Newsletter No 22 Christmas 2014

SOUTHERN LANDLORDS ASSOCIATION

This edition's featured Corporate Member orchard & shipman

THE SOUTHERN LANDLORDS ASSOCIATION CELEBRATES 40 YEARS REPRESENTING LANDLORDS' LEGITIMATE INTERESTS THROUGHOUT THE UNITED KINGDOM

It is with much satisfaction that our association is celebrating 40 years of representing landlords. Some members may recall that it was formed as a result of a letter in the Evening Argus Postbox by a landlady complaining about the unfairness of rent control and suggesting that landlords in the area should get together and form an association to lobby Government, seeking redress for the appalling way in which landlords were being treated. It is directly as a result of this letter that a meeting was held at the Marlborough Hotel in Old Steine, Brighton, and the Sussex Private Landlords Association was formed.

Members will be aware that during the 40 years much has changed to the benefit of landlords, to such a degree that there are now well over one million landlords in this country and the private rented sector is the largest provider of rented accommodation in the United Kingdom. None of this could have been achieved without much work by volunteers who have unreservedly given their time over the years for the benefit of landlords.

By the time this Newsletter is published, the 40th anniversary celebration held on 20th November in Hove will have passed and we must all now look towards the future. So what is on the horizon? Firstly, the demand for rented accommodation in many areas is outstripping supply. House prices in some areas are beyond the reach of many who would wish to purchase their own home, leaving renting as the only option. Local authorities and housing associations together are providing insufficient accommodation to meet the needs of the population. Immigration also has had a major effect on the need for provision of more properties.

Local authorities seek to preserve the green belt, and local communities don't wish to see more housing in their areas, often citing pressure on services as being the reason. Neither housing associations nor local authorities seek to house single people or the vulnerable, and significant numbers of families, for one reason or another, are unable to be housed by them. Many local authorities see the private rented sector as the social housing provider of last resort but then expect landlords to provide accommodation to high standards, often to those people who are not prepared to act in a tenant-like manner and respect the property that they occupy.

Rents in the private sector are currently being described as too high and that private landlords are ever increasing them. What is not mentioned is that rents in social and council housing have risen far higher proportionately over the past ten years than those in the private rented sector.

Currently, as will be noted from further articles in this Newsletter, there is pressure to restrict the use of the Section 21 notice in respect of tenants who claim disrepair and where the landlord then serves notice without doing the work. There is also much pressure for Government to 'control' rents and for tenancies to be granted for much longer periods than they currently are. Have no doubt, our main objective going forward is to preserve the benefits achieved over the past 40 years, some of which, as mentioned, are under severe pressure. Members should have no doubt, housing is at the top of the political agenda, regardless of which party is in power.

Over the past 40 years many landlords, as a result of the conditions they were faced with, were prepared to give up their valuable time in pursuit of better conditions. Most have been won, and landlords of today, in the main, enjoy good rents and ease of gaining possession. Few now see any reason to join landlords' associations or offer their valuable free time to ensure that the many gains made over the past 40 years are not lost. Landlords also, in general, believe that an effective organisation, promoting and protecting their interests, can be operated 'on a shoestring'. It cannot, and the days of people being able or willing to spend hours of their own time for the benefit of all landlords are disappearing quickly indeed.

For the future, then, is the challenge of being able effectively to represent the legitimate interests of landlords and to ensure that in the future the benefits gained over 40 years of hard work are not eroded or lost. Our association needs new blood and new ideas to take it forward into the next 40 years. Are you, as a member, prepared to be one of those to lead the challenge?

MPS URGE CHANGES TO RENTAL MARKET FOR UNDER 35S

The All Party Parliamentary Group for the Private Rented Sector has issued a report urging the re-examination of many policies that make the rental market difficult for young adults. Oliver Colvile MP, Chair of the Group, stated that policies such as Article 4 planning restrictions and the extension of the shared room rate to those under 35 were restricting access to suitable rental accommodation and urged the Government to consider a review of its policies.

The SLA submitted a report to the British Property Federation (BPF) who, on our behalf, submitted evidence and appeared as witnesses before the Group, echoing many of the concerns published in the final report.

FLOOD RE

Members will be aware from previous Newsletters that the issue of excluding properties from within the new Flood Re scheme is ongoing. The Water Bill, within which the Flood Re sits, received Royal Assent earlier this year and on our behalf the British Property Federation (BPF) is keeping up the campaign to reverse the decision to exclude leasehold properties and the private rented sector from the Flood Re initiative. What this means is that landlords owning properties in flood risk areas will be unable to access the Flood Re insurance cover and could well find it difficult to obtain reasonable cost flood insurance for their properties. That is if they can obtain cover at all.

We shall report in future issues the result of the further representations. Members should, in the meantime, take care when purchasing properties for let that they are not in an area where there are serious flood risks and where insurance policy exclusion from Flood Re is applicable.

