

GUIDANCE FOR PROPERTY OWNERS RELATING TO HOUSES IN MULTIPLE OCCUPATION

If you are unable to take on the responsibility for managing a property or if you do not wish to, you may consider using an agent to manage the property/properties for you.

Using a Managing Agent

If you want to use a managing agent you must be clear what services you want them to provide and whether they are able to do so.

They may provide some or all of the following services:

- finding tenants
- holding and managing deposits
- preparing and signing up tenancy agreements and inventories
- collecting rent
- dealing with repairs
- checking the condition of the property
- serving notices for the tenant to leave where necessary
- ensuring that the tenancy conditions are complied with.

The fees and services that letting/managing agencies charge vary. Make sure you check thoroughly to know what they will provide and how much it may cost. You would also be well advised to go to a reputable agent and preferably one who is a member of a professional body.

Managing the Property Yourself

As you will see, managing property is a complex and time-consuming matter. You must be sure that you have the time and expertise to undertake it. You must ensure that you have procedures in place for the following:

- make clear arrangements for the collection or payment of rent
- make arrangements for reporting/carrying out repairs
- have arrangements for dealing with emergencies
- make sure the tenant knows how to contact you when necessary

6. LANDLORD AND TENANT RIGHTS

Landlords and Tenants have basic rights which both should be aware of before a property is let.

Landlord's Rights

- to draw up a contract and decide the conditions of the tenancy before signing up
- to charge a "market rent" on all new lettings
- to receive the rent when due from the tenant
- to be informed of all disrepair
- to inspect a property for disrepair, at reasonable times after giving appropriate

- notice in writing
- to be given a proper notice that the tenant wishes to leave

Tenant's Rights

- to know the conditions of tenancy
- to know the name and address of the landlord/managing agent
- to have a rent book and receipt of rent payments
- to have a decent standard of safety and repair
- to be given notice in writing that the landlord wishes to inspect the property
- to have "quiet enjoyment" whilst living in the dwelling

Letting Agreements

You should always seek legal advice before you enter into any letting agreement. Before you make a tenancy, there are a number of decisions you have to make.

- what sort of tenancy do you want to create?
- is it for a short term or long term?
- who is going to be responsible for repairs that the law does not automatically make you responsible for?
- do you wish to include any special conditions, for example, about the keeping of pets or taking in of lodgers?
- how much rent do you wish to charge?

Tenancies

A tenancy is a legal agreement, which confers an exclusive right to possession on the tenant for the period of the agreement. It is up to you to decide what type of tenancy you wish to create and to make sure it is the type of tenancy you end up with.

Assured and Assured Shorthold Tenancies

Assured Shorthold Tenancies are the most common form of new tenancy. This is basically a fixed term tenancy (for tenancies created after 15 January 1989). The term of agreement must be no less than six months. Whilst the term of tenancy is fixed it can always be renewed or allowed to continue to run. At the end of the fixed term the landlord can give the tenant two months notice and will get a Court Order for possession. The landlord has an absolute right to get the property back.

An assured tenancy will generally be for an indefinite period; for example it may be a weekly or monthly tenancy.

For assured and assured shorthold tenancies and landlord must serve notice of possession proceedings and obtain a court order to evict a tenant based on one of the grounds set out in the Act.

Licences

A licence is different from a tenancy as it implies that the tenant does not have

exclusive rights to his/her accommodation. A Licence may apply where the landlord or a member of the landlord's family, lives on the premises on a permanent basis and shares amenities such as the kitchen or bathroom with the occupier (or lodger).

The agreement may be on a family or friendly basis. It may also apply in the case of Bed and Breakfast or hostel accommodation where the owners/managers need unrestricted access to the occupier's room(s), to provide services such as cleaning, changing bed linen etc.

Do you need to have a written agreement?

You do not have to supply a written agreement unless you want to create a tenancy for a fixed term of over three years. However, it is well worth having a proper written agreement about the terms of the tenancy. This will help prevent any difficulties, which might arise later on if there is a dispute about who is responsible for what.

In the case of assured shorthold tenancies, a written notice must be given to the tenant before the agreement is made stating that the agreement will be for a shorthold tenancy.

Standard forms of the various legal documents can be bought direct from law stations. If you are using the services of an agent, always check the tenancy agreement to ensure that it is what you want.

When is a Tenancy Created?

A tenancy has been made when:

- a person is given exclusive right to occupy "definable premises" (not, for example, moving from room to room)
- the amount to be paid for such occupation has been agreed (but not necessarily paid)

If you are proposing to let premises without creating a tenancy (a licence) you are strongly advised to consult a solicitor at the outset. The law in this area is complex and the courts have often held that a so-called licence arrangement is in fact a tenancy.

