glentree

THE LETTING GUIDE

This Guide provides the key points of the principal regulations applying to residential lettings.
The Guide contains links to relevant government publications and on-line guides.

CHOOSING THE AGENT

Be selective!

The range of experience, services and protections each Agency offers varies dramatically. Always ask before appointing an Agent what protections and services they provide:

How extensive is their market knowledge and residential lettings experience?

Are they are members of any professional organisations?

Do they have professional indemnity insurance cover?

Do they maintain a separate designated clients' account?

Having found you a tenant and secured their commission, what other benefits can you expect from your relationship with them?

By choosing Glentree Estates Limited (Glentree Estates) you secure the full range of professional services and protections from a long established Agency with sound knowledge of the residential lettings market.

Glentree Estates are members of ARLA, (The Association of Residential Lettings Agents www.arla.co.uk) a self-regulating professional organisation which leads the industry in setting professional standards and regulating its members through its Code of Practice applying ethical and professional standards over and above those required by law.

ARLA also keeps its members up-to-date with changes in legislation and residential lettings regulation and provides wide-ranging training and continuous guidance to help members gain, understand and interpret all aspects of letting and managing a residential property.

As members of ARLA, Glentree Estates are required to maintain Professional Indemnity Insurance and are automatically covered by the ARLA Client Money Protection Bonding Scheme protecting the funds of landlords and tenants. This means that rents collected for landlords and deposits held for tenants (irrespective of whether they are subject to the Deposit Protection Schemes), are maintained in an audited separate client account with the added protection of the ARLA Money Protection Bonding Scheme.

Glentree Estates are members of The Property Ombudsman Service (www.tpos.co.uk) which offers a free, impartial and independent service for the resolution of unresolved disputes.

Glentree Estates' extensive industry and local knowledge, commitment to professionalism and the Lettings Code of Conduct and our wealth of experience means that Glentree Estates is the best choice for your property.

PREPARING YOUR PROPERTY FOR RENTAL – REGULATIONS & WHAT YOU NEED TO KNOW

Today's letting market is sophisticated, competitive and above all highly regulated.

Landlords are legally responsible for their tenants' safety and need to be aware of constantly evolving regulations and how they affect the expense of offering residential property for rental.

A range of statutes and regulations impose responsibilities on landlords for such things as property repairs and maintenance, fire safety of furniture and furnishings, gas supply and appliance safety, electrical wiring and appliance safety and deposit protection.

Keeping up with changing law and regulation is a heavy responsibility. Key points of the principal law and regulation is set out below with links to government and other authoritative publications and on-line guides to assist you to locate up-to-date information.

The contents herein are intended for general information purposes only, and you must consult your own solicitor concerning your legal situation and any specific legal questions you may have. The information contained in this guide has been obtained from sources that we believe to be reliable, but its accuracy and completeness is not guaranteed. Glentree Estates reserves the right at any time and without notice to change, amend or cease publishing the information. It has been prepared solely for information purposes and no reliance is given. Glentree Estates does not make any warrant or representation regarding the information. Without prior written permission from Glentree Estates, it may not be reproduced in whole or in part, in any form. Please also note, as it is virtually impossible to maintain current links to on-line guides, you must always satisfy yourself when you use the link that it is current and effective.

Gas Safety - the Key Points
Gas Safety (Installation and Use) Regulations 1998
Gas Cooking Appliances (Safety) Regulations 1989

- ✓ legally oblige landlords to repair and maintain gas pipes, flues and appliances (including portable and LPG BBQs and appliances) in safe condition
- ✓ make it a statutory requirement that landlords commission an annual gas safety check on each gas appliance and flue
- ✓ impose a statutory duty on the landlord to keep a record of each safety check undertaken

For the complete Landlord's Guide see: http://www.hse.gov.uk/pubns/indg285.pdf

The Health and Safety Executive runs a free Gas Safety Advice Line offering advice on gas safety that is open 8 am to 8 pm Monday- Friday and 10 am to 4 pm on a Saturday. To contact the Gas Safety Advice Line freephone 0800 300 363

The Smoke and Carbon Monoxide Alarm (England) Regulations 2015

The Legislation is in force from 1st October 2015

- From 1st October 2015 all let properties must be fitted with Smoke Alarms on every floor and Carbon Monoxide (CO) Alarms in every room where there is a solid fuel appliance (gas appliances are not included but it is highly recommended to have a CO Alarm in rooms with a gas appliance as they do emit carbon monoxide). Battery operated alarms are acceptable.
- This is applicable for all existing tenancies and new tenancies.
- For any new tenancy from 1st October, the regulations require the Landlord to ensure all alarms are checked and recorded as working on Day 1 of the tenancy.
- It will be the responsibility of the Tenant to check the alarms are working throughout the tenancy.