FISCAL DRAG SEES STAMP DUTY REVENUE SOAR

Members who are still purchasing properties will be aware of the ever increasing costs of stamp duty and that Government appears content to leave the levels at which stamp duty is imposed without any concern for inflation or higher prices. As a result, the stamp duty revenue for Treasury has now reached over £1 billion a month, reinforcing the case for reform. Members will be only too aware that when purchasing properties the cost of stamp duty, when added to the purchase price, has to reflect in the rent charged in order to obtain a fair return.

PRIVATE MEMBERS' BILLS

There are currently two private members' bills making their way through the parliamentary process that affect private landlords.

The first is a private member's bill being brought forward by Sarah Teather MP which aims to outlaw 'revenge evictions' and has been gathering widespread support. The Tenancies (Reform) Bill, which would introduce protection for tenants against retaliatory Section 21 evictions, has been given Government backing by Communities minister Stephen Williams. The Bill will receive its second reading debate in parliament on 28th November 2014.

Our association's representatives have made both oral and written submissions to the British Property Federation (BPF) strongly opposing this Bill. Firstly, it seems that although Sarah Teather came fourth in the ballot to present private members' bills, this Bill is being sponsored by Shelter (who, by the way, as a charity should not be taking a political stance). What concerns the SLA is that, on the face of it, the Bill seeks to stop the use of a Section 21 notice for six months where a tenant has complained to the local authority of disrepair and the landlord, instead of carrying out the work, issues a Section 21 notice seeking possession. That sounds perfectly reasonable, in that the Section 21 cannot be effected for a period of six months. Then, again, after that time if the tenant again claims disrepair and a further Section 21 notice is issued it will not be allowed to be taken forward for a further six months.

Why is it then that our association is so opposed to this Bill? The answer is very simple: if a tenant makes a legitimate claim for disrepair to the local authority, then that local authority has a duty to make an inspection and serve a notice on the landlord, seeking the disrepair to be rectified. In the opinion of the SLA this is effective and there is absolutely no need to bring in more regulation. In fact, what the SLA considers to be the objective is to further restrict the use of Section 21 notices and, at the same time, give tenants who have sole occupation of their property the opportunity to claim disrepair when faced, perhaps for other reasons, with a possession claim against them, e.g. antisocial behaviour.

As an example of restrictions on the use of Section 21 notices, Sarah Teather cites a landlord who fails to regulate a deposit within the prescribed period and then, as a result, cannot use the Section 21 procedure. What Sarah Teather has not mentioned is that the vast majority of cases brought against landlords in respect of failure to regulate deposits are on a minor irregularity in the provision of the prescribed information and has nothing whatsoever to do with the failure to deal with a deposit in a reasonable way.

What should be happening is that Government, instead of supporting more regulation against landlords, should be looking at current regulations for deposit protection that, in the opinion of SLA, are not fit for purpose. Government should be ashamed of the way deposit regulation was introduced on false information from Citizens Advice and Shelter and it has proved to be not only inflated but completely wrong, and that those organisations representing tenants have used deposit regulation not to ensure fairness in return of deposits but to ensure that every landlord meets every minor portion of the regulations, otherwise they are in court and being fined between one and three times the value of the deposit for the most insignificant mistake.

Have no doubt, if Sarah Teather's Bill becomes law, then not only will landlords be faced with spurious claims of disrepair but they will also be faced with compensation claims as a result, and those legally aided agencies will be only too keen to find ways of attacking landlords by asking two questions of those tenants who seek advice, the first one being, 'Did the landlord take a deposit and has that landlord dealt correctly in every detail with its regulation?' and secondly, 'Have you disrepair?' and then there will be a detailed examination of what the tenant could be claiming, with a list being sent to the local authority, and that is a charter for some tenants to claim disrepair, having caused that disrepair themselves.

As mentioned, the SLA strongly opposes this Bill and has made the strongest representations for it to be opposed. On a more humorous note, one of the questions asked in the consultation is, 'What can be done to make the Bill better'? Our reply was, 'Scrap it. A bad bill cannot be made better in any other way'.

The second private member's bill is sponsored by Dr Alan Whitehead MP to close a loophole in the minimum energy efficiency standard regulations. Members will be aware that HMO properties let on a 'room by room' basis are excluded from compliance, and in his Houses in Multiple Occupation (Energy Performance Certificates and Minimum Energy Standards) Bill he proposes to ensure that all properties will have to meet a prescribed level of energy efficiency before they can be legally let.

Members who have houses in multiple occupation will be aware that some of the properties may well be let as rooms while others are sold as leasehold flats, etc. To impose a high standard of energy efficiency in these properties, although a commendable objective, is nigh impossible to achieve and certainly not in any cost effective way.

It is most unfortunate that the British Property Federation representatives are in support of this Bill, on the basis that any energy efficiency improvements in properties are to be welcomed. The SLA supports the principle but in reality is opposed to any bill that imposes conditions that are nigh impossible to be carried out at reasonable cost and then imposes the inability to let accommodation because of it. There is a significant shortage of shared accommodation / larger HMOs and every effort should be made to keep those properties occupied and not impose, even with good intentions, regulations that make it impossible for landlords to comply and that good accommodation, albeit a little energy inefficient, cannot then be let.

