniture with a limited range of cover fabrics. The cover fabric is not match resistant, but the furniture has an 'interliner' which passes the specified test. The furniture meets the filling requirements and is cigarette resistant.

The implications to a Landlord for non compliance with these regulations are: -

- A fine of £5000 per non-compliant item
- Six months imprisonment • Possible manslaughter charges in the event of death
- Tenant may also sue for civil damages
- Property insurance could be invalidated.

10.2 The Gas Safety (Installation & Use) Regulations 1998

The Gas Regulations require that any person letting a property must ensure that any gas appliances, installation pipe work and flues in that property are maintained in a safe condition so as to prevent risk of injury to any person by ensuring that all such appliances, pipe work and flues are checked annually by an approved contractor. They also require that a record be kept of these checks for at least two years and the latest certificate be issued to existing and any new Tenants before they move in. All gas contractors must be CORGI registered.

The regulations state that failure to give a copy of the Gas Safety Record to each Tenant prior to occupying the property or within 28 days of the annual renewal of the record is a criminal offence which could carry a penalty of imprisonment or a fine. In the event of death, Landlords have been charged with manslaughter.

The central provision of these regulations, require that: -

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1. The Landlord of a rented property must have a gas safety check carried out prior to a let and annually thereafter. A copy of the appropriate record must be given to the tenants. Gas fittings and fires must be maintained in a safe condition.
2. If any appliance or pipework is dangerous or defective it must not be used and must be repaired or replaced as soon as possible.
3. The gas safety check can only be performed by an authorised CORGI registered engineer qualified to work on the particular type of appliances or systems.

In general terms the check itself will relate to the following: -

1. Adequate ventilation and flues
2. Operating pressures
3. Heat output
4. Flame combustion
5. Escape of gas or dangerous fumes
6. Obvious defects
7. Where appropriate the provision of adequate instructions for use of equipment or appliances

It should be noted that a standard annual "service" of equipment or appliances would not normally be sufficiently detailed to comply with and satisfy the requirements of the regulations. Where a property has failed a Gas Safety Check, under no circumstances should a Tenant occupy the property – even if the gas mains supply is turned off. If there is no gas in the property we insist that a Landlord provides us with a signed letter confirming the same.

LSL are able to arrange for a Corgi Registered Engineer to inspect your property, please ask for further details and costs.

10.3 The Electrical Equipment (Safety) Regulations 1994, and the Plugs and Sockets etc. (Safety) Regulations 1994 and the Consumer Protection Act 1987

Landlords must ensure that the electrical system and all appliances supplied in a rented property are safe and will not cause danger. Failure to comply with these regulations may result in: -

- A fine of £5,000 per item not complying
- Six months imprisonment
- Possible manslaughter charges in the event of deaths
- The Tenant may also sue you for civil damages
- Your property insurance may be invalidated

These regulations are enforced by the Health & Safety Executive. It is important to insure that all electrical appliances and fittings within the property are safe and in good working order. Unlike gas regulations, there is no law that says you must have a Landlord electrical safety certificate. But, should any electrical fittings or appliances within your rental property cause harm to a Tenant you could be held liable. The Tenant could sue you for damages, or worse you may be brought before a Court for negligence under the regulations.

In January 2005 new legislation under Part P of the Building Regulations made it a requirement that certain types of electrical work in dwellings, plus garages, sheds, greenhouses and outbuildings comply with the standards. This means a competent electrician must carry out the work. For DIY electrical work

you must belong to one of the Government's approved Competent Person Self-Certification schemes or submit a building notice to the local authority before doing the work.

What items should be checked?

1. Electric cookers, microwaves
2. Toasters, kettles, TV's, video players
3. Washing machines, tumble dryers, dishwashers
4. Immersion heaters, electric blankets
5. Fuses, circuit breakers
6. Electric lawnmowers or similar garden equipment

Whilst there is not at present a specific statutory requirement placed upon a Landlord to prove that such items are regularly checked or tested by a qualified electrical engineer, **LSL** strongly recommended that Landlords do so.

Due Diligence

In the event of a Tenant complaint or an incident the defence of "due diligence" may be accepted where it can be shown that the Landlord or Agent took all reasonable steps to avoid committing an offence - documentary evidence will be needed.

What Reasonable Steps?

Portable Appliance Test (PAT) An electric appliance may be classed as "portable" if connected to the mains by way of a flexible lead and plug. The Health & Safety Executive states that 25% of all reportable electrical accidents involve portable appliances. A PAT Test involves a series of inspections and electrical tests on each item. These tests vary depending on the class of the item.

