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Legal update for residential landlords

SEPTEMBER 2019

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In recent months, the introduction of a raft of new rules and regulations relating to residential lettings mean that now, more than ever, landlords need to ensure they have the right legal advice to hand.

According to recent figures published by The Property Ombudsmen, the most common reasons for tenancy complaints are 'poor management', 'communication and record-keeping issues' and 'problems with tenancy agreements, inventories and deposits'.

To help you navigate the potential minefield of new regulations and ensure you not only remain compliant but also hopefully reduce instances of tenancy disputes, we have prepared a guide to the latest legal changes which affect landlords.

The Tenant Fee Act 2019

The Tenant Fees Act 2019 prohibits Landlords and Letting Agents from charging fees to the Tenants in connection with a Tenancy, unless it is a permitted payment under the Act.

The Act took effect from 1 June 2019, meaning that Landlords and Letting Agents cannot charge prohibited payments in respect of all tenancy agreements entered into on or after 1 June 2019.

For any tenancies entered into prior to this date, you will still be able to charge fees required under the tenancy which are not permitted payments until 31 May 2020.

From 1 June 2020, you will not be able to charge any prohibited payments, even if the Tenancy Agreement states otherwise.

Which fees will be permitted?

The **only** payments you can charge in connection with a tenancy are:

- The rent
- A refundable tenancy deposit
- Payments to change the tenancy (limited to £50.00)
- Payments associated with early termination of the tenancy
- Payments in respect of utilities, communication services, TV licence and council tax
- A default for late payment of rent and replacement of a lost key/security device, where required under a tenancy agreement
- A refundable holding deposit

What are the new rules regarding tenancy deposits?

The new rules mean the level of tenancy deposit you can ask a tenant to pay is now capped. The amount depends on the total annual rent for the property.

- If the total annual rent for the property is less than £50,000, the maximum tenancy deposit you can ask a tenant to pay is up to five weeks' rent.
- If the total annual rent for the property is £50,000 or above, the maximum tenancy deposit you can ask a tenant to pay is up to six weeks' rent.

What are the new rules regarding refundable holding deposits?

A refundable holding deposit can be taken to reserve a property and is capped at no more than **one week's** rent. This is for the entire property.

You may only accept one holding deposit for one property at any one time. If you accept more than one this will be a prohibited payment.

You must refund the whole of the holding deposit where:

- The tenant later enters into a tenancy agreement
- The landlord decides not to rent the property
- An agreement is not reached before the *deadline for agreement* and the tenant is not at fault
- If you impose a requirement that breaches the ban/or act in such a way that it would be unreasonable to expect a tenant to enter into a tenancy agreement with you (i.e. harassment or including unfair terms into a tenancy agreement)

You can only retain a tenant's holding deposit if:

- The tenant provides false or misleading information which reasonably affects your decision to let the property to them
- The tenant fails a right to rent check
- The tenant withdraws from the proposed agreement
- The tenant fails to take all reasonable steps to enter an agreement, when the landlord has done so

Where you wish to retain the holding deposit, you must set out in writing the reason for this within seven days of deciding not to enter the agreement or the deadline for agreement.

The deadline for agreement for both parties is usually 15 days after a holding deposit has been received by a landlord or agent (unless otherwise agreed in writing).

What constitutes a prohibited fee?

According to the Act, the following fees are now prohibited:

- Property viewing fees
- Referencing fees
- Administrative charges
- Charging for guarantors
- Inventory costs
- Right to rent checks
- Pet fees and deposits
- Renewal or exit fees
- Interest on permitted payments
- Garden services

How will the law be enforced?

Enforcement of this new legislation will be carried out by Trading Standards and some councils. Tenants will also have powers to enforce any breaches through the First-tier Tribunal.

A first offence will be dealt with under civil law and a fine of up to £5,000 can be imposed. If a further breach is committed within five years this will be dealt with as a criminal offence. Additionally, if you receive two or more financial penalties within a 12 month period a local housing authority has discretion to include you on the database of rogue landlords and property agents.

Penalties including a banning order under the Housing and Planning Act 2016 and an unlimited fine.

How are Section 21 evictions affected?

It is important to note that you cannot evict a tenant using the Section 21 eviction procedure until you have repaid any unlawfully charged fees or returned an unlawfully retained holding deposit. All other rules around the application of the Section 21 evictions procedure will continue to apply.

The Fitness for Human Habitation Act 2019

The Fitness for Human Habitation Act came into force in March 2019, updating the former Landlord and Tenant Act 1985. All landlords, both social and private, must now ensure that their properties are fit for human habitation at the beginning of the tenancy and throughout.

Recent inspections of around 60,000 properties found that more than 4,500 had at least one Housing Health & Safety Rating Assessment (HHSRS) issue. The main areas for concern were broken smoke detectors, which made up 40 per cent of all issues, while more than one-quarter of the problems reported were stair trip hazards.

What does the Act apply to?



Tenancies of less than seven years granted on or after 20 March 2019.



New secure, assured and introductory tenancies granted on or after 20 March 2019.



Tenancies renewed for a fixed term on or after 20 March 2019.



From 20 March 2020 – all periodic tenancies (including those that commenced before 20 March 2019).

What is considered 'fitness for habitation'?

The criteria used to decide if a property is "fit for human habitation" includes 29 hazards, some of the most serious of these include:

- The building has been neglected and is in a bad condition
- The building is unstable
- There is a serious problem with damp
- It has an unsafe layout
- There is insufficient natural light
- There is insufficient ventilation
- Problems with the supply of hot and cold water
- Problems with the drainage or the lavatories
- It is difficult to prepare and cook food or wash up

The courts will decide whether the dwelling is fit for human habitation. The court may also make a decision without expert advice e.g. if there is no plumbed-in toilet the property would evidently be deemed unfit.



What are the penalties?

The penalties for landlords who breach the new rules are severe, with tenants now having more power to take action.

If the Court finds that the property is not fit for human habitation, they may require one or both of the following:

	Compulsory improvement to the condition of the property
	Compensation to the tenant
	The compensation is currently unlimited
	Prohibited from serving Section 21

Are there any exceptions to liability?

There are a number of legal exceptions to this rule. They include:

	Where the problems have been caused by the tenant
	Problems have been caused by the tenant's possessions
	Where the problems have been caused by an act of God
	Where the landlord has not been able to obtain the consent for any necessary work
	Where the tenant is not an individual

Accessing expert legal advice

Whether you are letting out a single property or running a large portfolio as a residential landlord you need access to quick, expert legal advice.

At Palmers Law, we are experienced in working with residential landlords and recognise that they look for high quality legal services that also deliver value for money.

The advice of property law professionals is particularly important to help keep ahead of the latest regulation changes and clarify your legal obligations. Our services can also be invaluable in avoiding disputes with your tenants, or resolving these at an early stage in order to avoid costly rental voids.

To help you budget effectively, we have developed a series of cost-effective, fixed fee services for residential landlords, focusing on some of the most commonly experienced issues you may have to deal with. To find out more please contact us.

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