Members can be assured that the SLA has made its views known, in writing, to our representatives at the British Property Federation.

INCOME SOURCES FOR TENANT REPRESENTATIVE BODIES

Generation Rent: This is a national charitable organisation helping private tenants. The SLA is to speak with their local southern representative and hear about their objectives in this area. What is most surprising is that that organisation has received £725,000 from the Nationwide Foundation, which is funded by the Nationwide Building Society.

Shelter: This charity receives more than a fifth of its income from Government grants. In addition, it receives 7% of its income from legal aid advice contracts and, further, receives monies from the Big Lottery Fund. It may be a surprise to landlords that Shelter is also supported financially by the Nationwide Building Society. As a representative of landlords for over 40 years, the SLA believes that Shelter exists to promote regulation against landlords and to promote tenants' objectives but that Shelter itself has never housed one tenant, neither has it provided refuge in any form. It is simply a campaigning group for tenants and is mainly anti-private landlord.

One wonders why the Nationwide Building Society is prepared to give so much money to both Generation Rent and Shelter. To the knowledge of SLA, no landlords' association is given any form of grant by Government to pursue decent and fair regulation for landlords. It seems that Government expects landlords to fund their own associations, whilst tenants, many of whom are not economically poor, can expect Government / charity foundations to supply the income to allow them to progress their objectives.

What this means is that in order for landlords' associations to be able to provide professional negotiators and do detailed research, landlords should understand that they need to belong to a landlords' association and pay fees appropriate to the work they expect all too often to be done by volunteers for no cost. Unfortunately, those days are long gone and, to be effective, professional paid people are the only answer. We need to move forward, bearing in mind that there is a cost for providing excellent services. As one expression says, 'Quality isn't expensive, it's priceless'.

CONSERVATIVE CONFERENCE

Members may well know that the Conservative Conference was held in Birmingham in September, and two members of your Board were invited by the Residential Landlords Association to attend a private lunch consisting of a number of landlords and Conservative Members of Parliament.

Our representatives were Mike Stimpson and Fred Knight. Mike Stimpson made a short presentation to MPs, opposing selective licensing and giving reasons for so doing. A number of short presentations were made, such as Article 4, and each subject was followed by a discussion.

We trust that the MPs who attended the lunch are now better informed of the realities of being a landlord and of the constraints and cost of unnecessary regulation.

A NOTE FROM A TENANT TO A LANDLORD

'Hi. It's Steve from Flat 1. I know I've got rent to cover today but I have another follow up interview on Monday as I passed the group selection. The person I met told me that for the next one I should be suited, etc and I have to do dry cleaning and buy interview clobber plus bus fares, etc. As such I have no spare cash this fortnight but I will make it up next time (2 weeks) as I'll have no debts, etc. Hey, if I get the job and it's looking good I should be able to clear my arrears in one go. Pray for me ha ha. Soz for the hassle. Yours Steve'.

Comments from the landlord: Despite the good intentions, he did not get the job, and the rent arrears remain. This is how landlords, in reality, have to deal with their tenants.

AROUND THE BRANCHES

Brighton and Hove branch

Members who have properties in Brighton and Hove should be aware that the Local Authority is anticipating a shortfall of at least £5 million for the Council to help low income households pay their council tax. It is hoping to absorb £1.5 million of the funding reduction but is expecting to be able to make up the balance by reducing the amount of relief given to people of working age, the suggested changes being that all persons of working age would be required to pay at least 25% of their council tax bill, and in respect of that proposal no person will be expected to pay more than £5 a week extra council tax than they currently do.

In addition, it is proposed that the maximum savings a person can hold and still receive council tax rebate would be reduced from £16,000 to £6,000. The amount non-dependants must pay to help pay council tax would be doubled. Child benefit would be counted as income when assessing council tax rebate (it is not counted in the current scheme). Second adult rebate will no longer be paid to people of working age. The earnings disregard for some disabled people and carers would be increased by £10 to £30. None of these changes affect people of retirement age.

Our association has made representations to the consultation, as it considers that people in receipt of Jobseekers Allowance, many of whom are already having to make top-ups to the rent, will not be able to afford an additional amount of up to £5 a week towards their council tax payment. It is most likely to be unsustainable and what will, in effect, happen is that rents will not get paid and evictions will subsequently occur. Your representatives, in replying to this consultation, have made the point that increasing the council tax levy on people who are of working age but are not in employment will cause hardship for those people, and although it is reasonable that they make a contribution, such an expected contribution of up to £5 in addition to what they already pay is unlikely to be affordable and certainly will either not get paid or those tenants will be unable to pay their rents, resulting, as mentioned, in evictions.

As an alternative, your representatives have made the point that this city has a very significant number of students living in it who are currently exempt from council tax payments. Those same students have the right to vote, and often do vote, especially in local elections. Having the benefit of a vote should also have the obligation of contributing towards the cost of providing services. We have therefore suggested that students living in Brighton and Hove be required to make a contribution towards council tax in the city.

