SOUTHERN LANDLORDS ASSOCIATION

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Newsletter No 6 June

Welcome to our Summer 2010 newsletter

There is quite a lot of information this month which we feel is of interest or importance to members. However we realise that not everything is of interest to everyone, so we are introducing an index to help you locate items of interest.

INDEX

Budget and Other News:

Following the recent emergency budget, the Centre for Economics and Business Research predicts that interest rates will remain stable at 0.5% until the end of 2012. (Mortgage Strategy©)

The Chancellor of the Exchequer has announced a cap on housing benefits and plans to reduce their cost by almost £2bn in today's Budget. George Osborne pledged to reduce the housing benefit budget by £1.8bn during the parliament. To do this he is introducing a cap on housing benefits at £280 a week for a one-bedroom property to £400 a week for four bedrooms or over. (Mortgage Strategy©)

The Chancellor also announced in the emergency budget that from midnight Tuesday 22nd June, higher-rate taxpayers would pay 28% on their capital gains. Low and middle rate income savers will continue to pay CGT at 18%. (Mortgage Strategy©)

Members will not need advising that VAT increases from 17.5% to 20% from 4th January 2011

The Chancellor has reinstated the tax relief on Furnished Holiday Lets, recently removed by Mr Darling.

The latest figures from Assetz House Price Watch© show that average house prices were 7.8% higher in May than at the same time in 2009.

Assetz House Price Watch compiles monthly average figures taken from five of the major house price indices to offer a more accurate picture of house price trends. The average house price in May was £200,347, representing annual growth of 7.8% from May 2009 – falling back from the high rate of annual growth recorded in April, 9.1%. (Mortgage Strategy ©)

On the other hand....

Property price rises dwindled to just 0.3% in June as estate agency website Rightmove© said the month saw a huge rise in unsold properties. (Doubtless vendors seeking to beat the anticipated CGT rises - Editor)

FROM THE DESK of MIKE STIMPSON

THE SOUTHERN LANDLORDS ASSOCIATION CELEBRATES ITS FIRST ANNIVERSARY

It is one year since the Southern Landlords Association (SLA) was formed following the break-up of the National Federation of Residential Landlords (NFRL), which gave landlords a real choice of which landlords' association they wish to belong to and not restricting them to one association.

With your support, we will again become established as the true voice of landlords, representing landlords' interests both at local and government level. We intend to ensure that the Southern Landlords Association is your association and that your voice really does count and that you are not simply a subscriber to a service for which you pay an annual subscription and have no input/participation.

May we, the Board of SLA, thank you, our members, for continuing to support us in such challenging circumstances. We all sincerely believe that right will succeed in the end.

A TIMELY OVERVIEW BY MIKE STIMPSON

Welcome to this mid summer edition of the SLA Newsletter.

Those members who have attended meetings where I have spoken will have been made aware that the future for landlords very much depended on the outcome of the recent parliamentary elections. Those elections have now taken place, with perhaps not a disastrous result but certainly not what most voters would have expected or, in fact, voted for. Whether it would have been more sensible for the Conservatives to form a minority government or, to do as they have done, form a coalition with the Liberal Democrats we will never know. However, it is very clear indeed that the influence of the Liberal Democrats and the number of ministerial positions they have obtained is very much disproportionate to the vote they received.

Consider that the worst that could have happened is for the Labour Party to have, once again, been elected, for then we would no doubt have experienced more regulation of landlords to the detriment of the industry as a whole. We shall all have to wait and see what now emerges and attempt to ensure that landlords are recognised for the contribution they make and not targeted for unfair taxes in this most difficult time.

On the brighter side, Home Information Packs (HIPs) have already been suspended (with the exception of Energy Performance Certificates) and that generally is accepted by the industry as a sensible move.

Similarly, will the coalition give tenants the option of having their Local Housing Allowance paid direct to landlords? Again, your SLA representatives will be pushing for these changes.

To confirm our recent newsflash:-

- the Rugge Review, regulation for the Private Rented Sector (PRS) is to be abandoned by Government as the Government believes that the current regulation framework for the PRS ALREADY strikes the right balance between the landlord and tenant.

