Newsletter No 10 July 2011

SOUTHERN LANDLORDS ASSOCIATION

Tel:	0845 475 3583
Fax:	0845 475 3283
Help-line	0845 475 2483
Insurance	0845 475 1383
Private Health	0845 475 2383

Welcome to our Mid Summer 2011 newsletter

SHARED HOUSES / SMALL HMOs - THE DIFFERENCES EXPLAINED

An article by Mike Stimpson, SLA Policy

Over the past few months a number of members have sought an explanation of the differences between shared houses and small HMOs (Houses in Multiple Occupation).

It has always been the position that single persons under 25 years of age in receipt of Local Housing Allowance (LHA) are only entitled to the 'single room rate'. However, as a result of the implementation of austerity measures by Government, single people living in self-contained accommodation aged from 25 and under 35 years of age and in receipt of Local Housing Allowance for self-contained accommodation will not, after January 2012, be entitled to other than the single room rate, which is much lower than the one bed rate currently received. Although existing tenants will enjoy extended periods of up to nine months' payment after their benefit is reviewed in 2012, any person claiming Local Housing Allowance aged under 35 years of age from January 2012 will only be entitled to the shared room rate. This, in effect, means that a significant number of single persons will be forced to live in shared housing, and the demand for such accommodation will rise significantly in many areas.

Bearing the above in mind and that most of these people will not come together as a group in the way that students do, what sort of accommodation can they expect and how can landlords provide it?

Members should be aware that 'small HMO' means any property occupied by six or fewer persons who are unrelated. Any property occupied by more than six unrelated persons has always required planning permission. Planning permission is not required for small HMOs / shared houses unless an Article 4 Direction has been implemented by the local authority, and those members in areas where councils are intending to apply such Directions should be aware of the situation. If, however, any property is used as a shared house / small HMO before an Article 4 Direction is implemented, it can continue to be used in that manner without the need for planning permission, provided that the use is continuous.

So, what is the difference between a shared house and a small HMO? Both are, in fact, Houses in Multiple Occupation. The most significant difference is that a shared house is let on a single tenancy agreement and the occupiers share the gas, electricity, Council Tax and water rates between them as part of the agreement. The landlord can, if he/she so wishes, include the services within the rent, but the property, provided there is only one agreement, will still be a shared house.

A small HMO, on the other hand, would be identified as a property let on individual agreements, with the tenants sharing toilets/bathrooms/kitchens (as appropriate). Each tenant would have exclusive use of a bedroom, with shared use of the other facilities provided by the landlord. Those facilities would become common parts and fall within the Regulatory Fire Order, which requires a landlord to carry out a Fire Risk Assessment and ensure appropriate fire protection. Also, the landlord becomes responsible for all cleaning (etc) of the common parts.

In addition, the landlord would normally be responsible for the payment of the Council Tax and water rates for the property. However, the Valuation Office could assess each room, dependent on the type of agreement, as an individual unit for Council Tax purposes and band each room as 'Band A' accommodation, with a significant increase in the Council Tax payable. Other regulations not applicable to shared houses could also apply.

However let, all HMOs have certain other restrictions placed upon them, including:

- the name and address of the landlord (or the agent/manager) must be displayed in a prominent position;

- some local authorities insist that HMOs must have a valid 5-year electrical certificate, which they can demand with 7 days notice.

(Note that Wales has separate provisions).

From the above it can be seen that it is far more beneficial to a landlord to let a property as a shared house on one tenancy agreement and not have individual agreements for each occupier. How a landlord brings together a group other than of students to form a shared house occupation on one agreement is quite difficult. I know that a number of members let shared houses to professional working tenants and perhaps to non-working tenants as well, and it would be very helpful if those that do could let me know how they do it to avoid letting shared housing on individual agreements. If any member can offer advice or suggestions, please contact Mike Stimpson at: Mike.Stimpson@SouthernLandlords.org.

The need for such accommodation will be high indeed in many areas in southern England, with hundreds of new shared houses being required to accommodate the 25 to 35 single person age group.

HOUSING BENEFIT: GOVERNMENT MINISTER COMMISSIONS AN INDEPENDENT REVIEW

Lord Freud, the Government Minister for Welfare Reform, has agreed to commission an independent review that will assess the impact of the Government's Housing Benefit cuts that commenced in April of this year. It is anticipated that the findings will be available in early 2013, with initial findings available in the spring of 2012 and an interim report in the summer of 2012. It will be left to the discretion of the authors to recommend whether they think that a follow-up evaluation will be necessary.