A visual inspection is carried out to check for faults /damage to the: -

- Plug Casing- (cracked or scorch marked)
- Damage to the flex of the appliance. (Cracked or cut)
- The wiring of the plug is checked to ensure correct and secure termination
- The fuse rating of the plug is checked Then a sequence of electrical tests are performed depending on the class of the equipment: -
- Insulation test
- Earth continuity test
- Touch leakage test
- Leakage test
- Polarity test

The cord or cable **MUST** be checked to comply with IEE best practice.

A PAT Test should be carried out at least annually, but we also strongly recommend that one is carried out at the commencement of each new let – therefore a PAT Test may be required every 6 months. The Department for Communities & Local Government (DCLG) guidance indicates that when accommodation is re-let, the electrical appliances will be classed as being supplied to that Tenant for the first time, and should therefore be re-checked.

LSL are able to arrange for a PAT Test on your behalf, please ask for further details and costs.

Periodic Electrical Inspection (Fixed Wiring Test – FWT) A Landlord can only prove the safety of the dwelling has been tested in accordance with British Standard 7671 – Requirements for Electrical Installations, by carrying out a Periodic Electrical Inspection. Ultimately the test report (and the

completion of any recommendations made) would provide a good defence in the event that loss or damage was suffered as a result of the operation of a defective (and untested) electrical system.

The PEI is a test carried out by a qualified NICEIC (National Inspection Council for Electrical Installation Contracting) approved electrician. The test concentrates on the safety elements of the system and compliance to BS 7671 – which include circuit breakers, fuses, sockets, wiring, earthing, bonding and protection against electric shock.

The electrician will recommend when the next test is to be carried out, usually at intervals of between 5-10 years if the installation is found to be satisfactory. However, if the engineer makes observations and recommendations concerning areas of the installation which are adversely affecting electrical safety, the interval could be as little as 12 months. The recommendations will need to be carried out immediately to ensure the Tenants continued safety.

An NICEIC approved electrician would charge approximately between £120-£160 + VAT for a test; however the cost is dependent on the size of the property and number of fuse boards.

LSL are able to arrange for a PEI on your behalf, please ask for further details and costs.

10.4 Smoke Alarms

Private sector landlords are required from 1 October 2015 to have at least one smoke alarm installed on every storey of their properties and a carbon monoxide alarm in any room containing a solid fuel burning appliance (eg a coal fire, wood burning stove). After that, the landlord must make sure the alarms are in working order at the start of each new tenancy.

The requirements will be enforced by local authorities who can impose a fine of up to £5,000 where a landlord fails to comply with a remedial notice.

LSL recommends a carbon monoxide alarm is put in any room with a gas appliance and open fire.

10.5 Legionella Risk Assessments

Landlords of residential accommodation have responsibilities for combating Legionnaires' Disease. Health and safety legislation requires that landlords carry out risk assessments for the Legionella bacteria which cause Legionnaires' Disease and thereafter maintain control measures to minimise the risk. Most rented premises will be low risk but it is important that risk assessments are carried out and control measures introduced.

11. ENERGY PERFORMANCE CERTIFICATES (EPC)

From October 1st 2008 it is mandatory for landlords of residential rented property to provide all new Tenants with an Energy Performance Certificate. If a rented property already has a Tenant in occupation on the 1st October, the Landlord will not require an EPC until that Tenant changes.

An Energy Performance Certificate (EPC) gives home owners and Tenants information on the energy efficiency of the property. It gives the building a standard energy and carbon emission efficiency grade from 'A' to 'G', where 'A' is the best and with the average to date being D/E.

For rented homes two ratings are shown on the EPC – (1) Energy Efficiency Rating and (2) Environmental Impact (CO²) Rating.

(1) The higher the rating, the more energy efficient the home is, and the lower the fuel bills are likely to be. (2) The environmental impact rating is a measure of the home's impact on the environment in terms of carbon dioxide (CO²) – the higher the rating, the less impact it has on the environment.

Each rating is based on the performance of the building itself and its services such as heating and lighting, rather than the domestic appliances within in. This is known as asset rating. The certificate also lists the potential rating of the building if all the cost-effective measures were installed.

The ratings will vary according to the age, location, size and condition of the building. The potential rating on the certificate will take these factors in account, and the suggested measures will be tailored so that they are realistic for the particular building.