- planning restrictions on Houses of Multiple Occupation (HMO's). The Government has seen fit to keep the current rules on HMO's, but will 'look again' at rules governing so called HMO's in more details.

The Minister said in Parliament that Government 'had no plans to overturn the legislation'.

This Newsletter contains information that is important for landlords. As with any change of government, one is always apprehensive in which direction it will go. This is even more challenging with a coalition government. Your association will do its part in taking forward the legitimate concerns of landlords, promoting your aspirations and, with a current situation where mortgages for home ownership are still scarce and deposits required to support those mortgages out of the reach of very many aspiring home owners, the private rented sector remains the only option for many members of our society.

WATER CHARGING

Our association has already notified members of the need to inform the local water authority when there is a change of tenancy where the tenant is responsible for payment of water rates. In order to comply, landlords will be required to include a new clause in their tenancy agreements stating that the specified information will be passed on to the water company. Enclosed with this Newsletter is the BPF briefing on water charging. Members need to note the content and, if necessary, make adjustments to their tenancy agreements by adding an appropriate clause, otherwise if you fail to deal with this matter as set out in the briefing paper you will find yourself liable to paying the water rates if your tenants fail to do so following Water Authority proposals that all landlords should be made legally responsible for payment of water rates in properties they let. In passing this was a very good compromise agreement settled following months of negotiations. SLA helpline staff will be pleased to explain, should you need any further clarification.

INCREASE IN THE ASSURED SHORTHOLD TENANCY LIMIT

As from 1st October 2010 the maximum annual rent that can be charged for an assured shorthold tenancy (AST) of £25,000 will be increased to £100,000. This will bring almost all residential lettings within the assured shorthold tenancy agreement regulations. Prior to this change, all tenancies above £25,000 were common law tenancies and the deposits were not protected under the deposit regulations. As from 1st October, those deposits will require to be protected.

It has been made clear that the regulations will require all deposits for tenancies that convert from common law tenancies to assured shorthold tenancies, i.e. those with an annual rental income of over £25,000, to be regulated as from 1st October 2010. What this, in effect, means is that the deposit for any tenancy already in existence that will convert to an assured shorthold tenancy on 1st October, whenever taken, will require to be regulated. In other words, the regulations are retrospective in respect of deposits.

This means that any landlord who regulates a deposit on 1st October that was taken some time earlier falls foul of the requirement to regulate that deposit within 10 days of receiving it. The Department for Communities and Local Government (CLG) is well aware of this anomaly but insists that all deposits taken before conversion from common law tenancies to ASTs be regulated. This, in effect, means that the landlord is in breach of the deposit regulations requiring that the deposit be regulated within 10 days of its receipt. However, a recent High Court case has established that where a landlord does not comply with the 10-day rule, he/she is not liable to the three times deposit penalty unless action has already been taken by the landlord for recovery of the property under Section 21 regulations.

Once again, it cannot be emphasised strongly enough that deposits taken MUST be regulated in accordance with the regulations, and members should ensure that all deposits are properly regulated and the specified information passed to tenants as required in the prescribed regulations. Members should not ignore these regulations believing that their tenant will not take any action.

DEPOSITS: THE REALITY OF REGULATION - A MEMBER'S PERSONAL EXPERIENCE

Members will probably think that our association is obsessed with talking about the regulation of deposits. The Government's perspective in introducing legislation was to protect the deposit and ensure that it was returned in an appropriate manner to the tenant, with only reasonable deductions made for unreasonable wear and tear, damage, rent arrears, etc.

The associations representing tenants saw it as an opportunity to restrict the use of the Section 21 Notice and, further, saw it as a means of extracting large sums of money from landlords who simply failed to comply precisely with the prescribed information.

Members are beginning to understand that tenants, especially those who are economically poor, want their deposit returned to provide it for further accommodation. However, under the custodial scheme there is no way in which the deposit is available to the tenant at the time he or she leaves the accommodation. No steps have been taken or proposals put forward to see what can be done about the custodial deposit being passed or allocated to a new landlord without the need for it to be returned to the last one whilst the tenant is left with no deposit for his/her next accommodation.