The review is a welcome recognition from the Government that Housing Benefit cuts could have highly damaging repercussions, a point that our association, amongst other housing interest groups, has consistently made to Government since the reforms were announced in the June 2010 budget. In response to the announcement from Lord Freud, the British Property Federation, of which we are members, called on the Government to step back from its plans for further reforms, which are due to be presented to Parliament in the Welfare Reform Bill, until the independent review has presented its interim findings.

Our association will keep members informed as the review progresses.

INCREASE IN COURT FEES

Members will wish to be aware that as from April 2011 the court fees for issuing proceedings for possession have risen from £150 to £175, an increase of just under 16.7%.

The fee remains at £100 if proceedings are initiated through Possession Claim Online (PCOL). Please note that this online service can only be used for the Section 8 route where money is owed. You must also serve on the defendant a full, up to date arrears history (rent schedule) within seven days after submitting your application online.

ARTICLE 4 DIRECTION - MORE LOCAL AUTHORITIES ARE SEEKING TO IMPLEMENT

Members will be aware that local authorities have the discretion to introduce an Article 4 Direction, which gives them powers to control the number of shared houses / small HMOs via planning applications. It seems that a significant number of local authorities are seeking to implement Article 4 Directions at a time when Government, through its Housing Benefit regulations and other austerity measures, is making the demand for shared housing even more acute.

Local authorities continually use the argument that HMOs do not bring about good community relationships. However, there are many things that Government and local authorities together could do to make the occupation of such accommodation more user-friendly to the occupants and not force them to live in isolation from one another. An example is that the provision of student blocks of housing by professional investors, allowing each unit of accommodation to include a toilet/shower but with shared kitchens, makes the accommodation more user-friendly for those occupying it, whereas Government and local authorities together insist that where Houses in Multiple Occupation are provided they must have a kitchen within the room and share bathroom/toilet facilities. It is exactly the opposite of the current student accommodation provision in new builds and promotes isolation, higher fire risks and does not promote the sense of community that Government seeks to achieve.

It is one thing local authorities trying to achieve balanced communities on the one hand, but they do not recognise the current need for shared housing and they fail to look at ways of ensuring that those providing it can do so in a manner that promotes community, rather than the opposite.

Comment from Mike Stimpson: It seems that one department of Government, namely the Department for Work and Pensions (DWP), is forcing more and more tenants to live in shared accommodation, whilst another department, Communities and Local Government (CLG), is allowing local authorities to discourage the very accommodation that is required to meet DWP regulations. Nothing changes, and nothing will until Government departments work together in the interests of their electorate.

DISCRETIONAL LICENSING: JUDICIAL REVIEWS

Members will be aware that local authorities have the delegated power to introduce discretionary licensing schemes (either additional licensing or selective licensing). Since the Labour Government removed the need for Secretary of State approval before a local authority could introduce a scheme, many local authorities have been taking the opportunity of implementing discretionary licensing.

There is no doubt that in some areas discretionary licensing is appropriate. However, in many areas there are other means of dealing with the alleged problems, without the need for discretionary licensing. For members' information, when discretionary licensing is implemented it is paid for by the landlords whose properties are licensed, and the fee can only be used for administration of the schemes, which, in many cases, restricts the way in which the landlord is allowed to operate his/her business and does nothing whatsoever to deal with the problems that are alleged to be occurring.

Local authorities are well aware that if they implement a scheme and do not comply with the guidance set out by the Department for Communities and Local Government (CLG) then it can be challenged, but only by judicial review, which is time consuming and very expensive in the event of failure.

The fact is that the only appeal system against alleged unlawful implementation of an additional licensing scheme is disproportionate and unfair and in effect makes it nigh impossible for local landlords to appeal against implementation.

What all this means, therefore, is that local landlords and their associations are having, independently, to consider judicial reviews where appropriate. It is most pleasing therefore to learn that the local landlords of Hyndburn sought and were successful in bringing a judicial review for the unlawful implementation of a selective licensing scheme covering approximately half of that town, which is situated in Lancashire, near to Accrington.

