Newsletter No 16 Christmas 2012

SOUTHERN LANDLORDS ASSOCIATION

> DON'T FORGET TO COME TO LONDON & SOUTH EAST LANDLORDS DAY ON DECEMBER 7TH. SEE OUR WEB SITE FOR FULL DETAILS <

Merry Christmas

DISCRETIONARY LICENSING – TO PRODUCE BETTER MANAGEMENT IN PRIVATE RENTED PROPERTIES OR TO KEEP LOCAL AUTHORITY STAFF IN EMPLOYMENT?

Since the last Labour government removed the requirement for local authorities to obtain permission to introduce either additional or selective licensing, a significant number of schemes have been introduced. In the opinion of the Southern Landlords Association (SLA), many of those schemes are unlawful. In the main, they do not meet the requirements set out in the 2004 Housing Act. Your association has no objection to any scheme being set up, provided it complies with the regulations.

What it appears is now happening is that schemes are being set up not to deal with antisocial behaviour or poor management but to set out standards of accommodation, i.e. physical requirements and not management requirements. Some local authorities are intending to inspect every property for which they give a licence and charge for those inspections from the fees. Again, our association does not believe that such actions are compatible with the regulations or guidance set out by Government. In fact, the sole use of discretionary licensing fees is for the administration of schemes and certainly not for inspections of properties and confirming that physical standards are met.

This, again, is misuse of the licensing powers delegated to local authorities. As mentioned on numerous occasions, the only way to contest any scheme is by judicial review, the cost of which is completely disproportionate, both in financial terms and in delays at the High Court. In the opinion of our association, any objection to a discretionary licensing scheme should be through a Residential Property Tribunal hearing and certainly not through a judicial review. Members in the locations where discretionary licensing has been or is being implemented should understand that unless a significant sum of money is put up by those members in order to meet a legal challenge, then it simply will not happen and members' only recourse for unreasonable requirements is through a Residential Property Tribunal, which deals with individual matters, as mentioned in the general article on licensing requirements in this Newsletter. Many of the schemes introduced have not improved anything but have cost landlords thousands of pounds in order to keep local authority staff in employment!

MANDATORY/DISCRETIONARY LICENSING

Many members will have properties that are subject to mandatory licensing. That is, those properties of three or more storeys occupied by five or more tenants. Other members will own smaller houses in multiple occupation (HMOs) that could be the subject of discretionary licensing, either additional or selective.

When a licence is granted, it will contain conditions that members must comply with. In the case of mandatory licensing, those conditions may relate both to management and physical requirements. In the case of discretionary licensing, those requirements should relate to management. However, some local authorities are including physical requirements as well, and some, in fact, only physical standards.

With those requirements, especially the physical ones, will be a timescale. That timescale should be adhered to. If a member considers that a physical requirement is unreasonable, that requirement can be challenged firstly with the local authority and secondly, if the landlord is not satisfied with the outcome, through a Residential Property Tribunal (RPT). Doing nothing is not an option. Either negotiating with the local authority or through a Residential Property Tribunal are two ways of dealing with any unreasonable requirements. The third way is completing the works within the time specified by the local authority or seeking an extension if those works cannot be done within the time specified.

It has been brought to the attention of our association by a member that having failed to carry out certain works within the specified period, summonses have been issued for failure to carry out the works as required by the local authority. In the event of a successful prosecution, the landlord will acquire a criminal record and it could well be held that they are unfit to manage the properties they own.

Members should take this as a warning not to sit back when conditions of a licence are set and required to be carried out. You must either contest those requirements as set out above or seek extra time to complete them or get on with the work and ensure you have met the requirements within the timescale set. Do not expect a local authority to simply give you more time, for, as has already been seen, it may well not be prepared to do so.

NLA SUPPORTS SELECTIVE LICENSING IN MARGATE CENTRAL AND CLIFTONVILLE WEST

The National Landlords Association (NLA) has supported the implementation of selective licensing by Thanet District Council in Margate Central and Cliftonville West, according to the barrister who represented Thanet District Council at a judicial review brought by our association against Thanet District Council and heard in the High Court on 30th and 31st October 2012.