Having said that, it is interesting to see, in practice, what can happen over a deposit. A landlord member granted a tenancy to a man and his wife in 2006, taking a deposit of £700. The deposit, at that time, was not required to be regulated. In December 2007 the husband reported that his wife had left him and, in view of his circumstances, a new tenancy agreement was granted in January 2008. This was due to be paid to the landlord's agent. The tenant alleged that his wife had paid the rent to the agent but as she had left in December 2007 and could not produce a receipt for the rental paid, and as the agent did not credit the landlord with the rent, it was assumed that it had not been paid, although, to complicate matters further, the agent subsequently "did a runner" not only with the landlord's deposit but, if it was paid, the rent also.

It was agreed between the tenant and landlord that the deposit of £700 would be offset against the rental due of £725 in January 2008. So, when the new agreement was prepared, there was no mention of a deposit being taken. When that agreement came to the end of its fixed term, a further agreement was issued and, again, there was no reference to a deposit having been taken. During the last period of the tenancy, the tenant's behaviour deteriorated and, it seems, he came involved in problems with both drugs and alcohol and was inviting undesirable persons into the property, to the annoyance of other flat owners. In the event, the landlord served notice on the tenant using the Section 21 procedure and, as the tenant did not leave after the notice expired, court proceedings were commenced, and the landlord was faced with the situation that the tenant alleged that the deposit paid in 2006 had not been regulated and therefore the serving of proceedings under Section 21 were invalid.

As can be seen, this was not a case of a dispute over the actual deposit but a dispute over whether possession should be granted because the deposit had allegedly not been regulated in accord with the requirements. The moral to be taken from this example is as follows: if you take a deposit prior to the regulations being introduced and then grant renewal tenancies within the period of the regulation, then that deposit is proper to be regulated.

SLA has always recommended that once a fixed term ends, then members should continue the tenancy as a periodic tenancy unless there is good reason for not doing so. The deposit in that case would not need to be regulated.

In the above case, it is alleged that the deposit was used to pay the rent and that this had been agreed with the tenant. There was no written evidence to support this position. If, as a landlord, you use a deposit taken prior to the deposit regulations being implemented, then it is most important that if that deposit is used to pay off rent arrears, an agreement is made in writing and signed by both tenant and landlord explaining the situation, otherwise, as you can see from the above example, a tenant could argue that the deposit had not been regulated, when in fact no deposit existed.

Once again, it should be emphasised that our association does not agree with the regulation of deposits at point of acceptance but only at point of dispute. The cost of this legislation and the perverse way the regulations have been used to curtail the use of Section 21 Notices is both unacceptable and unreasonable. SLA therefore recommends that using alternatives, for example the insurance facility operated by our insurers or not taking a deposit at all, avoids the risks inherent in taking a deposit.

SLA NATIONALLY

Members will wish to know that SLA representatives are making a contribution and supporting members on national committees.

On 6th May, Mike Stimpson made a presentation at a Council of Mortgage Lenders seminar entitled 'Emerging issues in the private rented sector'. Mike's presentation was entitled 'regulation of landlords and how regulations have evolved over the past decade'. Other speakers were: Michael Ball, Professor of Urban and Property Economics, University of Reading: Richard Donnell, Director of Hometrack: John Jones, Director of Learning and Development, Goldsmith Williams Solicitors and, finally, Andrew Pratt, Managing Director of Residential, Grainger plc.

In addition, your association is represented on the following committees/organisations:

Committees:

- Leasehold and Management
- Registration of Landlords

Organisations:

- The Energy Saving Trust
- LACORS
- Residential Committee of the British Property Federation
- The Industry Forum chaired by the Royal Institute of Chartered Surveyors

The Lord Best half-yearly meetings

All are unpaid volunteer representatives who are committed to promoting the interests of landlords at all levels and will continue to do so.

BPF briefing on water charging

Background

Compared to other utility sectors, the UK water industry is burdened by over a billion pounds of 'bad-debt': debts built up by those who fail to pay their water bills. According to the latest Government research, those living in the private rented sector contribute significantly to this debt (about 30% of the total).

To address this, the Government undertook a review to examine the levels of bad debt in the water industry and how this debt can be reduced. This review put forward a number of recommendations which have implications for landlords of private rented accommodation; one of which is set to become law by being included in the recently passed Floods and Water Management Act. This paper explains in clear terms what this requirement is.