- We strongly advise Landlords to 'pre-check' the alarms before the start of tenancy to avoid any unnecessary delays in the tenant moving in.

- The legislation indicates that keys cannot be released unless all alarms are working,

- Regulations require annual testing of smoke alarms and carbon monoxide detector as part of the annual gas safety check.

Electrical Safety - the Key Points
Electrical Equipment (Safety) Regulations 1994

✓ imposes a duty on landlords to ensure that electrical equipment and the electrical system are safe both when the tenant moves in and during the term of the letting

✓ imposes a requirement that the landlord carries out regular checks on electrical installations which includes a PAT Test (portable appliance test) for all electrical appliances

Annual electrical safety checks are not yet required by law but landlords remain exposed to liability if electrical equipment malfunctions. Irrespective of the age and condition of your property and contents, it makes sense to manage this risk.

Some gas service companies (Gas Safe Registered) now offer electrical checks when carrying out the annual gas checks. In any event, a fixed electrical installation test a minimum of once every 5 years is recommended.

For a complete Landlords Guild see: http://www.electricalsafetyfirst.org.uk/guides-and-advice/for-landlords/

Likewise for smoke alarms: there is no specific legislation requiring their installation in older single family rental properties but battery-operated smoke detectors on every floor is recommended as a failure to fit smoke alarms in a rental property leaves the landlord exposed to civil liability and, potentially to criminal liability in the event of fire.

New regulations laid in Parliament require landlords to install smoke and carbon monoxide alarms in their properties, and are in force from 10 October 2015.
https://www.gov.uk/government/news/tenants-safer-under-new-government-measures.

Simply leaving copies of operating and safety instructions for ALL equipment and providing a supply of batteries for smoke and carbon monoxide alarms in the rental property limits the risks.

Fire Safety Furniture and Furnishings – the Key Points
The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended in 1989 and 1993 and 2010)
The General Product Safety Regulations 2005 – Internal Blinds Child Safety Requirements

These regulations set levels of safety and fire resistance for domestic upholstered furniture, furnishings and other products containing upholstery and pull cords commonly used in the home:

✓ furniture and furnishings supplied in rental accommodation at any time during the tenancy must comply with The Furniture and Furnishings (Fire) (Safety) Regulations 1988 (as amended).

✓ some materials used to fill or cover furniture, particularly older and second hand furniture may be a fire risk or produce toxic gases when burning, such as cyanide or carbon monoxide.

- ✓ blinds, if operated with cords, chains and ball chains or similar, which are accessible can potentially form a hazardous loop posing a strangulation risk to children

- ✓ there are severe criminal penalties for non-compliance with these regulations.

For a guild to the Furniture and Furnishings (Fire) (Safety) Regulations 1988 see: http://www.firesafe.org.uk/furniture-and-furnishings-fire-safety-regulations-19881989-and-1993/

These regulations have been reviewed by the Department of Business Innovation and Skills and so amendments are likely to be expected. See: https://www.gov.uk/government/consultations/furniture-fire-safety-regulations-proposed-amendments

New British Standards apply to blinds which have cords or chains that could create a hazard and in *"premises where children 0-42 months are likely to have access or be present".*

Landlords considering retrofitting safety devices to blinds, curtails and insect screens to remove these hazards, will find useful information and a video on retrofitting options at: www.makeitsafe.org.uk

Energy Conservation – Energy Performance Certificates
Energy Act 2011
The Energy Performance of Buildings (Certificates and Inspections) (England and Wales) (Amendment) Regulations 2012 Green Deal (Acknowledgment) Regulations 2012

Would you knowingly rent a cold, energy inefficient house? An energy efficient property is more attractive to tenants.

The Energy Act 2011 contains significant provisions to ensure that from April 2018, it will be unlawful to rent out a residential property that does not reach a minimum energy efficiency standard which will be revealed in an Energy Performance Certificate ("EPC").

An EPC provides information on a building's energy efficiency on a sliding scale from 'A' (very efficient) to 'G' (least efficient). The purpose of the EPC is to show prospective tenants the energy performance of the dwelling they are considering renting. The minimum standard has been set at a rating of 'E'.

From 2018 onwards it will be illegal to rent out your property if it has an EPC rating below an E

EPCs are mandatory and are currently valid for 10 years and can be used as many times as required within the 10-year period.

Energy inefficient buildings will come to light when the obligation to provide an EPC arises. It not only records the current rating but includes recommendations for improving the rating.

Therefore a property (whether domestic or otherwise) with a rating of either F or G will not be able to be let until improvements have been made. This regime will be enforced by the imposition of fines by trading standards officers.