This particular case has been reported in previous SLA Newsletters as it has progressed. The judgment has been reserved for approximately 14 days but by the time you receive this Newsletter the result should be known.

The NLA, like ourselves and other landlords' associations, has opposed most discretionary licensing schemes, either selective or additional, as in many cases they do not meet the requirements of the guidance and, in fact, from experience, have produced no good results but have cost landlords substantial sums of money, not only in the cost of a licence but also the costs involved in producing the necessary information, plans and dealing with the management requirements set out as a condition of holding a licence.

The National Landlords Association produced an excellent response to the Thanet District Council consultation, setting out its reasons for opposing the scheme and why it considered it to be unlawful. It is most surprising therefore to find that having not recommended implementation of the scheme, the NLA then writes a letter purporting to support it, according to the barrister representing Thanet District Council. At the hearing, he said that the reason for NLA's change of heart was that amendments had been made to the scheme, following consultation. In fact, the only amendment was a reduction in fees for early applications, which had nothing whatsoever to do with the requirements for implementation. It seems that on the one hand the NLA opposes such schemes, but once the decision has been made by a local authority to implement, it then changes its position without good reason.

It is most disappointing, but not unexpected, that NLA has taken such a position. It is, of course, in the interests of all landlords that landlords' associations work in the interests of their members and not in their own interests. NLA has done no favours for landlords in Thanet or for the wider community of landlords. It is hard enough and extremely expensive to bring a judicial review and certainly most unhelpful when a landlords' association such as the NLA opposes a scheme for all the right reasons until it is implemented then backs down and considers it to be reasonably in order.

Members will understand why the Southern Landlords Association was formed. It acts as best it can in the interests of its members and has always believed that the NLA would not do so when called upon by its members to take action against local authorities, and this case bears out our decision to be independent and only work with landlords' associations that fully support their members.

UNFURNISHED PROPERTIES: EXPENSES CLAIMS FOR REPLACEMENT WHITE GOODS, FITTED KITCHENS, BATHROOMS, ETC

One of our members received a notification from his accountant that the facility of claiming for replacement white goods, kitchens, bathrooms, etc was to be abolished from April 2013. That member contacted our association and, as a result, we notified the British Property Federation (BPF), of which we are members, of the situation and asked whether this was true and, if so, how did it come about.

Following our representations, it was established that the Government was in the process of abolishing a significant number of regulations that it considered were no longer required. Included in those was the facility to claim replacement white goods, kitchens, etc. Directly as a result of our representations, HM Treasury has looked again at this regulation and has decided that it should not be abolished but be incorporated into other legislation and is at present undertaking that objective. BPF will be sent a draft of the new regulations.

It seems therefore that despite the removal of this regulation, HM Treasury has conceded that landlords will still be able to claim for replacement white goods, kitchens, etc after April 2013 and it is down to our member who notified us that the change is now taking place. This is an excellent example of members working with SLA to ensure that matters such as this can be processed through our membership of the British Property Federation directly with the Government departments concerned. May I, on behalf of those landlords who have unfurnished properties, thank our member for notifying us of the situation.

Members will also wish to note that the 10% fair wear and tear allowance in respect of furnished properties has already been incorporated in legislation and can still be claimed in the usual manner.

ADDITIONAL/SELECTIVE LICENSING – LONDON BOROUGH OF NEWHAM

Newham Council has agreed to implement both additional and selective licensing throughout its whole borough. Local landlords in Newham have for many months been contesting the scheme with the Local Authority. The larger landlords' associations have also been involved and there is little doubt that the Newham licensing scheme is unlawful. However, neither the local landlords nor the National Landlords Association were prepared either to seek Counsel advice on the merits of a judicial review or, in fact, take the Council to judicial review.

This is an excellent example of an area of very high demand being classified as an area of low demand, with alleged massive antisocial behaviour caused by private landlords failing to control the behaviour of their tenants within the curtilage of their properties. Our association gave much advice to the campaigners in Newham and are most disappointed that a fund was not able to be set up either to seek barrister's opinion on the likely success of a judicial review or, more importantly, to take that step.

