HC LETTINGS
NEWSLETTER

2019, ISSUE 1

HC LETTINGS NEWSLETTER

A lettings industry update from HC Lettings Ltd

HC LETTINGS UPDATE

BY STEVEN HOLDEN

With the country and parliament obsessed with Brexit, you would have thought it impossible for the lawmakers of the country to have time for other issues. However, they appear to have plenty of time to make the lives of those providing good quality private rented accommodation a touch harder.

In this edition of the HC Lettings newsletter, we will be looking at some of the proposed changes being made and how this will affect you as a either an investor landlord or one that is sometimes referred to as an accidental landlord.

A LOOK AT THIS ISSUE:

HC LETTINGS' VIEW

Since we opened, we've always believed that charging tenants a fair fee at the start of tenancy was in everyone's best interest. We have wanted to encourage applicants to apply for your properties and not feel restricted or burdened by excessive fees. Many agents charge tenants unreasonable fees at the beginning, during and also after the tenancy which has pushed the government to implement this significant change.

> WE HAVE WANTED TO ENCOURAGE APPLICANTS TO APPLY FOR YOUR PROPERTIES AND NOT FEEL RESTRICTED OR BURDENED BY EXCESSIVE FEES

Last year we wrote to you in anticipation of the fee ban and implemented an increase to our standard management fee up to 9% plus VAT which we know is extremely competitive in the current market. We expect that over the next 12 months, many agents in the industry will increase their management fees as a result of the tenant fee ban and the increased workload due to new compliance and legislation placed on letting agents. The industry standard is expected to eventually increase to 15% for full management, although some agents are already charging this. A selection of changes are set out in this newsletter.

MEET THE TEAM

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PROPERTY
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EMMA
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ADMINISTRATOR

JACK
PROPERTY
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TENANT FEES ACT 2019

IMPLEMENTATION DATE

The legislation will come into force on the 1st June 2019 and it will affect all new tenancies, including renewals created after that date. It does not include current statutory or contractual periodic tenancies, but these will eventually be caught by the 1st June 2020 date, where the legislation will apply to all tenancies in existence on that date.

TYPES OF AGREEMENTS COVERED

For a landlord this is relatively straightforward as it will cover the commonly used Assured Shorthold Tenancy and less used licence to occupy i.e. resident landlord. It will have no effect on a common law tenancy such as a company let or tenancies with a rent of over £100k per annum.

THE LEGISLATION WILL AFFECT ALL NEW TENANCIES COMMENCING AFTER 1 JUNE 2019

RELEVANT PERSON

You are not allowed to charge any person defined as a "relevant person" a payment unless its stated in the list of permitted payments. The Government have learnt from past mistakes and have included prospective, current and ex tenants in the definition. The definition also includes those acting on behalf of the tenant, which primarily will be guarantors. There is one exemption being the local council/housing who will still be allowed to make incentive payments to an agent or landlord in consideration of housing a tenant.

PERMITTED PAYMENTS

The law does allow for certain payments to be made, and these are the following, referred to as permitted payments:

RENT

The contractual rent payment within the tenancy is allowed. To counter the idea that some landlords have to upload any banned fees to the first month's rent, the law does not allow the contractual rent in the first month, to be any higher than rent in subsequent months. It does not stop you from levying the administration fee across the whole length of tenancy, which is probably going to be the default position for some landlords where there is high demand for a property.

TENANCY DEPOSIT

This has been capped at a maximum of 5 weeks for those tenancies with an annual rent of £50k or less, and at six weeks for those tenancies which have a rental level of more than £50k. The law defines how to calculate a week, and this in simplistic terms is the monthly rent x 12 divided by 52.

HOLDING DEPOSIT/ FEE

A holding deposit equal to one weeks rent can be taken at the application stage from the potential tenant. The calculation to determine the week, is exactly the same as used for the actual tenancy deposit. By default, you can hold the deposit for a maximum of 15 days, or longer if agreed, before it must be returned or transferred into the rent or tenancy deposit. You do have the ability to withhold some, or all of the deposit where the potential tenant has lied on their application, failed a right to rent check or fails to the take up the tenancy. A landlord will need to show any loss they have incurred to be able to deduct from the deposit.

TENANCY DEPOSITS WILL BE CAPPED AT A MAXIMUM OF FIVE WEEK'S RENT

Our view: The deposit is capped at 5 weeks rent. We will no longer be able to increase the deposit for certain properties or to allow for a pet, which we've done in the past and is a common solution. To combat this, we may discuss with you advertising rents on a two tier system with a slightly higher rent for tenants who are accepted with pets or where the property requires extra security.