If a rating of 'E' or above is obtained, the owner will be safe from the provisions of the Act until expiry of the EPC (10 years after it was produced). If a rating of 'F' or 'G' is obtained, work can be built into on-going property maintenance in preparation for the introduction of the minimum rating.

If the cost of the works required to bring a property up to an 'E' rating is higher that the benefit of the letting, disposal should perhaps be considered.

An EPC is also required for properties that are rented out as holiday lets for 4 months or more in any 12-month period.

Energy inefficient buildings come to light when the obligation to provide and EPC arises and Landlords must obtain an EPC as early as possible **before** marketing the property and in any event, when a prospective buyer or tenant requests information in writing or views the property in question.

The Regulations place an obligation on the letting agent to ensure that the EPC is available or has been commissioned **before** marketing is begun.

For a complete guide to the EPC regulations see:
http://www.direct.gov.uk/en/HomeAndCommunity/BuyingAndSellingYourHome/Energyperformancecertificates/DG_177026

Heat Network (Metering and Billing) Regulations 2014

These new Regulations are aimed at promoting energy efficiency in multi-let properties with communal heating a, cooling and hot water supplies

They impose the following new obligations :

1. Registration with the National Measurement Office.
   This can be completed by email to heatnotifications@nmro.gov.uk attaching the templates provided at the following link https://www.gov.uk/heat-networks

   This obligation came into effect in April 2015 and should be attended to as soon as practicable

2. Installation of individual meters and temperature control devices (eg thermostatic radiator valves) in each separate dwelling for each Tenant and

   This must be completed by end of December 2016

   There are exceptions for buildings where this is not cost-effective or technically feasible but this is the subject of detailed guidance on which professional advice should be sought

3. Tenants must be billed for actual consumption with tariff and comparative energy pricing information provided

   Glentree recommend that you start investigating the cost-effectiveness and technical feasibility of compliance

Houses in Multiple Occupation ("HMOs") – Housing Act 2004
Mandatory Licensing

The Housing Act 2004 introduced the mandatory licensing of certain types of houses in multiple occupation. All privately rented properties consisting of three or more storeys and occupied by five or more people who form more than one household are subject to mandatory HMO licensing.

Significantly, local authorities are also empowered under the Act to establish discretionary additional HMO licensing.

HMO status dwellings are subject to additional and onerous safety and regulatory obligations. By way of single example, it is mandatory in HMOs to provide mains powered interlinked smoke detectors.

Meeting these additional obligations adds significantly to the expense of letting to sharers. If you receive an offer from sharers, the possible application of this HMO legislation must always be considered.

If the property requires a license it is the landlord's responsibility to obtain it.

For a complete guide to these complex and potentially costly regulations see:
http://www.direct.gov.uk/en/HomeAndCommunity/Privaterenting/Repairsandstandards/DG_189201

Landlord and Tenant Act 1985
Responsibility for Repair and Maintenance

For all private residential tenancies with a fixed term of less than seven years, the landlord is responsible under this legislation for repairs to:

- the structure and exterior of the dwelling
- basins, sinks, baths and other sanitary installations in the dwelling and
- heating and hot water installations.

The Tenant's repairing obligation is generally limited to an obligation to use the property in a' *tenant-like'* manner and to repair damage caused by them during their occupation allowing for '*fair wear and tear*'.

Unless the tenant expressly agrees to accept additional repairing obligations in the tenancy agreement, the landlord remains responsible throughout for repair and maintenance of the property.

For a complete guide to landlords' repairing obligations see: https://www.gov.uk/private-renting/repairs

Landlords of leasehold properties can no longer rely on their tenants to give notice of disrepair to comment parts. The landlord remains primarily liable to the tenant if common parts' disrepair results in injury or loss to the tenant. This is the case even though the superior landlord or freehold management company bear ultimate responsibility for the condition of the common parts.

Landlords of leasehold properties must proactively manage regular inspections of the common parts and monitor the performance of their freeholder's or superior landlords' repairing obligations.

Given this responsibility, obtaining an inventory and a record of condition covering the common parts' condition at commencement of the tenancy in the form of a schedule of condition makes good sense.

With effect from October 2015 landlords cannot use the Section 21 accelerated possession procedures (the so-called 'retaliatory eviction' practice) if their tenant raises a legitimate complaint about the condition of the property or the common parts. See s33 Deregulation Act 2015:
http://www.legislation.gov.uk/ukpga/2015/20/section/33/enacted

Housing Act 2004 (the Act)
The Housing Health and Safety Rating System (HHSRS)

This Act imposed new responsibilities on local authorities in relation to housing conditions. With effect from 6 April 2006 all rental properties may be inspected by the local authority Environmental Health Officer who has a statutory duty to assess the condition using a risk assessment approach called the Housing Health and Safety Rating System (HHSRS).