The timescale in which a judicial review could be brought has now expired and our association has no doubt that this will thereby give the green light to other likeminded local authorities to introduce such schemes, knowing that the likelihood of them being challenged is very small indeed. Private landlords in Newham may well have been encouraged not to join an action against the Local Authority as a result of the low charges for early licensing, but once they see the conditions that are being imposed by Newham Council they may well regret not being part of any action.

SQUATTING IN RESIDENTIAL PROPERTIES

As mentioned in the Autumn edition of our Newsletter, squatting in residential properties became a criminal offence as from 1st September 2012. Hopefully, the new law will deter squatters from moving into residential properties, but it must be understood that even though squatting has been criminalised and could save landlords a substantial amount of money in legal fees, it is not clear at present whether the criminal procedure will be quicker, but it is certainly clear that landlords will have less control over the situation than before, as the eviction of squatters will be in the hands of the police and Crown Prosecution Service.

The new legislation only affects trespassers. Landlords should make sure that any persons in their properties are not there with the permission of a tenant, and there is little doubt that, on occasions, squatters will claim to be tenants and one wonders what the police will do in such cases.

There is also the consideration of conflicting resources and priorities of the police, and the landlord may well need to prove to the police that the person in the property is a trespasser without permission, and in some cases landlords may well have to use the existing civil routes, except in the most cut and dried cases.

AROUND THE BRANCHES

Southampton branch
<u>Additional licensing</u>

Southampton City Council is considering introducing a city-wide additional licensing scheme. The local Southampton committee are examining the scheme closely, with a view to considering obtaining legal advice as to whether it is lawful. Landlord members in the SLA at Southampton are considering financing such advice and, if favourable, may well go further in bringing a judicial review against the Local Authority.

It should perhaps be noted that John Denham, the then Secretary of State in CLG, was the person who removed the need for local authorities to obtain Secretary of State approval before implementing any discretionary licensing schemes. John Denham is an MP for one of the Southampton constituencies.

Thanet branch

Judicial Review (Selective Licensing)

Members will be aware of the judicial review brought by our association against Thanet District Council for what we believe is the unlawful implementation of selective licensing in Margate Central and Cliftonville West.

As already mentioned in this Newsletter, the case was heard in the High Court in London on 30th and 31st October 2012. A number of members attended the hearing and we believe our case was well presented during the two-day hearing. The outcome of this case will not be known for approximately two weeks and if it goes in our favour will be significant throughout England in respect of local authorities implementing similar schemes.

At this point in time, it would be right to thank those members in Thanet who have supported the judicial review, both financially and in time spent in providing statements and attending meetings with Counsel. It is hoped that there will be a successful outcome.

Brighton and Hove branch

Additional licensing

At the members' meeting held on 15th October, a very detailed presentation was given by Local Authority officers on the (then) forthcoming additional licensing scheme, subsequently implemented on 5th November 2012 in five wards.

At the meeting, there was an extremely lively discussion, but what became very apparent indeed was that the principle objective of the scheme was the setting of standards for smaller houses in multiple occupation (HMOs) that were to be included in the additional licensing scheme. In addition, all properties that are to be licensed are to be physically inspected, and part of the cost of licensing is the inspection of the property, and the cost of such inspection increases, dependent on the number of bedrooms.

The members in Brighton and Hove are most concerned that the scheme appears to be in respect of physical standards and not management of those properties. Members also believe that the costs of licensing should only be for the administration of the scheme and not for physical inspections. There is no requirement in licensing a property for it to be inspected.

Brighton and Hove members were also concerned that no discounts whatsoever were being offered for those landlords who were accredited or belong to a landlords' association.

Many questions have now been asked of the Local Authority about their objectives for the scheme. Replies are awaited but in the meantime members are generally dissatisfied with what the Council is doing.

MIKE STIMPSON'S COLUMN

I am dictating my portion of the Newsletter on Monday 5th November. Not only is it fireworks night, it is my grandson's 21st birthday and the day that I need to license those properties that I have in Brighton occupied by sharers. Fortunately, I only have a few.

As has already been mentioned in this Newsletter, discretionary licensing schemes are springing up everywhere and for a variety of reasons. Although many are described as unlawful, the cost of challenging them is so exorbitant as to be unreal, and the delays in bringing such cases to court is another factor that works against action being taken.