New obligations placed on landlords

Water companies currently have no statutory powers to gather information to assist in their billing and revenue collection. They therefore have a lack of data with which to target vulnerable customers who might need assistance or those customers who refuse to pay.

The Government is addressing this is by requiring landlords of tenanted private rented accommodation to disclose to water companies the details of their tenants, at the start of any new tenancy i.e. when a new agreement takes effect. It will not affect existing tenancies.

Should landlords fail to pass this information on to the water companies, or deliberately pass on incorrect information within a specified period, the landlord will be held responsible for paying the water bill for the property until it is re-let and the information is passed on. Landlords of vacant properties are liable to pay the water bills for their premises also.

This requirement applies to both traditional private rented property and HMOs though properties where the landlord is resident in the property are exempt. Crucially agents acting on behalf of landlords are not affected by the law as the requirement is drawn to rest on landlords only.

What details should be passed on?

The Floods and Water Management Act contained primary legislation only. Much of the detail as to how this requirement will work is yet to be drafted in secondary legislation. Until it is, the requirement does not take effect

From looking back at the recommendations of the Government's review, information that landlords may be required to pass on could include any of the following: the tenants full name, DOB, contact details, the commencement date for the tenancy, the tenant's previous address etc. And, going on the recommendations of the Government's review landlords are likely to have a period of 21 days to pass on the required information, though this again is not confirmed and will be set out in the secondary legislation.

The issue of tenancy agreements

Landlords will be required to write a new clause into their tenancy agreements with new tenants, stating that the specified pieces of information will be passed onto the water company.

Our thanks to the BPF. For more information, please contact James Anderson at the BPF (email janderson@bpf.org.uk, or tel 0207 802 0104).

CHANGES TO PLANNING USE LAW AFFECTING PRIVATE RENTED SECTOR LETTINGS

Introduction

Landlords renting out residential properties in the private rented sector may have heard of the changes to the planning use laws, which affect this sector. As a result of a vigorous campaign by lobbies representing local residents in student cities and towns, planning law has been changed so planning permission may be needed in future if you change the use of what has been a single family house or flat (whether owner/occupied or privately rented) to a shared house/flat occupied by an unrelated group of three to six individuals. Shared houses/flats occupied by between three and six unrelated individuals are most affected. This article explores in depth how these changes will impact. The social sector (properties rented out by local authorities, arms length management organisations (ALMOs) and housing associations) will be unaffected by these changes; only private landlords (and in some cases owner/occupiers renting out accommodation in their own homes) renting out in the private rented sector. The changes are not retrospective. The critical date is the 6th April 2010 when the new law is in force. It does not just affect student lettings but will also effect other shared lettings to groups such as young professionals

The whole document runs to some 20 pages and is supplied here as a separate attachment. For those of you receiving this by post, we will be happy to send on request.

Landlords insurance and claims experts advise on the 'Landlords Cannabis Crisis'

There has been much hype in the media surrounding the pressing issue of suburban properties being used as 'cannabis factories'. This is becoming a growing concern for landlords, as it seems the majority of cases happen in buy-to-let properties.

There is however light at the end of the tunnel as Alan Boswell Group explain how landlords could prevent this, and their experience of handling claims caused by the devastation of 'cannabis factories'.

The reality for landlords

Over the past year there has been a surge in landlords making insurance claims averaging at £40,000, because tenants have destroyed their property whilst using it to grow cannabis. Alan Boswell Group have dealt with many of these claims in the last year and it is evident landlords insurance is vital.

The devastation landlords face

From the outside the property will look like any other house on the street, but unsuspecting residential neighbours would be alarmed by what was happening next door. The inside of the house will resemble a forest of cannabis, electrical wires and pipes.

The main damage landlords will be left to restore after letting their property to cannabis growing tenants are:

- Contents and floors stripped
- Soil stored under floor boards
- Wiring cut into to bypass electricity meters
- Irrigation system installed
- Heating system installed
- Generators installed
- Damage to walls as a result of installations
- Mould, residue and damp
- Loft space used, often leading into neighbouring roofs if in a terrace house

Alan Boswell Group staff have been on frequent visits along with contractors and loss adjustors to witness the excessive damage caused to a property in these circumstances.