No sooner had we replied to that consultation than another one was forwarded to us. This affects all landlords and refers to council tax exemptions. Members will be aware that, currently, if a property becomes vacant and is unfurnished, members can claim up to one month's council tax exemption. It is proposed that as from 6th April 2015 that exemption be reduced to nil. In addition, where properties are in need of renovation, members can currently claim up to six months' exemption from council tax. As from 6th April 2015 it is proposed to reduce this exemption to nil. The SLA is making representations regarding this consultation also.

MIKE STIMPSON'S COLUMN

I shall spend the next few column inches reflecting on the 40 years that our association has been in existence.

I can clearly recall the very first meeting at the Marlborough Hotel in the Old Steine, Brighton where our association was formed. As I have mentioned many times before, the purpose of the formation of our association was to drive forward the objective of obtaining market rents for landlords. The journey to the present day has only been achieved by the work of such people as Ron Shrives, Ken Hall, Harold Slade and all the others who gave up their valuable time to take forward the interests of landlords and also to promote our association as the professional association for landlords in southern England. Although the road has been very bumpy, our association has retained its tradition for representing the legitimate interests of private landlords to local authorities and national Government.

The current number of landlords in the United Kingdom, totalling over one million, reflects the popularity of investment into the private rented sector. Whilst demand for rental property by tenants is ever increasing and often cannot be met, we must understand that Government's interest in the private rented sector is very high on its agenda. There are, for example, serious pressures to reduce/erode the ability to gain possession under Section 21, which should be an absolute right of landlords. There is also pressure for Government to put in controls for rental increases and in fact even rents in general. Further, there is also pressure on Government to introduce measures for longer term tenancies. Licensing by local authorities also poses significant problems for private landlords.

All of the above are real issues affecting private landlords and it is the landlords' associations that provide both action and evidence to refute unreasonable legislation. However, there are those organisations such as Shelter and Citizens Advice whose sole objective is to control the private rented sector, often representing the worst in landlordism as being the generality, rather than the insignificant.

Landlords should understand that their present freedoms in respect of lettings, rents and rental periods are all under threat, and to do nothing but simply draw the income and profit from their operations, expecting it to continue unchanged in an atmosphere of shortage of rental accommodation and unaffordability of home ownership, is living in a dream world. More than ever, landlords need to belong to landlords' associations that will effectively take action to promote their interests, not only today but for the next 40 years. We must not be complacent, and please assist by recommending fellow landlords to join our association and support us in the coming years.

May I finally thank those landlords who have stood by us over the many years we have been in existence. We must now hope that the next generation of landlords will be as keen to support landlordism in general and look forward to the next 40 years.

Mike Stimpson

DID YOU KNOW….?

Persons entering the United Kingdom from EU membership countries can claim Jobseekers Allowance and Housing Benefit. However, from January 2014, regulations were introduced that only allow such a person to claim Jobseekers Allowance for six months, during which time he must obtain employment. Similarly, from April 2014, Housing Benefit will only be paid for six months, unless the tenant has obtained employment.

What this means, in effect, is that if a person from the EU comes into this country, takes accommodation and is in receipt of Jobseekers Allowance and Housing Benefit and fails to obtain employment within the first six months, both his Jobseekers Allowance and Housing Benefit will cease and he will have no funds.

Although there are circumstances in which further payments will be made, members should be aware of these new regulations, otherwise they may well find themselves taking on a tenant from the EU who is unemployed and then find, soon after giving a tenancy, that no rent is forthcoming for the above mentioned reasons.

IMMIGRATION CHECKS

As from 1st December 2014, some landlords will have the obligation to carry out 'right to rent' checks for new tenancy agreements to determine whether the tenants have a right to live in the UK legally. This trial will be operated until May 2015, after which it may well be extended to the rest of the country.

A code of practice (31 pages long) has been produced by the Home Office and includes all the penalties that landlords can face. The areas in which the trial is being conducted are Birmingham, Walsall, Sandwell, Dudley and Wolverhampton. It will no doubt take time for landlords in those areas to understand the new requirements. However, as is usual, all landlords are expected to do this as part of their landlord business, for which no expenses are able to be claimed. That is, of course, unless you are an agent, who will no doubt charge the landlord for providing the service.

UPDATE ON THE DE-REGULATION BILL.

In the last newsletter we gave you news of amendments to tenancy deposits via the De-Regulation Bill (page 6 - AND ANOTHER SAGA CONTINUES - TENANCY DEPOSITS).
Here, we explained that the anomaly of a deposit having to re-protected when a fixed term AST goes periodic was to be reversed in this Bill. It was anticipated that it would become law in October, and we promised to tell you when this happened.

Well, it's not yet law. At one stage I thought that it might never see the light of day, but in the last two weeks (end October) has shown a flurry of activity in the Lords, where it has been having minor amendments made.

As soon as it gets Royal Assent we will inform members.