Our members in Thanet, with SLA assistance, have brought a judicial review and, as already mentioned, the result is awaited. In the last Newsletter, I requested members' donations towards the cost of that judicial review, for even if we are successful the cost to us could well be in the order of £20,000 to £30,000. The response from members was very poor indeed. However, I personally would like to thank those who made a donation. What I have gathered over many years of representing landlords is that most expect action on matters that concern them but few are prepared to pay anything towards the cost of such actions. As a small trade association, we cannot fight justified cases without members having to dip into their pockets. Unfortunately, many will go unchallenged, although the opposite should be the case. The Thanet case is the one example where we have managed to secure some funding from members and the result may benefit all landlords in the future.

Another subject that will be of great concern to many landlords is Universal Credits. I have been attending a number of meetings in London on this subject and hopefully there will be a reasonable recourse to direct payments when tenants fail to pay their rent under the new system, which comes in from April 2013. I shall report to members on progress of Universal Credits as firm policy emerges but those who have tenants in receipt of Local Housing Allowance can be assured that our association is doing its best to ensure a seamless change from Local Housing Allowance to Universal Credits.

Whilst writing, I should perhaps mention that as a commercial property investor, I have a small shop available to let in a very popular area in Brighton. Currently, I have five potential tenants lobbying for a lease on it. Nevertheless, on three occasions during the week commencing 29th October, the property was literally attacked by persons intending to break in and occupy it as squatters. Fortunately, I have a single tenant in the residential accommodation above the shop and on each occasion, when she heard disturbances in the early hours of the morning, she went down, and on two occasions the potential squatters ran off but on the third occasion they had smashed the door frame containing two mortice locks, damaged the alarm system and were inside the property.

Needless to say, they were high on drugs or similar substances. My tenant had, in the meantime, called the police but went down, nevertheless, to confront these two persons. She was armed with a meat cleaver and forced them on her own out of the property as the police turned up. Needless to say, she was warned about her actions and the persons who criminally damaged my property and would no doubt have squatted in it absconded without being apprehended. Congratulations go to my tenant, who did a very brave thing in ensuring that my property was not occupied by druggies.

These people are not genuine homeless people but out-and-out criminals who have absolutely no regard for people or property. They are a disgrace in society and the sooner the laws are changed to make squatting in commercial properties a criminal offence the better. Personally, I get sick and tired of those agencies allegedly representing tenants and the homeless forever pleading that these people are decent human beings, when the majority are not. They are hooligans, criminals and wasters who simply use society for their own ends.

On another matter in respect, yet again, of licensing of shared houses. A fellow landlord informed me that he had purchased a three bedroom flat in a modern block, which was erected in Brighton in approximately 2007, with full planning permission and planning regulations. As mentioned, it has three bedrooms and a modern, open-plan lounge with kitchen.

Because it has been let to three sharers, the landlord tells me that the Local Authority will require the kitchen to be separated from the lounge. Not only will this completely spoil the open-plan arrangement, it raises the question: why is it acceptable for a family to live in such accommodation without alterations but not three grown-up, professional sharers?

The Local Authority insists on heat detectors, fire blankets and alarms but it seems it does not consider sharers are responsible people. The Local Authority concerned needs to think again about its requirements, for on this basis it will find more homeless people unable to find suitable accommodation because the Local Authority cannot trust people to act in a sensible manner. Learning about this situation made me feel that the Local Authority itself does not appear to act in a sensible, professional manner but treats most people as though they are incompetent and incapable of acting sensibly within their homes. It's a funny world but often not a very sensible one.

EDITORIAL - STOP PRESS….

You will have seen that we have mounted a challenge to Thanet Council's decision to introduce licensing in the Margate area.

Unfortunately I have to tell you that we were not able to convince the judge of our case, and our claim was dismissed – i.e., we lost.

We continue to believe that this licensing scheme is inappropriate and consider that low demand for properties in the Margate and Cliftonville area does not exist, only that the mix of tenants/home owners is unbalanced directly as a consequence of TDC planning policies; nor that anti-social behaviour in the area can be as a result of landlords failing to control tenants within their properties. We intend to continue to work with Thanet Council, and others to improve the lot of landlords.