Please Note: For tenancy renewals created after 1st June and where the rent is below £650pcm we will be forced to refund back to the tenant the difference between 'Rent +£100' and '5 weeks Rent'. This will also apply to many tenancies where a 'pet deposit' has already been taken.

PERMITTED PAYMENTS (CONTINUED)

DEFAULT PAYMENTS

The Government after much lobbying have restricted default payments to two situations being:

(a) interest payments on late rent, this being 3% above the Bank of England base rate. This can only be charged after the rent has been late for 14 days or more, although it can be backdated to the date the rent became due

and;

(b) where a tenant has lost or requires an additional key/security device. The lost keys/security devices appear to be the more ambiguous position, as draft Government guidance indicates that the landlord will only be allowed to charge the tenant the cost of the key being cut and not for any other costs incurred i.e. your time.

TENANCY CHANGES

If there is a request by the tenant to amend the tenancy, for example a permitted occupier, or an allowance of pets then a charge of £50 (maximum) or higher, if you can justify such a charge is permitted. It will also be allowed to charge a tenant for an early termination of a tenancy. The legislation allows two parties to charge, firstly the landlord being able to charge for any loss suffered from the agreed termination, which could be as much as the whole rent due for that period of time, and secondly the agent for any works involved with the termination of the tenancy i.e. drawing up a surrender document. Interestingly for both scenarios, unlike other payments there are no restrictions in the amount that can be charged.

Our view: We are modifying our tenancy agreement to include the standard default payments and tenancy charges. The interest levied on late rents will likely be pennies in all but extreme cases of rent arrears. We also understand that if the tenant causes a maintenance issue and we can prove it, we will no longer be able to charge the tenant as this would be a non-permitted payment. We are looking at ways of applying these charges at the end of the tenancy by taking it out of the tenant's deposit.

UTILITIES

This is broken down into certain services and to whom the payment can made. The Council Tax is a permitted so long as it is paid direct to the local council. In respect of the commonly used utilities such as electricity/gas/water, these can be made direct to the landlord/agent but as noted under current consumer regulations, you cannot charge any higher than the costs incurred for providing such a utility.

FINES AND PENALTIES

If you do go down the path of non-compliance, then there are certain punishments available to the local council. This could be a maximum fine of £30,000 for a repeat offender, along with the landlord being placed on the "Rogue Landlord" database.

NON COMPLIANCE COULD RESULT IN A MAXIMUM PENALTY OF £30,000

LONGER TENANCY CONSULTATION

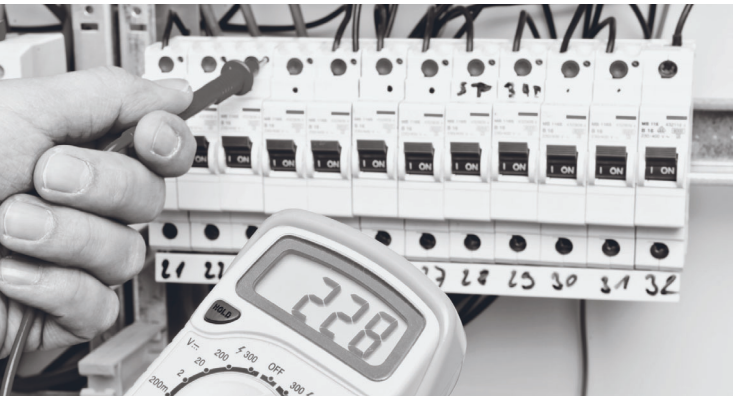
At the moment, just a set of proposals to give tenants more security in a world where flexibility seems to be more of a buzzword. It appears the landlord will be able to break the tenancy using the mutual break clause after the first six months, if the relationship between parties is not proceeding as intended. However, after the initial six months, the landlord will not be able to end the tenancy during the three-year term unless the tenant has defaulted in some way.

CARBON MONOXIDE ALARMS

To fill in the gap created by the Smoke and Carbon Alarm legislation in 2015, the Government intend to legislate that all landlords will need to install a Carbon Monoxide Alarm in a property where there is an oil or gas appliance. On the assumption that the requirements will be very similar to the 2015 legislation, this will be more than likely be a big bang approach i.e. every property on a certain date.

Our view: We believe every landlord should, as part of basic due diligence be fitting a CO alarm in rooms with gas appliances. With this legislation likely to come into force within the next 12 months, we will be getting in touch about carbon monoxide alarms either on your next let or re-let, or when legislation requires it, whichever is sooner.