ANTI-SOCIAL-BEHAVIOUR.

We have had so many examples of central, and local Government wanting landlords to control the anti-social behaviour (ASB) of their tenants. In fact in the early noughties the NFRL took Northern Ireland to a Judicial Review (JR) objecting to a proposal (in summary) to make landlords responsible for their tenants; and the tenants friends ASB in the property, and within the vicinity of the property. Needless to say, we thought this inappropriate, and so did the Judge.

The significance of Northern Ireland? If successful it would have also been introduced in England.

We are constantly repeating a mantra to Councils when they propose making landlords take more responsibility for their tenants ASB, via licensing. The mantra - the only people who have the ability to do something about ASB are the Police, and the Council themselves. The only thing a landlord could do is to evict the tenant(s). Whilst this helps the landlord, it takes a long time, and doesn't help the situation from a social point of view - it merely moves the problem elsewhere, probably to another un-suspecting landlord.

It was also made more difficult because the Section 8 Ground 14 that covers this is discretionary. So landlords generally have to use a Section 21.

There has been a new law passed - the Anti-Social Behaviour, Crime and Policing Act 2014 that gained Royal Assent on October 20th.

I could do a long piece on what this Act covers, but you would all be bored rotten. But a summary of the matters that affect landlords are:-

- Police and Councils now have new powers to quickly close any premises which 'are being used, or likely to be used, to commit nuisance or disorder'. This might be your property;
- Landlords now have mandatory grounds for eviction on the basis of ASB. These will be on the basis of:-
    - ASB against the landlord/agent committed by the tenant, another occupier or a visitor;
    - The property being closed (mentioned above);
    - The tenant is in breach of a noise abatement order.

- Additionally there are two more discretionary grounds:-
  - 14za - The tenant or an adult residing in the dwelling-house has been convicted of an indictable offence which took place during, and at the scene of, a riot in the United Kingdom (couldn't really summarise that);
  - 14 aa - long and complicated, but in summary - anyone residing at the property has caused a nuisance or annoyance to landlord/agent/or anyone employed to do work at the property.

The exact wording to be used on the actual Section 8 isn't yet clear, but when it is, we will amend the on-line version.

Please note that if you are confused, so will courts. So if you try to use these Grounds make sure you fully understand them, in case you have to convince the judge/magistrate.

So, to return to the original point. Landlords can still only evict. It's just been made easier (in theory).

TAX

Worth reminding you that the Inland Revenue are having a crackdown on landlords, and if they have to warn you about a problem, they will take that warning

as the second warning, as they consider the publicity as warning number 1. Any subsequent warnings will entail a fine, as well as any repayments.

We always advise that you ensure any tax experts you use specifically know about rental matters. The best way is if they are landlords themselves. If they are, trust me, they will have found everything they can claim for.

Have a look on our web site for an Inland Revenue e-learning site to help.

GREEN DEAL

Ed Davie, the Lib-Dem Energy Secretary has announced a further £100 million to assist people make energy improvement in their property. This is after the last assistance of £120 million went in a matter of days.

If you need to know what is available in your area ring the Energy Savings Trust helpline on 0300 123 1234. Don't bother looking at their web site, as by their own admission, they cannot keep it up to date.

LETTING AGENTS

Due to recent legislation, all Letting Agents and Property Managers now have to belong to a Property Redress Scheme. The two Property Ombudsman run schemes, as do a new company The Property Redress Scheme, run by Hamilton Frazer (also run My|Deposits). This is in addition to any trade body they might belong to - e.g. ARLA.

The scheme is designed to give disgruntled tenants and (some) landlords someone to complain to about the agent. Note however, that the critical matter of ensuring agents who handle clients monies do not yet have to belong to a Client Money Protection (CMP) scheme. This arguably is more important than having someone to 'moan at', and is disappointing that the Housing Minister Brandon Lewis didn't feel it appropriate to grasp the nettle and make this mandatory.

Baroness Hayter has been pushing for this for a long time, and has tabled an amendment to the Consumer Rights Bill to make CMP mandatory. Confusingly, the Government responded by stating they did not support a blanket ban on agent fees - which is not what Dianne Hayter has asked for.

The SLA were sounded out for their thoughts on this a couple of years ago, and we stated that we supported mandatory CMP, and a Redress Scheme, as long as it didn't cover landlords managing properties on behalf of someone in their family. Unfortunately it is not clear if you will have to join if you manage on behalf of someone else. Perhaps you should give serious thought to joining, certainly ask them - fees are between £100 to £300.

Note however, that the following are exempted from having to join:-

- an agent providing 'find only' service - i.e., they don't issue the AST;
- an employer renting property to their employees, as part of the employment;
- higher and further education bodies;
- legal profession.
- Note that Local Authorities are also exempt, but only because they are already a member of the Housing Ombudsman Scheme.

LICENSING

Discretionary Licensing - Selective and Additional Licensing are still being pursued by various councils, especially London Boroughs.

The latest is Enfield, intending to introduce both a brave local landlord has single handed taken them to a Judicial Review (JR).