Local Authority inspections may be triggered by

- overall assessment of the area (including a Neighbourhood Renewal Assessment)
- a request by any individual, such as a tenant or the owner of an adjoining property
- a complaint by another agency such as the Citizens Advice Bureau
- a request for assistance by the owner or tenant to deal with various aspects of home repair, adaption or improvement.

The HHSRS does not set minimum standards; the aim is avoiding or minimising potential hazards. Given the potential for local authority involvement however, Glentree Estates recommend regular inspections to manage possible hazards before they become a problem.

For a complete guide to HHSRS see:
http://www.communities.gov.uk/documents/housing/pdf/150940.pdf

Control of Legionella Bacteria in Water Systems
Health and Safety at Work etc Act 1974 and the Control of Substances Hazardous to Health Regulations 2002.

All premises with a water system are now within the scope of the revised Approved Code of Practice and guidance *Legionnaires' disease* (ACOP) which makes landlords of residential accommodation responsible for ensuring that the risk from exposure to legionella in their properties is properly controlled.

Legionella bacteria can multiply in hot or cold water systems and storage tanks in residential properties, and then be spread, e.g. in spray from showers and taps.

Generally high throughput and relatively low volume of water held in smaller water systems reduces the likelihood of the bacteria reaching dangerous concentrations but as landlord you must still carry out a risk assessment to identify and assess potential sources of exposure.

You must then introduce a course of action to prevent or control any risk you have identified.

Practical guidance on how to comply with your new legal responsibilities regarding control of legionella is given in the ACOP which can be found at: http://www.hse.gov.uk/legionnaires/

Council Tax
HMO the Council Tax (Liability for Owners) Regulations 1992 as amended

Council tax is a local occupational tax so generally the occupiers or tenants carry the primary responsibility.

But there are circumstances where this significant liability can revert to the landlord.

The landlord will be liable for council tax during any period when the property is unoccupied. So if your tenant vacates early, you need to factor in that this additional potential liability will revert to you.

If a property is let to sharers, the landlord not the tenants will carry primary liability for council tax.

In addition, how your local authority classifies properties as HMOs can result in a property being deemed to be a number of separate households. A deemed HMO further complicates the question of liability to council tax and this must be factored in.

If this exposure presents a risk, the landlord should consider grossing up the rent up to allow for this under the tenancy agreement.

The Council Tax (Administration and Enforcement) Regulations 1992 as amended (SI 1992 No. 613) imposes duties upon landlords and managing agents to respond to notices by the billing authority seeking information about possession and control of particular dwellings.

Where you believe your tenant is responsible for the council tax, you will protect yourself against this liability and avoid problems with the Data Protection legislation, if you include an express consent in the tenancy agreement to the release of the tenant's personal data to the Local Authority and utility suppliers.

For a guide to Council Tax see:
www.direct.gov.uk/en/HomeAndCommunity/YourlocalcouncilandCouncilTax/CouncilTax/DG_10037383

Water Industry Act 1991 as amended– The Flood and Water Management Act 2010 Liability for Water Charges

The landlord has an obligation under this legislation to provide the water company with contact details for the tenant including their forwarding address after they vacate the property. Failure to do so will render the landlord jointly liable with the tenant for the tenant's unpaid water charges.

Again we recommend that the tenancy agreement include an express consent by the tenant to the release of the tenant's personal data to avoid arguments under the Data Protection Legislation.

Immigration Act 2014

This legislation aims to prevent anyone from renting private housing when they have no right to live in the UK by requiring private landlords to undertake pre-letting checks on the immigration status of intending tenants.

Any intending tenant who cannot prove they are a British Citizen, a national of an EEA State or a Swiss national must have their immigration status verified before they can be offered any kind of tenancy.

Breach of the 2014 Act carries a maximum penalty of £3,000 per person in occupation. Liability rests with the person who has authorised the occupation of the premises.

The legislation came into effect in October 2015 when the Home Office launched its Landlords' Checking Service. This service is intended to support landlords in performing their obligations by:

(1) providing telephone advice on understanding the rules and interpreting immigration stamps and visas;

(2) offering **a 48-hour email confirmation service** in response to scanned, emailed evidence or data on the Home Office's own template, and

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(3) verifying letters of authority to migrants regarding their right to rent in some exceptional circumstances.

Landlords are required to make immigration status checks on tenants named in the tenancy agreement and on all adults who the prospective tenant says will occupy the property. The obligation to make checks extends to all adult occupants who the landlord would have been able to identify had reasonable enquiries been made.

These checks must be completed **before** occupation. A tenancy includes any lease, licence, sub-lease or sub-tenancy or an agreement of any of those things

The scheme does not apply to sitting tenants whose tenancy commenced before December 2014 provided there has been no break in the tenancy.