The EPC and recommendation report must be made available free of charge by the Landlord to a prospective Tenant at the earliest opportunity and no later than:

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- when any written information about the building is provided in response to a request for information received from the prospective Tenant; or
- when a viewing is conducted; or
- if neither of the above occur, before the Tenant signs the Tenancy Agreement

As soon as we agree a new tenancy which commences on or after the 1st of October 2008, unless we hear to the contrary, **LSL** will arrange for an EPC to be carried out conveniently, professionally and at a competitive price.

12. PROTECTING THE LANDLORD'S PROPERTY

12.1 Tenancy Deposit

It is usual for Tenants to give their Landlords a Deposit (normally equivalent to one and a half's month's rent) against possible non-payment of rent or damage to property. When a tenancy comes to an end, there is usually no disagreement about the return of the Deposit, but sometimes there is and this can cause much hardship and inconvenience to both Landlord and Tenant.

The Housing Act 2004 made provision for both the protection of Tenancy Deposits and the resolution of disputes over their return. The Government awarded contracts to three Companies to manage Tenancy Deposits in accordance with the legislation laid down. **LSL** are members of the Deposit protection Service. The legislation came into effect on the 6th April 2007 and after that date all deposits taken for Assured Shorthold Tenancies had to be covered by a Tenancy Deposit Protection Scheme.

What are the new legislative requirements?

- any Landlord or Agent who takes a deposit from a Tenant for an Assured Shorthold Tenancy must safeguard it in an approved Tenancy Deposit Scheme...
- ...and the Tenant must be told which one
- the Deposit must be in money
- Landlords in breach of these provisions will not be able to issue Section 21 notices (to terminate the Tenancy) and may also have to pay the Tenant compensation of three times the Deposit
- the Landlord or Agent must submit the Deposit to the operators of their scheme within 30 days of the contract.
- each scheme must have procedures for resolving disputes without going to Court
- there are strict time limits for the return of the Deposit if there is no dispute
- the Act allows for both Custodial and Insurance Backed schemes.

Custodial schemes are where the Deposit is lodged with an independent third party i.e. outside the control of the Landlord or Agent. Insurance Backed schemes allow the Landlord or Agent to retain control of the Deposit as long as they are subject to suitable Insurance arrangements

What is the DPS (Deposit Protection Service)?

The Deposit Protection Service (The DPS) is the only custodial scheme authorised by the Government. We require that the money you paid to your landlord/letting agent is physically paid over to us to

safeguard for the duration of the tenancy. The deposit will be repaid at the end of the tenancy when both parties have reached agreement on its distribution.

What happens if we can't agree on how the deposit is repaid?

The DPS run an independent Alternative Dispute Resolution (ADR) service which aims to resolve any dispute quickly and without the need for court action. It is an evidence-based adjudication service, but requires the consent of both parties.

12.2 Inventory and Schedule of Condition

This service is strongly recommended and unless otherwise instructed we will make the necessary arrangements for this highly specialised service to compile the inventory. Our Inventories: -

- are professionally prepared
 - include a Schedule of Condition
 - are carried out by experienced Inventory Clerks, who will attend the Check-In and Check Out, and prepare reports
- Costs for compiling and checking the Inventory will vary according to the size of the property, level of furnishings and time required to undertake this service.

We will not accept any responsibility should Landlords prefer to carry out their own Inventory formalities. In order to protect all/part of the Tenancy Deposit paid by the Tenant at the commencement of a Tenancy, in the case of a dispute at the end for payment towards any damage caused or non-payment of rent, it is essential to have a comprehensive Inventory and Schedule of Condition in place as evidence. The Independent case Examiner (ICE) at the Dispute Service will rely heavily on the contents of the Inventory and Schedule of Condition.

13. PROTECTING AGAINST NON-PAYMENT OF RENT

13.1 Tenant Referencing

Once a Tenant has moved into a rental property, how can you make sure that they (a) can afford to pay their rent and (b) will pay their rent? Short of actually living with your tenants, nobody can guarantee their behaviour.

However, Landlords can minimise the risk of things going wrong by ensuring that Tenants are professionally and adequately referenced prior to occupying the property. At **LSL** we have partnered with Rent4Sure.

13.2 Rent Protection and Legal Expenses Insurance

Even with thorough referencing, Tenants can lose their job, couples can split up or other unplanned financial hardships can arise. Landlords should arrange suitable insurance cover to at least ensure the rent is paid. Quite often Landlords who have decided to let out their 'home' in order to move, as they have had difficulties selling, will still be encumbered with their existing mortgage payment as well as possibly another mortgage payment or rental payment on the property they move to. These Landlords cannot afford for their Tenant not to pay in full and on time.