ELECTRICAL SAFETY



This seems to have been in the pipeline for some time, but with Parliament being preoccupied with Brexit, the legislation required to bring this to the table has been side-lined. On the assumption something happens over the summer, there is a good likelihood that the legislation will come into effect from the Autumn of 2019. There will be a requirement to undertake an Electrical Condition Report, conduct any of the remedial work in the report and repeat this at intervals of not less than five years. In addition, between occupation, there will be an obligation to undertake a visual check, to ensure that there has been no material change since the initial report was conducted. There is no obligation for a visual check to be done by a qualified person, but it is important to ensure that there is a record of one being done.

Our view: We've always believed that an Electrical condition report is best practice when letting out a property. As this legislation is highly likely to come into force soon, we will get in touch about an EICR either on your next let or re-let, or when legislation requires it, whichever is sooner.

LEGIONELLA RISK ASSESSMENT

The obligation to conduct a risk assessment for Legionella in residential property is clearly stated in guidance provided by the Health and Safety Executive. The guidance states the following:

> "The practical and proportionate application of health and safety law to landlords of domestic rental properties is that whilst there is a duty to assess the risk from exposure to Legionella to ensure the safety of their tenants, this does not require an in-depth, detailed assessment."

Therefore to ensure that you protect yourself from any risk of criminal prosecution, it is advisable to conduct a brief but written risk assessment covering at least the following:

- That any boiler is heating the water to above 55˚C
- The temperature of outlet taps to be below 20˚C for cold and above 45˚C for hot
- Any dead legs have been removed
- Any tanks are well insulated and have a lid or cover
- Any outside taps/hoses have been removed or flushed through
- Any shower heads have been replaced, flushed through or bleached
- If the property has been empty for any prolonged period of time, that the water system is either flushed through or drained down.

The risk assessment can be conducted by a competent person who has a basic knowledge of the property and that could either be the landlord, agent, inventory clerk or a plumber. In a more complex property with multiple water systems or one larger than a normal house, it would be advisable to seek the services of a professional who has undergone legionella risk training.

It is recommended to ensure that a risk assessment is conducted before the property is first let, and at regular intervals thereafter i.e. between tenancies. Wherever there is a change of risk, such as a new system, then it would advisable to consider revisiting the risk assessment to ensure it still covers the basic risks.

Failure to show due diligence could result in a criminal prosecution should the worse occur and a tenant or resident suffer serious illness or die from contracting Legionella bacteria from the property. In recent times a gardener died from contracting Legionella from an outside hose which had been left with a stagnant water over the winter and spring months. As always, wherever there is a risk a landlord needs show that they have shown due diligence and this is achieved by undertaking a brief written risk assessment.

Another proposal with very little detail beyond the soundbite. This will require all self-managing landlords to ensure they belong to one of the two currently approved schemes. The hardest part for the Government, as evidenced in other schemes, is trying to inform and educate the landlord before this becomes law. It is highly unlikely, considering the complexity, that this will be brought in within the next twelve months.

Our view: HC Lettings are members of The Property Ombudsman (TPO), perhaps the most well-known letting agent redress scheme. Currently the team here are all undertaking training to acquire professional qualifications.

LANDLORD REDRESS SCHEME

FITNESS FOR HUMAN HABITATION ACT 2018

What does this Act do?

The Fitness Test revives a clause which already exists in the Landlord and Tenant Act 1985, requiring all rented homes to be 'fit for human habitation' at the start of the tenancy and to remain so throughout. The clause is defunct due to the application of antiquated rent levels (£80/year in London, £52/year elsewhere). In determining whether a house is 'unfit', the Fitness Test incorporates the hazards enshrined in the Housing Health and Safety Rating System and adds them to the 9 original fitness categories,

The updated 'fitness standard' includes issues not currently covered by a landlord's legal repair responsibilities, such as damp caused by design defects (lack of ventilation) rather than disrepair and infestation, such as fleas. The Fitness Test gives tenants a way to take effective action themselves if they rent a property in poor condition and the landlord fails to do the necessary maintenance. Currently tenants have no way to enforce property standards themselves. The Fitness Test gives tenants the right to take their landlord to court where the property is not fit - they will be able to apply directly to the Court for an injunction to compel a landlord to carry out works, or for damages (compensation) for the landlord's failure to keep the property in good repair. Some tenants will be able to apply directly to the court using their own evidence, such as photos of mould, or just emails confirming that they have been experiencing no heating for several weeks.