The landlord continues responsible for ensuring occupation is only by those people on whom checks have been made unless the tenant sub-lets all or part of their accommodation or authorises occupation by other people *for money* when the tenant is the landlord for the purposes of the scheme and may be liable to a civil penalty if they fail to make the proper checks described within this Code of Practice.

The scheme does permit entry into conditional agreements with prospective tenants where it is not practical immediately to conduct document verification, e.g. if the person is currently overseas and wishes to arrange accommodation for work or study in the UK in advance of travelling to the country.

Checks must be performed without regard to race, religion or other protected characteristics as specified in the Equality Act 2010, on all adults who will be living at the property.

Where the landlord uses an agent, the agent is responsible for undertaking the checks and taking any other action required for the purposes of ensuring compliance with the scheme.

If an agent establishes that a person is an illegal immigrant and reports the matter to the landlord, the landlord is liable to a penalty if he/she proceeds to grant a tenancy to that person. And it remains the landlord's responsibility to ensure that a tenant is not granted a right of occupation before the agent has completed the checks and reported back to the landlord.

Where the tenant is a company leasing premises for its employee's accommodation, the landlord is not required to seek details of all employees who may use the premises and as the employer will have control over who uses the premises, responsibility for occupation passes to the employer.

More detailed information on this legislation can be found at:
https://www.gov.uk/government/publications/right-to-rent-landlords-code-of-practice

The Home Office's on-line 'right-to-rent' tool is available at
https://eforms.homeoffice.gov.uk/outreach/lcs-application.ofml

Right to Rent Scheme

From 1 February 2016 all private landlords in England, including those subletting or taking in lodgers, must check new tenants have the right to be in the UK before renting out their property.

Right to Rent is one part of the government's ongoing reforms to the immigration system to make it harder for people to live in the UK illegally.

What this means for the private rented sector

As of 1 February 2016, anyone who rents out private property in England needs to see and make a copy of evidence that any new adult tenant has the right to rent in the UK (for example a passport or a biometric residence permit).

The process is simple and many organisations in the private rented sector already check the immigration status of tenants.

In most cases, checks can be carried out without contacting the Home Office. However, if a tenant has an outstanding immigration application or appeal with the Home Office, landlords can request a Home Office Right to Rent check. A yes or no answer should be provided within two working days.

Landlords who don't make the checks could face a civil penalty of up to £3,000 per tenant if they are found to be renting out a property to someone who is in the UK illegally.

The Government is also making it easier for landlords to evict illegal migrants as part of the Immigration Bill.

You can read more about Right to Rent on https://www.gov.uk/check-tenant-right-to-rent-documents

Holding Deposits

Prospective tenants sometimes pay a holding or property reservation deposit before they have signed a tenancy agreement. That is, before they become your tenant.

The Housing Act 2004 does not apply to holding deposits because they are pre-contract deposits falling outside the statutory definition of a tenancy deposit. Consequently there is no requirement to protect a holding deposit within a Tenancy Deposit Scheme and the terms on which a landlord or agent retains a holding deposit are entirely a matter of private contract.

However, depending on the terms on which the holding deposit was paid, once the tenancy agreement is signed, the holding deposit will fall within the statutory definition and which must be protected with a scheme.

Landlords need to be aware however that unless the terms on which the holding deposit is taken are balanced and fair, the provisions for forfeiture of the holding deposit may not be enforceable.

Taxation and Non- Resident Landlords

Under UK tax laws, the Landlord is obliged to pay tax on UK rental income. UK residents do this through their self–assessment returns.

Non-resident landlords are subject to the Non-Resident Landlords (NRL) Scheme which is a scheme for taxing the UK rental income of non-resident landlords in the hands of the letting agent or tenant.

The NRL scheme requires UK letting agents to deduct basic rate tax from any rent collected for non-resident landlords. If the non-resident landlord does not retain a UK letting agents to collect the rent the responsibility for deducting the tax falls on their tenants who must deduct the tax before paying the rent into the landlord's bank.

Taxation is a highly complex ever-changing subject and well advised landlords always retain a Chartered Accountant or Chartered Tax Consultant to deal with their tax liability, not least because it is possible to make application to HM Revenue & Customs (HMRC) to receive rent without prior deduction of tax. See: www.hmrc.gov.uk/cnr/nr_landlords.htm

As letting agents, by law we must deduct tax unless and until HMRC notifies us in writing that the non-resident landlord has successfully applied for approval to receive rents with no tax deducted.

Stamp Duty Land Tax - Thresholds

Since 1 December 2003, the responsibility for any Stamp Duty Land Tax (SDLT) due on a tenancy agreement falls on the tenant. This inevitably affects negotiations for lettings on or near the SDLT threshold.