LSL offers Landlords with a tailored product to ensure rent is still paid.

Further details are available on request.

13.3 Rent Arrears

Where **LSL** are instructed on a Let Only basis (see Section 18.1 Let Only) we will process payment of the first month's rent only. Thereafter the Tenant will pay rent direct to the Landlord and the Landlord will be responsible for the day to day management of the property, including (but not limited to) rent collection, rent arrears and any breaches of the Tenancy Agreement.

Where **LSL** are instructed on a Full Management basis (see appendix), the following will apply: - We will advise Landlords as soon as we become aware of rent arrears and adopt our internal arrears procedure. If it becomes necessary to take legal action Landlords will be responsible for instructing their own Solicitor and for all fees arising.

If a Landlord has taken advantage of our recommended Rent Protection Insurance products through our partner, Rent4Sure, we will advise Rent4Sure of the arrears and they will take over the chasing of rent, and in the case of failure on the part of the Tenant to pay, begin legal proceedings to evict them. Rent will be paid by Rent4Sure to the Landlord (via **LSL**), subject to the conditions of the product bought by the Landlord.

14. PROPERTY MANAGEMENT SERVICE

14.1 LSL Management Services

Where **LSL** are instructed on a Let Only or Full Management basis, we will provide the services as detailed later. In order to best serve our customers we deal with this in house at our office in Bridgwater.

14.2 Transfer of Rents

We insist upon Tenants paying their rent via Standing Order. Our aim is to automatically transfer any rents received, to the Landlords bank within as few working days as possible. We must, of course, have cleared funds in our account.

14.3 Tenant Infringements (Full Management Service ONLY)

We will inform the Landlord of any breaches of contract brought to our attention. If it is necessary to enlist the services of a solicitor in respect of the letting, the Landlord will be responsible for instructing him and for all fees incurred.

14.4 Repairs and Routine Maintenance (Full Management Service ONLY)

We will investigate any faults reported at a property and instruct contractors to carry out repairs. In the case of minor repairs or emergencies these works will be carried out immediately without reference to the Landlord providing we are holding sufficient funds. Otherwise the cost is normally deducted from the next month's rent payment.

Where major works are necessary, for example, roofing, replacement of a boiler or re-decoration, an estimate will be obtained and sent to the Landlord for approval.

14.5 Contractors (Full Management Service ONLY)

In the majority of cases we are happy to use the Landlord's own contractors. However, we reserve the right to instruct our own contractors in the case of emergency or if the Landlord's contractor is unable to undertake the work necessary within a reasonable length of time.

14.6 Payment of Outgoings (Full Management Service ONLY)

We will pay property related bills (with the exception of mortgage payments) on the Landlords behalf and account to the Landlord monthly.

We are unable to make payment of any outgoings from our funds therefore we require sufficient monies to be available at all times.

14.7 Property Visits (Full Management Service ONLY)

Our Full Management Service does not include as standard Property Visits when the Property is vacant. The function of an Inventory and Schedule of Condition is to ensure the provision and return of the Property in the same condition, subject obviously to 'fair wear & tear'.

We carry out inspections every 3 to 6 months. (Tenant and Landlord depending) If a Landlord wishes us to carry out other Property Visits, there will be an additional charge per visit. Visits are generally carried out every three months. These visits should not be relied upon to pick up any structural defects and does not include lofts.

We cannot accept any responsibility for hidden or latent defects or for failure to notice anything concealed from our employees, representatives or agents.

15. TENANT SELECTION

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When deciding to let a property, Landlords should consider on what basis they will let the property and what type of Tenant they will accept.

15.1 Smokers

If a Landlord refuses to allow Tenants to smoke in the property they are potentially restricting the 'pool' of possible Tenants who may be interested in renting the property. However, by allowing Tenants to smoke in the property Landlords run the risk of the fabrics, furnishings and décor becoming smoke damaged.

There are, as previously documented, Special Clauses which can be inserted within the Tenancy Agreement to ensure that Tenants take the necessary measures at the end of the Tenancy to return the property in the same condition, allowing for 'fair wear and tear'. For example, the requirement for the Tenant to professionally clean all fabrics, curtains, upholstery and carpets, and to redecorate all walls and ceilings throughout the property.

Alternatively the Landlord can simply stipulate that the Tenant must not smoke within the property, but still include the obligation for them to clean and redecorate, should it be later discovered that they did smoke within the property.