"The most shocking fact about landlord's properties being used on a professional drug growing basis, is that a house can be completely stripped so it is unrecognisable as a home, and harvest two crops of cannabis in a short period of 6 months. Before a landlord has even noticed a problem the tenants are out, leaving the landlord to restore the property ready for the next tenants."

Conveniently Alan Boswell Group landlord's insurance policy will cover loss of rent during this time.

How can landlords prevent this?

This problem will not easily be solved, because these types of criminals are very sophisticated and fast moving. However, this does not mean landlords are losing control of their properties. There are simple ways landlords can prevent their property being used to grow cannabis.

It is always important for landlords to be vigilant in their approach to letting properties to potential tenants. Always ask for references both financial and personal, and follow these references up. Tenants may seem genuine, but is has been proved first impressions do not count. Landlords could also include routine property checks in the contract. Many landlords will not enter their property between 6-12 months after which the culprits have usually left.

According to Police Landlords should be actively aware of the following tell tale signs:

- Intense activity following moving in, then very little thereafter
- The curtains or blinds may be permanently drawn
- Access to the property may be limited to the front porch or doorstep
- There may be intense smells near the address
- Different occupants may visit at all times of day

Landlords insurance experts at Alan Boswell Group are fully aware of this problem, and are available to offer landlords insurance advice. If you are a landlord suspicious this could be happening in your property it is always advisable to contact the police first before taking any action.

The Warning Signs of Cannabis Production

An increasing number of residential landlords are suffering claims to their properties because their premises are being used by their tenant(s) to grow cannabis.

The cultivation process of cannabis causes damage to the property due to:

- Fires starting due to the tenants bypassing the electricity meter
- Holes being made in walls to pass cables through
- Large quantity of water leakage from buckets and pipes
- Tenants starting fires to cover their tracks before police raids occur

How will I know if my property is being used for this purpose?

From information taken from our claim files, the following characteristics stand out which may suggest that a property has the potential for being used as a cannabis farm:

- Short term let of 3 or 6 month duration
- Rent is paid in cash, sometimes either in full or for a significant period of the let
- Landlords not vetting the tenant(s) sufficiently
- Accepting a telephone number from the prospective tenant purporting to be last landlord as a reference
- No background checks undertaken other than seeing passport of prospective tenant
- Not getting bank details checked as rent is paid in cash
- Promised references not being provided
- Lack of visits to the property undertaken and, if done, external only or limited internal only
- A pungent smell is produced which may be noticed through the walls of adjoining properties
- Window blinds or curtains always drawn to prevent anyone seeing what's going on
- Sub letting being allowed, with no control of sub tenant activities
- No particular location issues, some very respectable premises/areas have been involved
- No managing or letting agent employed to manage the property or vet the tenant details

What should I do to prevent this happening?

- Take the following reasonable precautions
- Do not accept payment of rent in cash, insist on payment via Bank
- Be wary of short term lets without undertaking rigorous vetting of the prospective tenant
- Ensure you inspect the premises regularly if possible with internal viewing
- Do not allow sub letting to occur

Employ a letting or managing agent to manage the tenant vetting process and provide an inspection service on your behalf to identify any misuse of the premise early on

Be vigilant – taking these simple steps may result in your premises being safe from the damage caused by this practice

With thanks to Robert Graver of Alan Boswell Group for the above two articles. Robert may be contacted at 01603 216399, email: landlords@alanboswell.com and web site www.alanboswell.com/landlords.

ARE YOU INSURED IN VOID PERIODS?

A friend of the Editor recently suffered serious water damage whilst the property was between tenants. The previous occupant moved out the day before the incident and whilst she had not signed a new tenant up, she had received several enquiries and was expecting no problems in having a new tenant in a few days. However a major pipe burst and caused in excess of £22,000 of damage as well as rendering the property uninhabitable for a long period. Having proper landlord insurance she assumed that the claim would cover a reasonable level of lost rent for the duration of the drying out and repairs period. However, whilst the damages claim has been accepted the insurer has refused the lost rent claim based on that fact that there was no signed tenancy agreement in place, and thus “no loss has occurred”. We are not going to debate the rights and wrongs of this here (most landlords are likely to share one particular view) but we strongly urge you to check your policy and know what is and what is not covered. Furthermore members may wish to take steps to cover themselves and protect their property. For instance, try to ensure that the new tenancy is signed before the former tenant vacates, if the property is to be left empty for any time at all, turn off water, gas, etc. Finally, do yo have the reserves to meet the mortgage commitment whilst not receiving any rent?