The current Finance Act sets an SDLT threshold of £125,000 for residential leases and assesses SDLT on the 'Net Present Value' ('NPV') of the rent payable under a residential tenancy. NPV simply applies a discount to allow for inflation and periodic receipt of the rent.

SDLT is payable on the NPV of the rent for the entire term of the tenancy agreement and therefore can become payable if you grant a tenancy agreement for a number of years. If the NPV rental for the term does not exceed this £125,000 threshold however no SDLT is chargeable on the rent.

An SDLT calculator on can be found at www.hmrc.gov.uk/sdlt/calculate/calculators.htm

Protecting Your Property from Fraud

Property fraud is not common but the risk is known to be higher where the property is mortgage free or where the owner lives elsewhere.

The fraudsters may attempt to acquire ownership of a property either by using a forged document to transfer it into their own name, or by impersonating the registered owner.

HM Land Registry has identified an increased risk of fraud when:

- a property is empty or has been bought to let
- an owner is spending time abroad or absent
- the owner is infirm or in a nursing or care home
- a relationship breaks down
- a property has no mortgage.

The most simple and practical step you can take to protect your rental property is to ensure your contact details at HM Land Registry are kept up to date. Stating the obvious, your contact details at HM Land Registry should not be the address of the rental property. You are able to list up to 3 contact addresses and changing your contact details is free of charge.

In addition the Land Registry is now offering a trial service enabling you to request a restriction against new registrations against your property.

A Guide to Preventing Property Fraud is available at: www.landregistry.gov.uk/public/property-fraud

General Advice Line

This Letting Guide cannot provide answers to all the questions that may arise.

There are however a range of landlords websites some of which require subscriptions. You may find the following sites useful

http://www.letlink.co.uk/landlords-information/

http://www.pims.co.uk/Starting-A-Tenancy

http://www.landlordlaw.co.uk/new-landlords-guide

Pre-Marketing Essential Regulatory Requirements

So what is currently **mandatory** before offering your property for rental?

- ✓ Energy Performance Certificate
- ✓ Gas Safety Certificate
- ✓ (if applicable) HMO License

PROPERTY MANAGEMENT

Manage your property well and the risks to you as landlord are minimal, manage it badly and your rental return will be eroded, if not destroyed.

There follows some additional basic information and guidance for landlords managing their property.

Possible Essential Consents to Letting

To avoid delay to your letting, landlords should apply as soon as possible for necessary consents from

- ✓ your lender and/or
- ✓ your head lessor if your property is leasehold

It is essential to consider what if any consents are required before letting your property.

Property Insurance

Always think about insurance!

As a general rule the landlord insures the building, fixtures and fittings and any landlord's contents leaving the tenant to insure their own possessions.

It is essential to review existing insurance policies before letting your property for the first time.

Existing policies may not provide cover or may restrict cover for tenanted property and/or its contents or failure to inform your insurer of the letting could invalidate any subsequent claim or failure to notify vacancies between tenancies may void cover for losses in those periods.

In addition, you may require rent protection insurance to cover your mortgage payments if the property becomes unlettable for any reason. If so, you will need a landlord specific policy.

Insurance and regular attention to detail on insurance terms and conditions are fundamental to good property management.

Glentree Estates are not able to assist you on such matters because Insurance Services are FSA regulated services. Seeking out a suitably qualified insurance broker or a specialist landlord insurance offering is therefore essential.

Furnished, Unfurnished or Partly Furnished

There are no strict rules here. Variations range from fully furnished (which includes everything the tenant needs simply to move in with their suitcases) through to partly furnished and unfurnished where there is nothing apart from carpets, curtains and basic fixtures and fittings.

What is critical is that the landlord and the tenant should clearly understand what is, and what is not, included **before** entering into the tenancy agreement. This is why an inventory and schedule of condition and (signed and agreed by the landlord and tenant) appended to the tenancy schedule itself, is essential.

What is included or not included is a matter of agreement between landlord and tenant but it directly affects the asking rent so you should be clear about this from the outset.

Landlords are not expected to provide television sets, video recorders or hi-fi equipment as tenants commonly hire or buy their own. The tenant is however responsible for purchasing a television licence. See: www.tvlicensing.co.uk

Some very simple practices can assist the tenant to manage their rental home without involving the landlord. For example, simply providing equipment operating manuals and details of any maintenance contracts and, where available, any current guarantees will limit the calls from the tenant.

Inventory/Schedule of Condition

Glentree Estates always recommend that the landlord have a detailed inventory and schedule of condition of the property (preferably fully supported by photographs), prior to commencement of each tenancy.