Mr Constantinos Regas has challenged the Council on their plans to introduce both Selective, and Additional Licensing across the whole borough, as Newham Council's scheme. Mr Regas went to the High Court requesting permission to take the whole case to a JR. He experienced partial success:-

- he could not get permission to proceed to challenge the scheme to license all single let properties. The Judge ruled that the decision making process was "robust and fair".
- But he was given permission to proceed to challenge the scheme to introduce Additional Licensing, designed to allow Enfield to license all HMO's over and above the current mandatory scheme.

Mr Regas has applied for permission to appeal the Selective Licensing decision.

Now Camden Council are proposing to introduce licensing of HMO's. The SLA attended a meeting with them, where we pointed out that blanket licensing of everything was a blunt tool to sort out these problems. We prefer to train and accredit landlords, so they are aware of where they are going wrong - then prosecute.

To be fair to Camden, they are very keen on training and accreditation, but this still only accounts for a small percentage of landlords.

The list of other councils looking at licensing is long. All we say is:-

- Take part in the consultation - Camden is on their web site, enter 'consultation on licensing' in the search box;
- If licensing is introduced, whether you agree with it or not, it becomes a legal requirement, and ignoring could be very costly.

TRADE POINT CARDS

We are delighted to tell you that we have obtained a Trade Point Card for all members.

Note that even if you already have a card, it is likely that the SLA card will give you a better discount, as we enjoy the maximum discount available. Don't forget to go to the Trade Point counter at your larger B&Q stores.

COUNCIL TAX FOR LANDLORDS - TAXING FOR THE BRAIN!

How many times do we start an article with, 'This used to be very straightforward…but not any longer'? Well, here's another one for your collection!

Council tax and property
Council tax makes up more than £22 billion of English councils' income. It's charged on 'each unit of accommodation which has its own separate council tax banding'. A unit of accommodation could be a whole house, a single flat or a bedsit within a house. However, it's to be noted that some bedsit houses with separate accommodation may be banded as one unit.

Who is liable for council tax?
The all-important question. And, predictably, the answer is, 'it depends.' Usually, the person living in the property will be liable, but sometimes it will be the owner of the property - that is to say, sometimes it will be YOU, the landlord.

When is the tenant responsible?
If you rent the whole property to one person, a family or joint tenants, then you, as landlord, are not liable. However, if the tenant(s) vacate before the tenancy expires, then you could be liable.

When is the landlord responsible?

If you rent out your property to several people and they have individual tenancy agreements, this is known as a 'house in multiple occupation,' (HMO). You will pay the council tax and take a contribution from everyone to recoup your costs. If anyone leaves, it remains the landlord's liability.

There is a specific circumstance where the ruling is not clear - some cases have gone one way, some the other. This is when a 6 month fixed term tenancy has become periodic and a tenant has left without notice.

It could be ruled that:

- the tenant remains liable for council tax, on the grounds that the periodic tenancy was a continuation of the original fixed term.

OR

- the landlord is liable, on the grounds that the periodic tenancy is regarded as a brand new tenancy, not a continuation.
-

As they say, the jury's out on this!

What about students?

A property occupied solely by full-time students will be exempt from council tax. Students not studying at a local college or university will require a Council Tax Student Certificate as soon as possible, and needless to say, obtaining this supporting document is not uppermost in their minds at the start of their tertiary education! Beware, also, that students may drop out of education but continue to live in the property, so outstanding council tax may fall back on you.

If there are some full-time students in residence, the household may be eligible for council tax discount.

What about empty properties?

In the good old days, empty houses were not liable for council tax for up to six months. Today, following the Localism Act, 2011, councils are allowed to decide on exemption or discounts. Some allow 3 months, some 2, but many offer zero allowance. In addition to this:

- a property which is empty for 18 months or more can result in a 150% council tax demand as a way of forcing the owner to bring it back into use
- amazingly, some councils apply their tax from midnight, so if a tenant moves in on the day following the last tenant's departure:
  1. the ex-tenant is liable for the day of leaving
  2. the landlord is liable for the following day, because of the midnight ruling
  3. the new tenant is liable from the second day of the let

What a poor message to send to landlords! The cost of pursuing this must be more than the revenue obtained by the council and it discourages landlords from taking the time to do any remedial work to the property between tenants. Our advice is to speak to your local councillor if you come up against this issue.

The situation has been successfully challenged, though, on the basis that, with a new tenant coming in, the landlord has lost 'material interest' and cannot occupy the property, so therefore, should not be liable for council tax.

Two bits of good news to finish with!

- if you have to pay council tax on an empty property then you can claim this as an allowable expense to be deducted from the taxable rental profit when you submit your accounts to HMRC
- if you have a planning application in before the property becomes vacant, there will generally be no council tax bill while you're waiting for permission

And finally…

Here's a quotation, attributed to Jean Baptist Colbert: *The art of taxation consists in so plucking the goose as to get the most feathers with the least hissing."*

Remember that next time you feel tempted to hiss when you receive an unexpected council tax demand!