We don't doubt that we were correct to make this challenge. We are not as large as the other associations, but we concentrate on helping landlords and representing them where necessary - rather than building a commercial company. And where we believe a decision should be challenged, we will continue to challenge.

DEPOSIT SCHEMES

You will be aware that if you take a deposit it has to be protected in the appropriate manner.

There are two ways of protecting it:-

1. by putting the deposit in a custodial scheme – only 1 available – DPS;
2. keeping it, provided you belong to an insured scheme – TDS, or MyDeposits.

At the beginning of the year it was announced that the Government were reviewing the insured options, and invited companies to tender – including the current incumbents. The SLA in association with Boswells Insurance tendered, but unfortunately weren't accepted.

However, you will be interested to know that as from April 1st next year there will be 4 insured schemes:-

1. TDS;
2. MyDeposits;
3. DPS are to open an insurance scheme in addition to the custodial scheme they operate;
4. A new scheme to be introduced by Capita Ltd. Capita offers services to Councils. Interestingly, it was started by the FD of Brighton Council several years ago.

In spite of the fact we bid – and our advice remains the same – think long and hard before taking a deposit. Ask yourself if it is worth the time, effort and cost?

Did you know you can now have a **Green Deal assessment** carried out - although you can't have the actual work done until after January 28th

THE THREAT OF WATER ESCAPE IN VACANT PROPERTIES

Fire, break-ins, earthquakes, acts of God. There are plenty of insurable risks that sound disastrous, but the biggest headache for landlords involves something far more innocent: water.

Constituting nearly 20% of all buildings and contents insurance claims, damage related to water escape cost the industry £730 million in 2010, more than double the impact of burglary. Figures released by the Association of British Insurers put the daily cost of water escape at £2 million, with 371,000 claimants receiving average payouts of £2,000.

With some tenants seemingly oblivious, landlords find themselves at heightened risk of water escape, but it is when their properties are unoccupied that water damage can be most costly.

Prolonged damage

In empty property, leaks are less likely to be spotted early, with prolonged presence of water exacerbating localised damage, increasing the size of the area affected, and driving up the cost of repair. Logic may suggest leaks that occur behind walls would be costlier, but figures from Allianz showed the cost of damage related to unconcealed pipes was greater, at approximately £7,500 a claim.

A report by Allianz showed leaking feeder pipes were the cause of 39% of water damage claims they dealt with in 2010, with leaking showers responsible for 11%, toilets causing 9% of claims and radiators 6%.

Making the problem worse, because of the nature of water, and as illustrated by damp patches caused by roof problems, damage does not always appear at the point of escape, with the cost of investigation adding to the burden of property owners.

Winter months

The risks are far greater for landlords with vacant properties in winter months. Legal and General saw damage caused by frozen pipes rocket rise from 1.3% of claims to 6.5% the year later.

While the cold snap that year was undoubtedly a major contributor, landlords tempted to save gas bills by not heating non-rent-yielding investments would also have been disproportionately affected.

Landlords' insurance

Provided landlords have the correct landlords' insurance cover, the financial impact of water damage need only extend to the cost of the excess on their policy.

Every landlord insurance policy differs from the next, and it is vital to make sure the details are tailored to the property it covers. There are a host of landlord insurance providers on the market, so while choosing the correct policy can be problematic, there is value to be found.

Using the services of a specialist landlord broker like **Alan Boswell** should make the best deals easier to find. With expertise in the landlord insurance field, we are proud of our record of providing tailored policies that give our clients cost-effective protection against the kind of risk that can turn a good investment bad.