This new law comes into effect from the 20th March 2019 for all new tenancies, renewals, and any tenancy which becomes statutory periodic after that date. At HC Lettings, we use a type of tenancy, which means that current tenancies, will not be caught by the new legislation until the 20th March 2020 (which is the date the law will apply to all tenancies in existence).

What does this mean for a landlord?
It will place greater emphasis on the landlord to ensure that the property is fit for habitation at the commencement of the tenancy and during the occupation itself. You will need to ensure that there is a detailed check in inventory covering the relevant areas contained within the Fitness Test i.e. heating, trips and falls, and security. In addition, you need to ensure there are regular property visits to take note of any defects with a property whether these have been caused by the tenant or fair wear and tear. Finally, the importance of having a robust and detailed repairing system cannot be understated.

Our View: The government is implementing a series of changes in law that ensure lettings properties are maintained to a high standard by the landlord. Our stance has always been that properties in good condition are let to good quality tenants. In turn, good tenants pay their rent on time and take care of your property.

SELECTIVE LICENCING UPDATE

Selective Licensing schemes have been introduced in Nottingham that require private rented properties to be licensed. The schemes are designed to help local authorities risk assess landlords and rental properties with the aim of improving the standard of accommodation.

We have applied for many licences on behalf of our landlords in both the Nottingham City Council and Gedling Borough Council schemes. At the time of writing we have only received a handful of draft licenses with the vast majority still held up in the councils administration. We will be in touch when the council request the second payment or when we are updated. This could be up to 6 months.

If you have applied for the licence yourself, please make sure you send us a copy of the draft licence when you receive it.

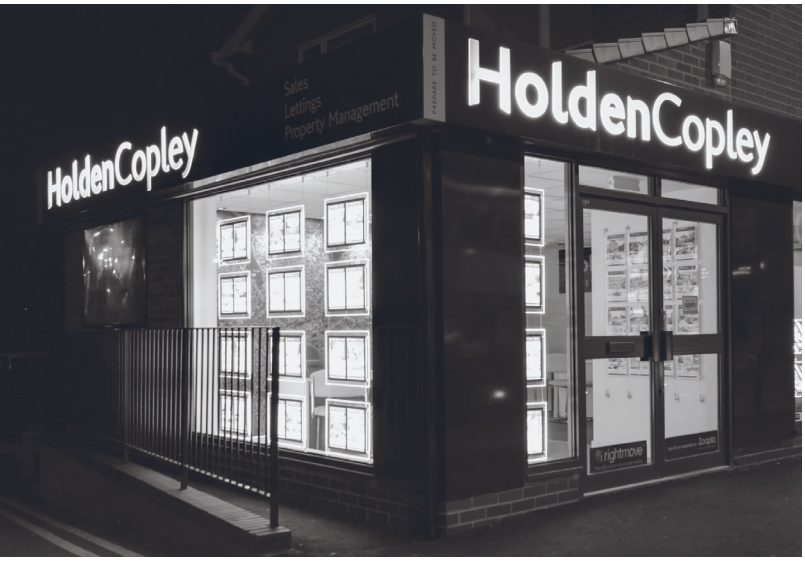
Here is some brief information about selective licencing you might find helpful if you are looking to increase your portfolio in the city. For more information or to speak to us about applying for a licence on your behalf, please get in touch.

The councils have introduced selective licensing schemes in Nottingham and Gedling to:

- Ensure that these properties are managed properly
- Improve neighbourhoods in the designated area
- Reduce complaints of noise, rubbish, housing disrepair and other anti-social behaviour related to the private rental sector, by making landlords accountable for their tenants
- Continue to improve the private rented sector
- Ensure the licence holder and manager are suitable
- Ensure fundamental basic standards of accommodation are provided including safe gas and electrics and room sizes for an appropriate number of occupants
- Assist in identifying and dealing with rogue landlords.

A licence will last up to five years and one licence will be required for each private rented property, not each landlord. Landlords and property managers (person receiving the rent) need to apply for the licence, not tenants.

The licence holder should be the person who has control of the property. Usually this person receives the rent (usually the owner). They will be bound by the licence conditions and should be competent in managing and maintaining the property. The licence holder does not have to be the owner of the property.



SUMMARY

The conveyor belt of new landlord legislation will continue throughout 2019 and the importance of having a professional and knowledgeable agent cannot be understated.

At HC Lettings, we put compliance and protecting you, our landlord at the top of our priority list, through regular training and employing the services of an outside consultant to ensure we keep ourselves fully informed. If you have any questions, please do not hesitate to contact us.

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