HAPPY BIRTHDAY THE SLA

As reported elsewhere, the SLA can trace its formation back to a meeting of Brighton & Hove landlords in a pub in Brighton.

To mark this event, the B&H branch held an anniversary social on Thursday November 20th, and approximately 40 landlords celebrated the 40th anniversary. Here's to the future.

THE SUBJECT OF COUNCIL TAX IS NOW OF CONSIDERABLE CONCERN TO LANDLORDS

Council Tax. An overview by a member of our Help Line John Pettman LL.B (Hons)

Please note that any views or opinions presented in this article are solely those of the author and do not necessarily represent those of the SLA.

Since the Norman Conquest the Crown claimed ownership of all the land in the Country and we only have what is known as a Legal Estate. There are two Legal Estates 1. Fee simple absolute in possession(known as Freehold) 2. Term of years (known as Leasehold) It matters not is the term is for 1week 1 year or 100 years It is a decided point of law Sidebotham V Holland that when a tenancy is granted it includes the whole of the last day of the tenancy right up to and including the last second of that day, unless of course some provision is included in the tenancy agreement to the contrary. The question of who is liable for Council tax came to a head earlier this year when I granted a back to back tenancy . The old tenant moved out on the Monday and the new tenant moved in on the Tuesday yet I received a bill for one days Council Tax £3.15.

The liability for Council Tax is set out in the Local Government Finance Act and basically liability (subject to some exceptions)is with the occupier of the property however the Act deems that an existing tenant is not resident at midnight on the last day and deem that what existed at midnight has existed all that day so that on the last day of a tenancy there is no one in occupation. The Act then sets out that it is the owner of the property that bears the liability hence I got the bill however as stated above the tenant holds the legal estate for the whole of the day and it is therefore the obligation of the tenant in his /her capacity as owner that still bears the liability. The Local Government Act however require that the owner must have a material interest which is a lease for at least 6 months which in my case they did . To get the Council to accept that no tax was due from myself was an uphill struggle with them continually ignoring the provisions of the Act and all the legal points put to them until they eventually concede Thus the position is on the last day of a tenancy it is the existing tenant who is liable PROVIDING they have a current tenancy for at least 6 months similarly if you have a tenant who moves out without giving notice or correct notice they will also be responsible for the Council Tax up to and including the last day by way of their ownership of the leasehold interest provided it is for at least 6 months.

The problem arises when the Landlord has granted an initial A.S.T of less than 6 months or the tenantis holding over on a statutory periodic A.S.T. of less than 6 months The Superstrike Case made it quite clear that when the fixed term of an A.S.T comes to an end a new periodic tenancy comes into existence. Thus in those circumstances the tenant will hold a legal estate but will not satisfy the requirement in the Local Government Act of holding a Material interest i.e 6 Months . This point came before the courts in Macattram v. London Borough of Camden where the periodic tenancy that followed on after the fixed term was "not granted for at least 6 months "and thus the landlord was responsible not for just the last day but the whole of the period that the tenant was not in occupation. This case can be contrasted with the case of Trustees of the Berwick Settlement and Shropshire Council where a clause was inserted in the A.S.T that "at the end of the fixed term the tenancy hereby created shall continue as a contractual periodic tenancy from month to month until terminated in accordance with the provisions of this agreement. For the avoidance of doubt the continuing tenancy shall not be a statutory periodic tenancy"

This was a valuation tribunal case who decided that the material interest test had been satisfied and the tenant was liable the argument being that a right to remain was granted in the original tenancy agreement.

Thus the question is how do we avoid having to pay Council Tax if the tenant just disappears without giving notice or on the last day of a tenancy.

1. You can insert a provision in your A.S.T that the tenant is responsible for Council Tax for the whole of the duration of the A.S.T and any resulting periodic tenancy that may arise, including the last day of the tenancy . This will not shift the liability but will give a clear means of redress. Delete any clause that refers to their liability under the Local Government Act

2. Make certain that when a A.S.T fixed term comes to an end that another fixed term of at least 6 months is entered into and a monthly periodic tenancy does not arise

3 Grant a tenancy for a longer period say 3 years but with a break clause (but check and conditions in your mortgage offer if you have a mortgage)

4 You could insert the words used in the Berwick Settlement but do bear in mind this was a Valuation Tribunal case

After the Council had taken legal advise and conceded that they were wrong I wrote enquiring how many other cases had they incorrectly demanded Council Tax payment and what had they done to repay their illegal demands . Once again they avoided the question This is the same Council where the Chief executive is reported to have said entirely unrelated to the Council Tax issue "We have some good people working for us but they are reluctant to concede even when they know they are wrong"

I am indebted to Dr David Price a friend and fellow landlord who assisted in the research in the above matter who also enquired of his Council under the Freedom of Information Act how much it cost to issue a Council Tax demand and the response from the Council Tax Dept was that they did not know , His Council have refused to enter into any discussion regarding Council Tax Liability so check have you been illegally charged Council Tax

John Pettman LL.B (Hons)

SOCIAL HOUSING INVESTMENT OPPORTUNITIES FOR SOUTHERN LANDLORDS.