Having spoken with the landlord who initiated the action and managed to get support from a very significant number of landlords who would have been affected had the scheme been implemented, it is pleasing to see that they not only had the courage to bring the judicial review, considering the financial implications involved, but were successful, and the scheme, which had already been implemented, has now to be abandoned and the costs awarded against the Local Authority.

The judicial review was heard in the High Court on 25th May. Assistance and support for the Hyndburn landlords was also provided by the Residential Landlords Association (RLA).

Members may be aware that our association is the first landlords' association to commence a judicial review for what we consider to be the unlawful implementation of a selective licensing scheme by Thanet District Council in Margate Central and Cliftonville West. The National Landlords Association (NLA) were asked by the local landlords to take action against Thanet District Council but declined to do so. The Thanet landlords then turned to our association for assistance and, after much consideration, our association decided to bring a judicial review. An application has been made to the High Court for permission to bring it, and the result of the application is awaited.

RESIGNATION OF BARRY MARKHAM, DIRECTOR, NLA

Members will be only too aware that Barry Markham, along with Ken Groves and Michael Cohen, Directors of the old Southern Private Landlords Association, were the three people who gave away the assets of the association to the National Landlords Association

(NLA). That now is history and members will have drawn their own conclusions as to whether or not this move was to the benefit of old SPLA/NFRL members.

What members may not know is that the current Board of NLA consists of David Salusbury, who is both the Chairman and paid Interim Chief Executive, Richard Price, a full time paid contractor with NLA, Patrick Jacobs, the full time paid Treasurer, and Anthony Lock. A quorum, for NLA purposes, consists of two persons only, with the Chair having the casting vote.

Under the terms of the acquisition agreement, one of the directors on the NLA Board must be a nominated director of the Southern Private Landlords Association. However, with the resignation of Barry Markham, the previous SPLA members who have joined the NLA have no representation on the Board whatsoever. This is contrary to the acquisition agreement.

Members may also wish to know that the SPLA, as a company, still exists, but members can only be accepted with the approval of the Board. In fact, it exists now only in name. Members may also wish to know that having been party to the giving away of the assets of SPLA to NLA, Michael Cohen has now resigned as a Board member of the old SPLA.

MIKE STIMPSON'S COLUMN

May I welcome you all to our mid summer Newsletter. Much is happening, especially as a result of the austerity measures being implemented by Government, which will affect many people, particularly those on limited budgets. Money will become tighter and landlords will no doubt find it more difficult in collecting rents from their tenants.

On the other hand, demand for rental property is probably at the highest it has been for many years and there are no signs that this trend will change. However, those letting to students may well find it more difficult once the new fee structure is imposed by universities from 2012. It may mean that some landlords in the student letting market will have to focus on alternatives, such as those single persons between the age of 25 and under 35 who from January next year will not be able to live in self-contained accommodation if in receipt of Local Housing Allowance.

For very many years, I have been arguing that landlords who manage their own properties should be treated as businesses and their properties as business assets, but Government continually resists acknowledging landlords as businesses. This was once again raised to Treasury, the department responsible, and I would like to thank Lord Richard Best for supporting our position in the House of Lords.

With capital gains now set at up to 28%, with no indexation or tapering, it demonstrates even more the attitude of Government towards landlords. It is quite content to say that we must act professionally and carry out more and more responsibilities in running our letting business but still be described as investors and not businesses, and then cap it by not allowing rollover relief when we sell one property and purchase another and, when we retire, to take up to 28% of the gain made on the original purchase price, which could be up to 50 years earlier, by changing the rules without considering the hardship/unfairness it is causing.

When the changes to capital gains were introduced in Parliament, with implementation the following day, people with shares and such investments were able to dispose of them without loss of the previous capital gain rates. Landlords, however, were in a very different position and could not dispose of a property in the few hours given before the new regulations were imposed.

In all aspects except taxation we are regarded as businesses and told to act as such. There is clearly a groundswell of belief amongst landlords, both large and small, that Government is acting unlawfully in not allowing landlords as businesses, with their assets being treated as business assets.

There is little doubt that capital gains will increase over the years, whilst disposal of business assets upon retirement will not. It is about time that a case was sponsored, using Human Rights legislation, to demonstrate that this Government is acting unlawfully in not allowing landlords to be businesses. I am keen, but not hopeful, for a national organisation to provide the finance for a suitable case to be referred to the High Court. It is one thing for Grant Shapps, the Housing Minister, to say that landlords could be incorporated as businesses and thereby enjoy some of the benefits that businesses do, but it is quite another for a landlord who has already traded for many years as an individual to be required to pay all the capital gains and taxes to enable his assets to be incorporated into a business.