If you buy premises that are already tenanted, then the old agreement still applies. There is no need to create a new tenancy but you have a duty to inform the tenants of your name and address when you acquire the property.

Matters usually covered in tenancy agreements are:

- the amount of rent
- what services are included in the rent
- how often is rent/s to be paid
- who is responsible for fuel bills, water and sewerage charges, Council Tax
- bond or deposit to be paid
- notice to quit by landlord or tenant
- responsibility for repairs and internal decoration

- lodgers and sub-letting

Remember

As you are giving the tenant the right to use your property as their home it follows that you are not entitled to a key or to enter their home without their permission. You should only enter by invitation and whenever possible you should make an appointment.

Problems With Tenants

There are legal remedies available to help you if you have “bad tenants” and you should expect certain responsibilities to be discharged by your tenants.

They should:

- pay rent promptly
- take decent care of your property
- avoid causing a nuisance to neighbours
- must not use the house for illegal or immoral purposes
- must obey any additional rules in the tenancy agreement such as keeping pets or sub-letting

If your tenants are not discharging these basic responsibilities or if you want the tenant to leave, you must seek advice from a solicitor to ensure that you undertake the correct eviction process.

Care of your Property

Before you let your property it is worth taking photographs of all fixtures and fittings and writing an inventory of items supplied with the letting. You should show these to the tenant and ask them to sign a declaration to the effect that they agree that these are a true representation of the condition of the property at that time. A copy of the inventory should be given with each agreement issued.

You must accept normal wear and tear on the property but excessive damage will be the tenant’s responsibility.

You may ask for a deposit for the property as part of the letting agreement. You should state in writing the purpose of this deposit, which will normally be to cover damage to the property and not rent arrears.

8. RENT

What Rent are you going to Charge?

A “market rent” may be charged for Assured and Assured Shorthold Tenancies. You will have to decide what rent you want to charge for your property and the “market” decides whether you can attract a tenant willing and able to pay the amount you are charging.

You should take into account:

- the income level of your prospective tenants
- the quality and size of the accommodation
- the services or furniture included
- the location of the property

Obviously, you will want to ensure that the rent you receive covers your management costs and allow for a 'profit margin'. However, if you set the rent too high you may have more problems in recovering the rent from the tenant and may end up incurring more costs in rent arrears and management costs, including possible court action.

If you are renting property for the first time and are unsure as to what may be a reasonable charge, you may want to look at levels charged by other landlords for similar properties in the locality by checking adverts in the press.

For Assured tenancies, tenants can in some circumstances, apply to the Rent Assessment Committee if he/she believes that the rent is too high.

Rent Levels

The issue of what is a legal rent is complex and once again you should seek advice from your solicitor or the managing agent on this.

Deposits

A landlord may charge a deposit at the beginning of a tenancy. This deposit is usually to cover "neglect" or "damage" during the tenancy. Providing the tenant has not damaged the property and has carried out repairs included in the tenancy agreement as his/her responsibility, this deposit must be returned at the end of the tenancy agreement.

It is up to you, as landlord, to decide how much deposit is reasonable; the equivalent of two weeks – one month's rent may be reasonable. Some applicants may find it difficult to pay a lump sum (especially if they are in receipt of Income Support) you may wish to negotiate with the tenant payment of the deposit over a period of time.

If you take a deposit, give a written receipt, which clearly states what is to be held against.

Collection of Rent

1. Always make proper arrangements for the collection of rent (e.g. on the first of the month at the dwelling).
2. Always give a receipt for any monies received from your tenant, for example by entering it in the rent book.

Choosing a Tenant

You can advertise your tenancy and find interview prospective tenants. You may do this by:

- advertising through your local paper (e.g. Gravesend Reporter)
- placing adverts in local shop windows.

- advertising through a commercial letting agent
- registering with Safelet or another charitable letting organisation

Safelet will introduce landlords and tenants and will give advice on letting agreements and other areas of private renting.

You don't have to obtain references for tenants but you would be well advised to do so. The information gathered from former landlords, employers or others might be most useful.

As an alternative, you may wish to employ a letting agency to handle these matters for you.

Information for the Tenant

The tenant should be given a copy of the tenancy agreement and any notice served in the case of shorthold, fixed term tenancies. A Rent Book need only be provided when rent is received on a weekly basis. But it is a useful document for recording/receipting payment of rent and providing details of the tenancy and information such as your name and address or that of your managing agent and a telephone number to contact in case of emergency. Rent books can be obtained from all stationers or through your solicitor.

2. HOUSING BENEFITS

The Gravesham Borough Council, Housing Benefits Section administers housing benefits. A guide to benefits is now being compiled. In the meantime, if you have any queries please telephone the Housing Benefits on Gravesend 337710 or visit the Civic Centre.

