

WinckworthSherwood

ASTs – Are you compliant?

As landlords are aware, there are an increasing number of hoops which must be jumped through not only at the commencement of a tenancy to ensure your tenancy agreement and procedures comply with the law, but also prior to service of a section 21 notice to ensure that you do not serve an invalid notice and limit your chances of recovering possession.

We set out below the recent changes to the complicated rules and regulations now governing AST's in England which you should be aware of.

The Tenants Fees Act 2019

The Tenants Fees Act (TFA) came into force on 1 June 2019. It applies to all ASTs which were entered into on or after 1 June 2019 other than social housing tenancies, long leases, student lettings and licences to occupy housing.

Whilst it does not apply to statutory periodic tenancies arising after 1 June 2019 (in respect of fixed term tenancies entered into before 1 June 2019), from 1 June 2020, it will apply to all tenancies whenever granted

The TFA 2019 restricts the type and amount of payments that can be required by landlords or letting agents from tenants in connection with their tenancy. All payments in respect of a tenancy are prohibited except where they are expressly permitted in accordance with Schedule 1 of the TFA 2019.

The permitted payments include Rent, payments on certain default events (i.e., loss of keys), payment on early termination of the tenancy,

Council Tax, Utilities, TV Licence and payments for landline phone, internet and cable or satellite TV.

Whilst Tenancy Deposits, Holding Deposits and fees for the variation, assignment or novation of the tenancy are permitted payments, they are capped at specific levels. Further, the TFA prohibits a spike in rent at the start of the tenancy in effect, to compensate for the prohibited payments.

Examples of prohibited payments include a tenancy set up fee, inventory check fees, check out fees, professional cleaning costs and credit check fees.

From 1 June 2019 (and 1 June 2020 for pre-existing agreements) any term of an AST which breaches the TFA 2019 will not bind the tenant. However, the remaining terms will continue to have effect.

Failure to comply with the TFA 2019 carries serious financial penalties and the possibility of prosecution. The landlord or letting agent can also be required to return any prohibited payments together with interest. The Tenant will also have the ability to make an application to the First Tier Tribunal to request the return of the payments.

A section 21 notice cannot be given in relation to an AST if the landlord is in breach of the TFA 2019. Any prohibited payments would need to be returned to the tenant (or the relevant person) or the consent of the Tenant obtained to allow the payments to be applied towards their rent or tenancy deposit.

We would advise all landlords to ensure that they are familiar with the TFA and to review their existing standard tenancy agreements to see whether any provisions need to be amended.

As a result of the introduction of the TFA, changes have been made to the following existing documents;

1. Section 21 Notice – new Form

From 1 June 2019, landlords seeking to end an AST will need to use the new amended Form 6A. This form has been updated to include reference to the restriction upon terminating a tenancy under Section 21 of the Housing Act 1988 if the landlord has received a payment prohibited under the TFA 2019.

2. How to Rent: checklist for renting in England

In the private rental market, the How to Rent Booklet must be provided to tenants if their tenancy began on or after 1 October 2015.

The guide has been updated to include reference to the TFA 2019. The amended version must be given to all tenancies commencing on or after 31 May 2019.

As the booklet has changed, the new version must be given for any tenancy which becomes a statutory periodic tenancy or if the tenancy is renewed after that date.

Gas Safety Certificates – is change afoot?

One of the most concerning cases for landlords in recent years has been the decision of *Caridon Property Ltd V Shooltz* [2018]

The Court decided that section 36(6)(b) of the Gas Safety Regulations, which require the landlord to serve a gas safety certificate upon the tenant, must be complied with at the start of the tenancy. This was a 'once and for all' chance for the landlord to get it right. For all post 1 October 2015 tenancies, if the gas certificate has not been served at the start of the tenancy, the landlord is prevented from serving a section 21 notice.

Whilst there was discussion as to whether other courts would follow this County Court decision, the Judgment was followed on appeal in *Trecarrel House Limited and Rouncefield* (2019). An application has now been made to the Court of Appeal for permission to appeal. For now however,

landlords must continue to enact procedures to ensure they can demonstrate the gas safety certificate was provided to the tenant prior to the commencement of the tenancy or risk not being able to serve a section 21 notice during that tenancy.

Conclusion

The increasing number of limitations being imposed on the creation of ASTs and a landlord's ability to terminate the tenancy, means landlords need to ensure they are familiar with the recent changes and understand how failure to comply could affect their ability to recover possession of the property.

Landlords should check their tenancy agreements are compliant with the law, and have systems in place to ensure that the correct information is being served upon tenants at the correct time. Further, a paper trail is essential to ensure that all steps that are taken can be evidenced at Court if necessary.

For further information, please contact:



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