The inventory and schedule of condition should, wherever possible, be agreed with the tenant and scheduled to the tenancy agreement so it will form part of the agreement between the landlord and the tenant.

An inventory and schedule of condition should include:

- ✓ a brief description of the property and its general condition
- ✓ a list and description of the contents, fixtures and fittings in the property
- ✓ a report on condition of ceilings, walls, floors, doors and door fittings, windows and window fittings and garden and common parts, detailing state of repair

and details of any garages and out buildings and gardens and sheds.

Best practice is to retain a professional inventory clerk as they are less likely to miss the detail and independent professional schedules reduce the risk of doubt or confusion.

In addition, a professional inventory clerk will complete the inventory check-in and take meter readings when the tenant takes occupation. At the end of the tenancy on check-out, the inventory clerk will audit the check-in report and complete the inspection and check-out, on your behalf.

The landlord usually pays for the inventory check-in leaving the tenant to pay for the check-out but ultimately this is a matter of contract. If you wish the check-out and check-in costs to be recoverable from the tenant this must be included expressly in the tenancy agreement.

Glentree Estates recommend professional involvement as it reduces disputes and in the event of dispute, including where this may involve insurers, it distances you, as landlord, from detail and matters of opinion.

Without doubt, a professionally prepared inventory and professional involvement at check-in and check-out, presents the best means of limiting disputes over responsibility for damage to the property and is a worthwhile investment by the landlord.

If required, Glentree can recommend an independent professional inventory clerk to prepare the Schedule of Condition and Inventory on your behalf.

Cleaning:

The Landlord and Tenant Act 1985 requires residential property to be fit for human habitation. Most prospective tenants insist that a rental property is professionally cleaned or 'cleaned to a professional standard' before their occupation.

Stating the obvious, the property including the curtains, soft furnishings, flooring carpets, windows, gardens and outbuildings must be clean and prepared in readiness for each new letting. If the landlord wants to retain a cleaner during the letting or to impose a requirement for a professional clean by the tenant at the end of the tenancy, this must be expressly provided for and separately agreed in the tenancy agreement.

Disputes over cleaning costs generally arise at the end of the tenancy in the context of return of the deposit. If this results in a reference to TDS, they will look for balanced provisions in the tenancy agreement.

The TDS booklets in particular, their Guide to Disputes and Damages provides useful information about the TDS handling of disputes. See: http://www.tds.gb.com/landlords-documents-and-forms.html

Gardening and Trees

Some gardens require a professional or contract gardener. If so, this must be expressly addressed in the tenancy agreement. If the tenant is to be responsible for gardening, adequate tools should be provided.

Because trees can be expensive to maintain and are all too often the cause neighbour disputes, the responsibility for maintenance of any trees, particularly protected trees, should always be addressed in the tenancy agreement.

For a complete guide to tree control see:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/6111/2127793.pdf

Tenant Reference Checks and Credit Reports

Your property is a valuable asset that you are entrusting to an unconnected third party whose occupation of it is protected by law.

Glentree recommend that before you entrust your valuable asset to that unconnected third party you undertake pre-letting checks to confirm:

- the prospective tenant is who they say they are – if they are a company that they are in good standing
- that they can and will pay the rent and outgoings
- that they have a proven track record of honouring their commitments

The extent of pre-letting checks varies between individual tenants but getting the right information from prospective tenants is critical to obtaining worthwhile tenant checks. Glentree know from long experience what information should be obtained and what warrants the cost of pre-letting credit and reference enquiries.

THE TENANCY AGREEMENT

Housing Acts 1988 and 1996 as amended- Assured and Shorthold Tenancies

Assured or **Assured Shorthold** is the preferred form of letting if:

- ✓ you are a private landlord and your tenant is a private tenant;
- ✓ the house or flat is let as separate accommodation and is the tenant's main home.

This is because after the initial 6 months of the letting, Assured and Assured Shorthold tenancies offer definitive and speedy rights to possession.

For example, if you let on an Assured Shorthold basis, unless your tenancy agreement specifies a longer minimum fixed term, you can regain possession of your property only 6 months after the beginning of the tenancy, by simply giving 2 months' notice to the tenant.

As part of the statutory scheme for protection of tenants, deposits paid under Assured and Assured Shorthold tenancies fall within the Deposit Protection Scheme and the rent may be subject to a reduction application by the tenant to the Rent Assessment Committee. (see below)

Since 1 October 2010 tenancies with a rent up to £100,000 (previously £25,000) come within the provisions of the Housing Acts 1988 and 1996 and now qualify as Assured or Assured Shorthold tenancies.