CGT changes - Buy - Sell or Remortgage

Well this article is written on the evening of the Budget and it is too late to sell your property and avoid the CGT increase for those who are Higher Rate taxpayers. As you will have seen earlier in the newsletter property prices have been increasing this year, but, apparently, in June, prices have stagnated, probably as a result of some people wishing to sell pre Budget, and also as a consequence of the absolution of the (un)loved HIPS.

Whilst landlords obviously do not like CGT, we should remember that property investment is by its nature a long term investment, and potential CGT liability at the time of ultimate sale is only one (hopefully small) aspect of the overall proposition.

Now is still a good time to buy, especially as many areas report extremely high demand for rental property.

The issue however is finance. If you can buy from your own cash holdings then BUY BUY BUY! If, on the other hand you need finance it is not quite so clear cut. Lender’s offerings are improving; for instance it is now possible to borrow up to 80% of the value. The down side is that the rates and terms being offered could not be described as generous to the potential borrower. Lenders are also much more picky abut who they lend to and against what property. As a broker I believe that rates are likely to improve later this year now that the new government is settling in and the Budget has passed. If you need to borrow it may be worth waiting another 3 months or so.

INVENTORIES

As members will have read earlier in this Newsletter, and previously, it is becoming increasingly difficult to defend themselves should there be a dispute about the condition of the property. Tenants are also becoming much more aware of their “rights” with regard to deposits. Furthermore, the recent change in the AST / common law tenancy threshold will result in many more student properties requiring deposit security. We advise the following will help strengthen members position:

Make sure you have a very detailed and comprehensive inventory. Ensure it contains a full description of all items, as well as condition. We strongly advise that this is supported by copious photographic evidence showing the condition of items. Ensure the tenant signs a copy and you retain this for future reference.

If at all possible carry out the checkout with the tenant. Compare the prevailing condition with that stated in the checkin inventory. Get the tenant to agree and then sign the updated inventory as being correct. Take further photos, especially of any damages / dilapidation's.

If you are not confident in doing this yourself then use a reputable inventory company, but check them out first. We have seen some inventories that frankly are more of a liability than an asset to you, the landlord.

ADVERTISING WITH SLA

We are pleased to launch the facility for both members and non member service providers to advertise here in SLA eNews.

The rate for a quarter page advert is £50 for approved non member service providers. Members get a 20% discount to £40.

If you need some typesetting, then we may be able to assist, for a small extra charge.

We will shortly be launching an option to advertise on our web site, further details to follow.

YOUR ASSOCIATION NEEDS YOU!

Would you like to be involved or know someone who would? This association is for YOU the members.

- If you wish to offer your services or know someone you would like to propose, or contribute in any way please contact us.
- We are especially keen to find a Treasurer - voluntary at first
- We are pleased to receive comments, articles, stories, and other items for consideration for publication in future issues of this newsletter. We are also keen to receive feedback and suggestions (preferably constructive!) regarding the Association and its future.

  Please email editor@southernlandords.org

IF YOU HAVE NOT YET JOINED US THEN NOW IS THE TIME!

For a low annual membership fee of £75 (£82.50 for couples, £5 discount if paying by Standing Order) you get all the great benefits of membership of an association dedicated to YOU and your interests:

- representation to government
- excellent expert assistance on our helpline
- web site, including dedicated and secure members area (coming soon)
- free access to quality documentation, including ASTs, Section 21s and Section 8s
- discounted insurance via our insurance partner, Alan Boswell
- insurance to cover the cost of defending an HMRC investigation
- and so the benefits go on - don’t delay, join today!

  Many members find that they cover the membership cost just on the buildings insurance premium savings.

Forthcoming meetings

Guildford First Wednesday in each month, 12.30 at Parkway Pub, The Parkway, Guildford

For all other events check our web site: southernlandlords.org

Please note that the views expressed here do not necessarily reflect the views of the SLA, its members or management committee.