Government changes regulations and forces compliance without any consideration of the effect, yet when it comes to landlords wishing to change from individual property ownership and be incorporated as a company, this can only be done at massive cost. That is not fair. I sincerely hope that this position can be challenged and righted.

Mike Stimpson

Home repossessions up but down

The number of properties repossessed by mortgage lenders in the UK rose by 15% to 9,100 in the first quarter of 2011, according to recent figures from the Council of Mortgage Lenders (CML).

The figure is well above the 7,900 homes repossessed in the final quarter of 2010, but is 10% lower than the same period last year and equal to the average throughout 2010.

At the same time the number of mortgages deemed to be in arrears showed a slight drop in the last quarter. All this seems to be positive, but is it masking people on the edge of mortgage debt, only kept away from the abyss by the current low rates?

All the time we hear from landlords who say that a small rise in interest rates will spell disaster for them, and there is only one way mortgage rates can go - up. It is just a question of when.

Our advice is the same as it always is, plan ahead as much as possible, and don't be caught by matters that are highly predictable - we have enough un-predictable things to catch us out!

Energy Matters

We have told you before about the Government's probable plans for dealing with the country's energy matters (Autumn 2010).

The Secretary of State for Energy (Chris Hulme) gave some more meat for the original bare bones on May 10th during the second reading of the Energy Bill. Whilst most was expected there was a surprise announcement affecting many landlords.

Hopefully you are aware that the Energy Performance Certificate runs from 'A' (very good) to 'G' (very poor). Mr Hulme announced that:-

- from April 2016 landlords will not be able to refuse reasonable requests from tenants, or local authorities acting on behalf of tenants, to improve their property, and;
- From April 2018 the government will make it unlawful to rent out a house or business premise which has less than an "E" energy efficiency rating, ensuring at least 682,000 properties will have to be improved.

See the news section in our web site for a link to the complete announcement.

The unknown factors are:-

- what constitutes a 'reasonable' request from your tenant after April 2016?
- what happens to 'F' & 'G' rated properties after 2018 if they are:-
    - listed?
    - in a conservation area?
    - off the gas mains (oil and electric heating tend to result in a lower rating)?

Whilst we are trying to find more details, we would urge you to take advantage of the current energy allowance only avaiable to landords – LESA (Landlord's Energy Saving Allowance). This will go in the next couple of years. Also, if you have tenants on benefit it is still possible to get good allowances on necessary work – although the tenant has to make the application (with your permission).

To HMO or not to HMO

There's been a lot of talk recently about all the problems of shared lettings, whether they are HMO's or not - see name of article about the difference between HMOs and sharing

It is certainly true to say that this area of letting has changed considerably over the years.

Not that long ago you could take a fairly ordinary house, and provided it was in an area requiring rooms to let (most towns/cities) split it into separate rooms; possibly even put a room in the roof, and away you went.

As long as it was for less than 6 people, it probably didn't even require planning permission (but obviously needed Building Control). The biggest problem was what type of tenant - student; benefit; working. And then whether to grant separate tenancies, or one joint one covering them all.

Whilst this type of let tended to require more management, it also tended to take a bigger rent - especially when let as separate tenancies. Additionally, separate tenancies spread the risk, so it's unusual to have 100% vacancy.

But if you do this now, you might have to seek planning permission; and get a licence to let - with all the inherent rules that brings. Additionally, everyone else has discovered this apparent 'goldmine', and there might be so many rooms to let, you might have trouble letting yours. Or even worse, you relied on students, and the local education establishment have realised they were missing a trick, and have built purpose-built student housing.

So is it still worth going into Shared Housing (rooms to let)?

It depends. All the normal rules of letting apply. Check the market, ensure there is a market available for this type of let, preferably talk to other landlords (although they might not want to reveal their 'secrets'). Remember that with the current benefit changes there will be more people looking for shared accommodation, as single people in the age range 25 - 35 will be dropping from a single room rate, to a shared room rate - i.e. approximately half their old rate.

But most importantly, talk to the local authority.

Ask them if you will need planning permission, and whether you will require a licence to let. All this unfortunately varies from authority to authority.