2. REPAIRS

In accordance with the Landlord and Tenant Act 1985 a landlord is legally responsible for certain basic repairs. These include repairs to:

- the structure and exterior of the dwelling
- basins, sinks, baths and other sanitary installations in the dwelling
- radiators and fires
- water heaters
- water, gas, electricity supply and meters
- cold water tank and boilers

In the case of a flat, the repairing responsibility can include the building containing the flat, communal areas, steps, stairs, lifts, and any other facilities (for example, heating) which serve the flat. There may be additional repairing obligations for the landlord, which are stated in the tenancy agreement.

The landlord is not generally responsible for repairs arising from damage caused by the tenant, or for rebuilding the property in the case of damage by fire, flood or other inevitable accident. The landlord is not responsible for repairing anything that the tenant has the right to take away, unless the damage was caused by the landlord's failure to carry out other repairs for which he/she was responsible. Such items may include the tenant's furniture, cooker, fridge and so on.

Only a court can transfer the landlord's repairing obligations to the tenant and the costs of such repairs cannot be passed on in the form of a service charge. For this reason, when you set a rent for your property, you must ensure that it will provide sufficient funds to undertake routine and emergency maintenance from time to time.

Failure to Carry out Repairs

If you do not meet your obligations to carry out repairs a number of sanctions may be available against you.

- the tenant can take you to Court and the Court can order you to carry out repairs and to pay compensation to the tenant (Landlord and Tenant Act 1985, Section.11)
- the tenant may serve notices on the landlord to carry out the repairs, allowing reasonable time for the works to be completed
- the tenant may undertake the works and reclaim the cost from the landlord
- the tenant, other occupiers and visitors, may be able to claim compensation from you if they suffer any personal injury or damage to their property as a result of your failure to repair (Section 4 Defective Premises Act 1972)
- the Local Authority has the power to require you to carry out repairs or, if necessary, carry them out itself and charge you for the works (Housing Act 1985)

The Council may serve a Repair Notice on the owner to make good disrepair. Disrepair may be divided into:

2. major disrepair, which is sufficient to make the house or letting, unfit for human habitation, under the terms of the Housing Act 1985 (as amended)
2. disrepair, which is detrimental to the material comfort of the tenant but not so substantial as to make the house or letting unfit

In addition to disrepair, the house may lack basic amenities and the Council may serve an Improvement Notice requiring the landlord to install certain amenities. This notice may include a requirement for improvements in the fire safety installations in the house and other measures for improving safety in the house in case of fire.

Under the Housing Act 1985 the Council can serve notice on a landlord to start repair work by a certain date and give a date by which the works must be completed. If the landlord does not undertake the works, the Council may give notice that they intend carrying out the works themselves. This process is called "work in default", and the Council will charge the cost of the work to the landlord with the addition of an administration fee.

You should note that it is also an offence if you intentionally fail to comply with a Repair Notice. The Repairs Notice is a charge on the property and binds anyone that becomes an owner of the property.

Tenants' Responsibilities

The tenant has an overall responsibility to use the property in a responsible way and take proper care of it.

- he should turn off the water if there is a risk of burst pipes when he is going away

- unblock the sink when it is clogged up by waste
- not damage the property and make sure that his/her family or any visitors do not do so either

If the tenant's neglect or misbehaviour causes any damage, this is a ground for possession and the landlord can claim compensation.

If you want the tenant to be responsible for anything else, for example the internal decoration of the premises, make sure this is included in the tenancy agreement.

Access to the Property

If you have repairing obligations, as outlined above, your Tenants must allow you or your agent access to inspect the property and all facilities to carry out repairs.

However, you must give the tenant 24 hours notice, in writing, before carrying out such inspections and repairs and all visits must be at reasonable times of the day.

If Major Repairs Require the Tenant to Move Out

You cannot repossess the house or letting of either a regulated or an assured tenant just because you need or want to do repairs (even if the repairs are in response to a legal notice). You may be able to obtain an order to move the tenant, if you can provide suitable alternative accommodation or, in the case of assured tenancies, if you wish to develop the property or do substantial works (see the grounds for repossession in the DETR handbook Assured and Assured Shorthold Tenancies).

You can make an agreement with the tenant to leave the accommodation on a temporary basis while work is carried out. However, you should set out clearly, in writing, the basis on which the tenant is leaving, details of alternative temporary accommodation and his/her right to return to the original property. You cannot change any aspect of the tenancy agreement during this time.

10. SUMMARY

This document is an overall guide to many aspects of renting out HMO's and is for general guidance only. If you have any queries, you should contact the Private Housing Development Team of Gravesham Borough Council.

Remember

The Council is not only here to protect tenants rights the Private Housing Development Team will always give advice to landlords as well. If you are unclear about any aspect of these guidance notes or your rights and responsibilities, we will assist you as far as they can and will advise you when specialist input is needed.

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