This editorial supplied by Orchard & Shipman and any views expressed are their own.

As Social Housing waiting lists in the UK continue to grow, more and more people are being forced into private rented housing instead. This is leaving thousands of families and vulnerable households without a suitable home.

According to Government Social Housing statistics, there are more than 1.8 million households waiting for a social home - an increase of 81% since 1997. Shelter's analysis of the English housing survey 2010/11 suggested that two thirds of those on the waiting list have been waiting for more than a year.

The shortage in supply of Social Housing simply stems from one cause; inadequate quantity of purpose built property over the past few decades. Additionally, whilst we have witnessed a lack of supply in housing, the demand has also risen. As a result, waiting lists for social housing continue to grow - forcing more and more people to move into private rented accommodation.

This presents excellent mid - long term opportunities for private investors to help meet this high demand with good quality, professionally managed properties.

At Orchard & Shipman, our nationwide social housing company offers a very compelling proposition to today's socially aware Landlords; ensuring high rental incomes, multiple lease options and a host of additional services to ensure maximum yields and expert portfolio management.

Working with Local Authorities and central government to provide social housing solutions, Orchard & Shipman offer their expert local knowledge in helping to source investment properties, full rental market assessments, project management, and financial and legal services.

Orchard & Shipman's nationwide portfolio of over 4,500 Landlords and Property Investors profit from monthly rental incomes that compete favourably with the annual average achieved through Orchard & Shipman's competitors. Investor Landlords can also benefit from cash rewards minimal risks, minimal expenses, and no hidden costs.

STOP PRESS

Members will be interested to know that the bill presented by Sarah Teather described on pages 2&3 had a second reading in the House of Commons on Friday Nov 28th, and two MP's succeeded in 'talking it out'. It is unlikely to now find more time; and thus will not become law.

Additionally, the Licensing JR described on page 8 went to the High Court in it's entirety on Nov 26th, and they await a ruling.'

MEETINGS/EXHIBITIONS

Social meetings

The regular London and Thanet socials will be:-

- London, the first Monday of every month (bar August) commencing February. To be held upstairs at the Constitution - 42 Churton Street, SW1V 2LP. 020 7834 3651. Commencing 6.30 pm
- Thanet, the first Thursday of every month (bar August) commencing February. To be held in the newly re-furbished, and renamed Botany Bay Hotel (formerly the Fayreness), Marine Drive, Kingsgate, Broadstairs, Kent CT10 3LG. 01843 868 641. Commencing 7 pm

Meetings/exhibitions for 2015

Make a note in your diary, details on the web:-

- Mon Jan 26th - Southampton branch meeting
- Thurs Jan 29th - Landlord Invest Show - Woking
- Mon Feb 2nd - London Social
- Wed Feb 4th - Woking meeting
- Thurs Feb 5th - Thanet Social
- Thurs Feb 5th - Landlord Invest Show - Ashford
- Mon Feb 9th - Brighton & Hove branch meeting
- Wed Feb 11th - Ashford meeting
- Wed/Thurs Feb 25th/26th - Landlord and Letting Show
- Mon March 2nd - London Social
- Tues-Thurs March 3rd-5th - Ecobuild
- Thurs March 5th - Thanet Social
- Tues March 10th - Swale forum
- Thurs April 9th - Thanet Social
- Mon April 13th - Southampton branch meeting
- Mon April 13th - London Social
- Tues April 21st - Medway forum
- Thurs April 23rd - Landlord Invest Show - Reading
- Wed April 29th - Reading meeting
- Thurs May 7th - Thanet Social
- Thurs May 7th - Landlord Invest Show - Olympia
- Mon May 11th - London Social
- Mon May 18th - Brighton & Hove branch meeting
- Mon June 1st - London Social
- Thurs June 4th - Thanet Social
- Thurs June 4th - Landlord Invest Show - Croydon
- Wed June 10th - Croydon meeting
- Thurs June 11th - Dover & Folkestone forum
- Mon July 6th - London Social
- Thurs July 2nd - Thanet Social
- August - no meetings
- Thurs Sept 3rd - Thanet Social
- Mon Sept 7th - London Social
- Wed/Thurs Sept 9th/10th - Landlord and Letting Show
- Mon Sept 14th - Southampton branch meeting
- Thurs Oct 1st - Thanet Social
- Mon Oct 5th - London Social
- Thurs Oct 15th - Landlord Invest Show - Maidstone
- Wed Oct 21st - Maidstone meeting
- Mon Nov 2nd - Brighton & Hove branch meeting
- Mon Nov 2nd - London Social
- Thurs Nov 5th - Thanet Social
- Mon Nov 9th - Landlord Invest Show - Olympia
- Thurs Dec 3rd - Thanet Social
- Mon Dec 7th - Southampton branch meeting
- Mon Dec 7th - London Social

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