15.2 Children

In some rare instances Landlords will insist that they do not want families with children as Tenants. This is mostly due to the presumption that children will cause more damage to a property. However, Tenants with children sign exactly the same type of contract as Tenants who do not, requiring them to return the property at the end of the Tenancy in the same condition as when they moved in. Consequently if damage is caused the Tenant will have to make good the damage or be prepared to accept that monies will be retained from the Tenancy Deposit to affect repairs.

15.3 Pets

If a Landlord is willing to accept a Tenant with a pet (or pets), Special Clauses can be added to the Tenancy Agreement to ensure that the property is returned in the same condition at the end of the Tenancy. These Clauses can include the requirement for a Tenant to professionally clean all fabrics, curtains, upholstery and carpets, and to have the property treated for any related infestation.

15.4 Sharers

Whether Landlords accept sharers is a matter of personal choice. There are rarely any problems and if there are, they tend to be associated with young sharers i.e. friends who have left home for the first time or just left college. Obviously there is a greater chance of three people not getting on than two, however, sharers are jointly and severally liable: this gives them all equal responsibility for adhering to the terms and conditions contained in the Tenancy Agreement and makes each and every one of them responsible for the whole rent. All sharers should be named on a Tenancy Agreement. During the fixed term all sharers are bound by the terms of the Agreement – if there is a Break Clause it is only effective if all the Tenants agree to it by serving the necessary notice. If they do not all agree, then the notice is ineffective. However, when the Tenancy is periodic (when the fixed term has expired) any single Tenant can bring the Tenancy to an end.

15.5 Unsatisfactory References/Guarantors

Where the results of a Tenant's referencing are 'unsatisfactory', it is still possible to proceed with a let should the Landlord wish to do so.

Landlord Proceeds Regardless

If the Landlord decides to proceed despite unsatisfactory references, and against the advice of the agent, we will require a letter from the Landlord confirming that this is his decision, with the full knowledge of the results of the referencing.

Page | 20 Rent in Advance

If the proposed let is for, say, 6 months, a Landlord may agree to proceed as long as this rent is paid in its entirety upfront. In this situation we will require a letter from the Landlord confirming that this is his decision, with the full knowledge of the results of the referencing. Landlords need to be aware, that whilst this will protect their rent for the initial Tenancy Period, if the Tenant requests to extend for a further Term, there is no guarantee that at that point that they will be able to afford to pay in advance again.

Guarantor

In the case of unsatisfactory references, or the inability to obtain references (overseas Tenants/Student Tenants), a Guarantor can be added to the Tenancy Agreement, in effect 'guaranteeing' that the Tenant will comply with the terms of the Agreement and that rent will be paid on time and in full. The Guarantor is guaranteeing that he will comply with the obligations of the tenant under the tenancy agreement if the tenant is in breach. As with Tenants, we will undertake references on a Guarantor to ensure that he is financially sound.

Guarantors must reside in UK – it would not be cost effective to chase a guarantor for any monies if they were abroad.

The Guarantor must sign the Tenancy agreement PRIOR to the start of the Tenancy and the relevant Special Clauses MUST be put into the terms of the Tenancy Agreement.

Where there is more than one Tenant it is possible to have one Guarantor for all parties as the Tenancy is jointly and severally liable.

15.6 DWP

Tenants (Department for Work and Pensions – previously referred to as DSS)

What is a DWP tenant?

Generally a DWP Tenant is someone receiving benefits from the Council. The local Council will give DWP Tenants a monthly allowance for accommodation. DWP Tenants are NOT private Tenants.

The DWP Set Up Process

The viewing process is as normal, if the Tenant likes the property and wants to take the property then a Pre- Tenancy Determination form needs to be filled in with the agents details or Landlord details (as applicable). The Tenant completes their details into the form and then presents this to their housing officer. The Council will then determine the house value and then assess the situation of the person requiring the rent and make a rental offer. Once this has been received and accepted on both sides then the usual Tenancy Agreement is drawn up and the contract with the council who will then arrange the payment set-up.

Landlord Beware

The rent is paid either directly to the Landlord or the letting agent. Commonly rent will be paid in 4 week cycles. If the allowance from the Council is less than the rent, the Tenant will need to make up any shortfall – therefore there may be a need to monitor two payments every 4 weeks. Some local Council's have a 'Claw-Back' clause, which the Landlord must agree to if he wishes to accept housing-benefit Tenants. This basically enables the local Council to claim back from the Landlord/letting agent any over-payments that may have been made to the Tenant i.e. if the Council discovers that the

Tenant has for example, been falsely/under declaring income or has taken black economy work etc. It will ultimately be the Landlord's responsibility to repay money the Tenant may have falsely claimed.

