

Landlord and Tenant

Winter 2014

Letting agents must publish fee details or face fine

Letting agents will have to publish full details of the fees they charge or face a fine under new regulations being introduced by the government.

Ministers say the move will help to ensure a fairer deal for both landlords and tenants. Under the current regulations, agents have to list their compulsory charges to the tenant.

However, if an agent then imposes hidden charges, the sanction against them is little more than being named and shamed on the Advertising Standards Authority website. The government doesn't think this is a sufficient deterrent and will now require all letting agents to publish a full tariff of their fees on their websites, and in a prominent position in their offices.

Failure to do so could result in a fine. It's hoped the move will provide greater protection for landlords and tenants



without imposing excessive regulation which could force up rents.

Housing Minister Kris Hopkins said: "We are determined to tackle the minority of rogue agents who offer a poor service.

"Ensuring full transparency and banning hidden fees is the best approach, giving consumers the information they want and supporting good letting agents. Short-term gimmicks like trying to ban any fee to tenants means higher rents by the back door."

Tenant's 'serious' contract breaches

A court has ruled that a tenant's breaches of contract in relation to business premises were serious enough to justify the landlord's decision not to renew the lease.

The case involved a landlord who owned a commercial and residential property. It was leased to a tenant with an agreement that it would be used as a shop and a home.

The tenant occupied the building for more than three years but never made any attempt to open a shop, despite receiving numerous warnings from the landlord.

When the lease agreement expired the tenant applied for a renewal on the same terms.

The landlord refused on several counts: the tenant had not always been on time with the rent, the property had not been used for commercial purposes and the maintenance and upkeep had not been sufficient.

The judge ruled in favour of the landlord. Individually, the breaches of rent arrears and failure to keep up with the maintenance of the property did not justify the landlord refusing to renew the agreement.

However, when considered alongside the failure to utilise the property's commercial potential, it would be unfair to force the landlord to continue a business relationship with the tenant. Therefore, there was no obligation to renew the lease.

Landlord within his rights to refuse tenancy to 'unreasonable' retailers

A court has ruled that a landlord was within his rights to refuse to renew tenancies to shopkeepers who had pestered him with frivolous lawsuits.

The issue arose after the shopkeepers had brought a total of 10 claims against the landlord over the course of several years, saying that he had obstructed their rights of way and their entitlement to parking spaces.

The court heard that the shopkeepers had maintained a relentless campaign of litigation despite receiving legal advice that they should not pursue the claims. They changed solicitors and ran up legal bills of hundreds of thousands of pounds.

When their tenancies expired, the landlord refused to renew. The shopkeepers took legal action claiming the refusal to renew was not related to their management of the premises and so was therefore not allowed under the Landlord and Tenant Act.

The judge ruled that the relationship between the landlord and tenants had completely broken down and that there seemed to be little chance of the litigation ending.

It wouldn't be right to force the landlord to accept the behaviour of the tenants. It was not always acceptable for a landlord to refuse to renew a tenancy due to litigation, but it was in this case.

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Escrow money 'not part of tenant's assets'

A landlord company has won its appeal to be paid money owed by a commercial tenant which had gone into administration before completing the surrender of its lease.

The case involved a retail group that leased several properties. It got into financial difficulty and began proceedings to surrender the leases.

Money was held in escrow - the system in which a firm's money or assets are held by a third party to be paid out to another company once certain conditions have been fulfilled. In this case, the escrow money would be payable to the landlord once the surrender of the lease was complete.

However, before the surrender took place, the retailer went into administration. The administrators refused to complete the surrender of the lease or pay the money owed because they felt to do so would be to the detriment of other creditors.

The landlord claimed that the escrow money was no longer a part of the retailer's assets because it was due to be paid once the surrender of the lease had been completed.

The High Court ruled in favour of the administrators stating that the landlord was only entitled to the escrow money once the surrender of the lease had been completed, which it hadn't.

However, the landlord won the case in the Court of Appeal. It ruled that the landlord had followed the correct procedure in serving notice for the surrender of the lease and was not responsible for the retailer going into administration.

As the escrow money was intended to be paid to the landlord before the retailer went into administration, it could not be included in the retailer's total assets.

It would be wrong to promote the interests of creditors over the interests of landlords when there is no sound reason to do so.



Landlord 'not justified' in evicting dentist

A dentist who was evicted for being late with his rent has won a legal dispute with his landlord.

The court ruled that the late payments did not amount to a repudiatory breach of contract and so the eviction was not justified.

The dentist had a contract with the NHS which paid him on a monthly basis in advance of treating a set number of patients. The dentist paid his landlord half this money for the use of the premises.

If in any given month the NHS didn't send enough patients, the dentist would return the excess amount paid to him. The dentist began to receive fewer patients from the NHS, meaning he had to return some of the money paid to him on a more



regular basis. He informed his landlord that he would no longer be able to pay him half of the NHS money at the start of each month.

Instead, he would pay him half of the money he received on the work he had completed. He would pay the landlord any money owed when he was in a better financial position.

The landlord terminated the contract after three months and evicted the dentist from the premises. The dentist claimed the landlord wasn't entitled to terminate the contract and took legal action. The court ruled that the landlord was wrong to

evict the dentist after just three months; there should have been a six-month notice period.

The landlord took the case to the Court of Appeal but it also ruled in favour of the dentist. It pointed out that the dentist did intend to pay the full amount owed when his financial position became more stable.

The late payments did not amount to a repudiatory breach of the contract.

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