So this market still exists, but is different from what it was a few years ago, and in general is not for the faint hearted.

Forthcoming Landlord Shows

Your association is to be involved in the forthcoming show:-

Landlord and Letting Show.
London Olympia, Wednesday 7th and Thursday 8th September 2011.

All the details are on the web site, events page.

We look forward to seeing you.

SCHEDULE OF MEETINGS TO BE ATTENDED BY SLA REPRESENTATIVES

1st June 2011 – British Property Federation quarterly members' meeting

8th June 2011 – Industry meeting with Lord Best

9th June 2011 – South East Regional Forum, Homelessness Group meeting

21st June 2011 – Recession Impact Group meeting, Brighton and Hove City Council

22nd June 2011 – SLA Board meeting

29th June 2011 – Industry Forum meeting, London

IPHONE APPS

We are delighted to tell you that you can now access the SLA documents from your iPhone. Tell us what you think

MEMBERS AND OTHER NEWS:

Following enquiries from companies wishing to work with us we are delighted to launch a "**Corporate Membership"** scheme. Briefly details are:

1. Advert / company details and information on our web site
2. 1/8 page advert in each newsletter (larger available, subject to space, at extra (but discounted) charge)
3. Advertorial upon joining, and priority editorial space on matters relevant to them, (subject to space and editor's discrettion)
4. 25% discount on "this newsletter sponsored by " charge previously agreed to be £195
5. Preferential rates and priority if and when we decide to take advertising on web main pages

- We WILL NOT and cannot release membership lists (indeed it would breach Data Protection Act provisions to do so)
- No access to helpline etc.
- Corporate membership £195 per annum.

Please contact editor@southernlandlords.org for more details

MEMBERS' DISCOUNTS

We remind you of the following trade suppliers' discounts :

Travis Perkins
SLA members are 'on special' at Travis Perkins putting landlords on a par with large builders in buying lower

priced building materials. Contact Louise Brew. Tel: 01273 439871 and quote Trade Card Z66265 for best prices. Delivery can be arranged to any part of the country.

Leyland Paints
Up to a massive 40% discount off Kalon paints and specialist finishes. Telephone or visit Brighton or Hove branch - Tel: 01273 677626. National delivery and discounts.

TLC Direct
Special discounts off electrical supplies putting SLA members on a par with electricians. Call Pete West at TLC 01273 724288 for best prices. Delivery can be arranged to any part of the country.

If you know of a reputable supplier who offers or is willing to offer Members a significant trade discount please let us know.

ADVERTISING WITH SLA

We are pleased to offer 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.

TELEPHONE NUMBERS

We are fortunate to have several people who help run the SLA. This means that we are not able to give out a geographic number, but have to use non-geographic numbers to allow us to switch the telephone to whomever is manning it at that time.

Note that you should only be charged the local rate for your call, and that the SLA makes no money from their use - it is purely for your convenience. Any other numbers might not be answered. To remind you, our numbers are: -

Main number	0845 475 35 83
Fax	0845 475 32 83
Help Line	0845 475 24 83
Landlords Insurance	0845 475 13 83
Private Health Insurance	0845 475 23 83

Recommended by Member:

CLEANtech Cleaning Services
Adur Business Centre, Shoreham-by-Sea, West Sussex BN43 5EG
Phone 01273 467556, fax. 01273 467555.

"The man to speak to is Karl Wheeler and I recommend their services highly. As Mr Wheeler says 'I insist that my staff touch every surface when they clean'. Ideal for end of tenancy clean-up."

WANTED - YOUR CONTRACTOR or SUPPLIER

DO YOU HAVE A GOOD, RELIABLE CONTRACTOR or SUPPLIER THAT YOU CAN RECOMMEND?

- We are wishing to establish a list of recommended contractors, particularly builders, electricians and heating engineers / plumbers for your benefit. If you use a person / organisation that you could recommend, please let us know.
- We are pleased to receive comments, articles, stories, and other items for consideration for publication in future issues of this newsletter.

REASONS FOR BEING A MEMBER

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
- 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.

If you have any contributions, ideas or wish to communicate please contact editor@southernlandlords.org.

For general enquiries: info@SouthernLandlords.org
www.SouthernLandlords.org
The Business Centre, 17a Priory Road, Tonbridge TN9 2AQ

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