Usually any problems are with the local Council, not the Tenant, and this can be due to administrative errors, tardiness in forwarding payments to the Landlord/letting agent. Occasionally there may be problems with the treatment of the property, but if a robust and detailed inventory is drawn up, this can minimise problems.

15.7 Furnishings

In most cases, but dependent on local market forces, properties are let Part Furnished, with the Landlord leaving carpets, curtains, cooker and a fridge, as this is the minimum standard most tenants would expect. In a Fully Furnished property it is usual to provide a complete range of appliances, furniture, crockery, utensils and other furnishings commensurate with the size of accommodation available. In all cases Tenants would be expected to supply their own linens.

If letting Fully Furnished it is advisable to have cutlery and crockery that is easily replaceable and supply a quantity sufficient for the size of family expected to occupy the property. Should you be letting a property with a garden it is a good idea to leave the Tenant the means to maintain it (i.e. mower, fork & spade), even if letting Unfurnished.

To maximise the potential 'pool' of Tenants that may be interested in a property, it is best to be flexible, budgeting to offer the property Unfurnished, Part Furnished or Fully Furnished.

Landlords should remember that the higher the quality of the furnishings supplied, potentially the higher rent achievable and the higher quality of Tenant. It is often said that Tenants are more likely to care for furnishings and fittings that are in good condition when they commence their Tenancy.

16. UTILITIES/SERVICES

16.1 Gas and Electric

On the day the Tenancy commences, Landlords or their letting agent should read both the Gas (if connected) and Electric meters in the property during the 'Check In'. The readings should be entered into the inventory for the Property. Similarly at the end of the Tenancy, the closing meter readings should be recorded.

16.2 Water

If the Property has a water meter it should, as above, be read on the day the Tenancy commences and at the end. However, not all properties have a water meter installed; therefore the local Water Company should be notified at the commencement of a Tenancy, of the new occupant and the changeover date. The Water Act 2003 allows Tenants renting a property, for longer than 6 months, to apply for a water meter to be installed without permission from a Landlord.

16.3 Oil

Where a property is heated by Oil, an agreement should be reached between the Landlord and Tenant for the use of any remaining Oil within the Oil Tank on the day the Tenancy commences. Typically, a Landlord and Tenant will agree that at the end of a Tenancy, that it is the Tenant's responsibility to ensure that the Oil Tank is filled to the same level at which it was when the Tenancy commenced. It is advisable that the Landlord provides to the Tenant contact details for the supplier they use for replenishing the Oil.

16.4 Council Tax

The Council Tax is the responsibility of the Tenant. The local Council must be informed at the commencement of a Tenancy of the new occupant and the changeover date, and similarly at the end.

Dwellings are exempt for a limited period if they have been unoccupied and unfurnished for up to 6 months. After this period it is the Landlord's responsibility to pay the Council Tax.

16.5 Telephone

It is the responsibility of both Landlord and the Tenant to contact British Telecom with regard to a telephone. Telephone Service providers will not take instructions from a letting agent. The Landlord should proceed to disconnect the telephone at the property unless the Tenant wishes to have a telephone, in which case the Landlord and Tenant both need to phone through to the Telephone Service provider giving details of the impending changeover.

16.6 Non Mains Drainage – Cesspit/Septic Tank

Where a Property is not on mains drainage and relies upon either a Cesspit or Septic Tank, it is the Landlord's responsibility to ensure that these remain functional at all times including the removal of blockages and emptying.

17. THE PROPERTY OMBUDSMAN (TPOS)

LSL are members of The Property Ombudsman Scheme, and are members of an approved redress scheme under section 172 of the Housing Act 2004.

How does this benefit a Landlord?

- A completely independent, free and fair service for dealing with disputes between member agencies and customers
- Minimum standards of service are mandatory under the Scheme
- Compliance levels and consumer satisfaction are closely monitored by TPOS
- Any financial award that the Ombudsman makes in your favour is binding on the agent

18. CLIENT MONEY PROTECTION

LSL are members of **Client Money Protect** which is a **client money protection** membership scheme designed to **protect client money** held by property agents and professionals. The member's **clients** are **protected** in the event that the member misappropriates the **client money** held in the course of running their business.