Don't forget that you can now use the Boswells on-line quoting service; and also the their tenant referencing service - see back page for more details

THE SLA QUESTIONNAIRE

Because we want to find out what members want from us, we recently carried out a questionnaire. We are delighted that many of you took the time to respond. Results of questions:

- Method of communication:-
  It would appear that the majority of people now prefer to communicate electronically. When asked how you would like to communicate with the SLA:-
  - Email 36%
  - Phone 29%
  - Internet 16%
  - In person 12%
  - By post 5%
  - Text 1%
- Ranking the services in order gave the results:-
  - Telephone Help Line 24%
  - Members newsletter 19%
  - Branch meetings 16%
  - Website 15%
  - Boswells insurance 15%
  - Members discounts 10%
- There were several requests for enhanced/more services. Too many to list here, but the following are a sample:-
  - ***Help line have access to legally trained person.*** John Pettman takes it on a Tuesday, and is a solicitor. Additionally Tony Newey of Quality Solicitors Howlett Clarke takes it on Wednesday mornings.
    Note that this is the only time there is a limit on use of the Help Line. Tony will only give 10 minutes free help. But you can get a lot into 10 minutes, as long as you organise your questions;
  - ***Effectively tackle local concerns***.
    Whilst we lost, our recent case at Thanet shows that we are willing, and able to take on complicated local cases.
    We are involved in reviewing Brighton's, and also Southampton's licensing plans;
  - ***Greater representation in Kent.*** We will investigate how we can do this;
  - ***Improved documents.*** Again, we will investigate this;
  - ***Put resume of branch meetings on the web for those who can't go.*** Good idea, we'll start to do this.

Thank you to all those who took part.

We sit on the **UK Landlord Accreditation Partnership,** and they have recently published a survey into the Private Rented Sector in the South East. The full survey is on our web site, strongly suggest you take the time to have a look - it makes fascinating reading'

MEMBER'S ADVERT - FOR SALE

1 bed, Ground Floor Flat, Dean Street,
Brighton BN1 3EG.
With patio, characterful cottage style
Tenanted £800pcm
Share of Freehold OIRO £175,000
Mobile: 07866 581872 (SLA Member)

If you would like to place an advert in our next edition please email by 12th Feb 2013 to: editor@southernlandlords.org

FORTHCOMING MEETINGS.

The next London social will be Wed Dec 5th, from 6 pm at The Jugged Hare (upstairs gallery), 172 Vauxhall Bridge Road, London SW1V 1DX

The dates for **next year's** meetings are:-

- Wed, Jan 9th – London Social - The Jugged Hare;
- Mon, Jan 21st – Brighton & Hove – Langfords Hotel;
- Mon, Jan 21st – Southampton – Chilworth Manor – "*Debate about next weeks vote on licensing - the last chance to influence your local councillor*";
- Wed, Feb 6th – London Social - The Jugged Hare;
- Wed, March 6th – London Social - The Jugged Hare;
- Wed, April 3rd – London Social - The Jugged Hare;
- Mon, April 8th – Brighton & Hove – Langfords Hotel;
- Mon April 22nd – Southampton – Chilworth Manor
- Wed, May 1st – London Social - The Jugged Hare;
- Wed, June 5th – London Social - The Jugged Hare;
- Wed, Jul 3rd – London Social - The Jugged Hare;
- Mon, Jul 22nd – Brighton & Hove – Langfords Hotel;
- Mon, Sept 16th – Southampton – Chilworth Manor;
- Mon, Oct 21st – Brighton & Hove – Langfords Hotel.
- Mon, Nov 11th – Southampton – Chilworth Manor

Watch the web site for more details – www.southernlandlords.org. Note that we are to put a resume of the meeting on the web after the meetings.

See the web for more information
www.southernlandlords.org

MEMBERSHIP OPTIONS:

	Bronze – Free (on-line application only):-	Silver - £35 pa:-	Gold - £75 pa:-	Corporate £195 pa:-
email notification of meetings, etc, in your area;	SLA	SLA	SLA	SLA
all member trade discounts;	SLA	SLA	SLA	SLA
on-line newsletter;		SLA	SLA	SLA
all documents (AST's/notices, etc);		SLA	SLA	SLA
insurance cover for HMRC investigation		SLA	SLA	
fact-sheets;		SLA	SLA	
posted newsletter;			SLA	
unlimited use of advice line;			SLA	
Classified advert and company details and information on our web site				SLA
1/8 page advert in each newsletter				SLA

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Copy Deadline for Spring 2013 edition strictly 12th February

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