The primary difference between an assured tenancy and an assured shorthold tenancy is that at the end of the assured shorthold tenancy, the Landlord has an automatic right at the end of the tenancy to regain possession, whereas under an assured shorthold tenancy, the Landlord needs to show certain possession grounds (such as non-payment of rent)

For a complete guide to Assured and Assured Shorthold Tenancies see: https://www.gov.uk/tenancy-agreements-a-guide-for-landlords

Note that the Deregulation Act 2015 amends the Housing Act 1988 in relation to Section 21 notices and repayment of rent where the tenancy ends before the end of the lease

Short Stay and Holiday Lettings

Schedule 1 of the Housing Act 1988 defines a holiday letting as *'a tenancy the purpose of which is to confer the tenant the right to occupy the dwelling-house for a holiday*'

Holiday lets fall outside the Assured and Assured Shorthold Letting Regime but what constitutes a holiday let remains purely a question of fact.

By contrast, short stay lettings for purposes other than holidays do fall within the Assured and Assured Shorthold Letting Regime and the Tenancy Deposit Scheme. If however you are making a letting of less than 8 months of a property which

'*at some time within the period of twelve months ending with the beginning of the tenancy*'

was let for the purposes of a holiday, provided you give the appropriate prior notice to the tenant, you are afforded a mandatory right to possession under Ground 3 at the end of the short fixed term.

In all other circumstances, you should assume your letting falls within the Assured Shorthold Letting regime and that possession cannot be obtained within the first 6 months of the letting.

You should also be aware that that some residential leases may prohibit use as short stay or holiday letting accommodation and that furnished holiday homes can attract different tax treatment. For more information consult your tax adviser. Guidance is available at the direct.gov website.

http://www.hmrc.gov.uk/helpsheets/hs253.pdf

Common Law Tenancies

Any letting that is not Assured or Assured Shorthold such as lettings to companies or to individuals at rents above £100,000 are known as "common law tenancies" as they fall outside the statutory Assured Shorthold Letting scheme and do not qualify for statutory protection.

They operate instead on the express terms of the tenancy agreement.

Common law tenancies are also outside the Deposit Protection Schemes (see below) but some depending on the rent level may fall within the charge to Stamp Duty Land Tax.

Rent Assessment Committee
Housing Act 1988

You need to be aware that Assured Shorthold tenants have a right to apply to a Rent Assessment Committee (RAC) during the first 6 months of any tenancy to have the rent reduced.

Application is made under section 22 of the Housing Act 1988 for a determination of the rent, which, in the Committee's opinion, the landlord might reasonably be expected to obtain under the Assured Shorthold tenancy.

For guidance on this entitlement see: https://www.gov.uk/private-renting/rent-increases

Landlord's Address for Service - Section 48 Notices:
Landlord and Tenant Act 1985 and 1987

Essential information - expensive if overlooked!

Landlords must supply the tenant with an address in England and Wales at which notices (including court proceedings) may be served on him. Until the landlord satisfies this requirement (by serving the tenant with a Section 48 notice), the landlord is unable to enforce payment of rent or service charge arrears. The notice is conveniently given in the Tenancy Agreement itself.

In addition, Section 1 of the Landlord and Tenant Act 1985 provides that if the landlord receives a request in writing from the tenant asking for his address, the landlord must respond in writing and within 21 days giving their address.

Breach, without reasonable excuse of this provision, attracts criminal liability: the landlord commits a summary offence and is liable on conviction to a fine not exceeding level 4 on the standard scale currently £2,500.

Accordingly, the tenancy agreement itself should always include a notice of address for service in section 48 form. For section 48 purposes (as distinct from section 47), it does not have to be the landlord's residential address but it must be an address at which the landlord can be served with proceedings.

The Tenancy Deposit - The Deposit Protection Scheme

Housing Act 2004 Prt 6 Chapter 4 as amended by the Deregulation Act 2015 and the Localism Act 2011

Deposits are a standard and essential feature of resident lettings. They are taken primarily as security against damage to the property or contents, that is, for issues that generally arise at the end of the tenancy on check-out.

Deposits can also be used as security in the event of non-payment of rent or other monies payable by the tenant.

Since 6 April 2007, deposits taken on Assured Tenancies are subject to mandatory regulation. Company lets and non-assured tenancies (that is, lettings at more than £100,000 rental per year) are outside the scope of this legislation.

There are very significant sanctions for failure to observe the requirements of the regulations.

The policy behind the regulation is simple

- ✓ **to safeguard the tenant's deposit** by removing it from the landlord's control,

  The deposit must be held in a Government Approved Deposit Protection Scheme.

  There are currently three approved schemes:

  Deposit Protection Service (Custodial and Insured)

  MyDeposits

  Tenancy Deposit Scheme

- ✓ **to inform the tenant or any third party providing the deposit on behalf of the tenant** of how and by whom it will be held

  The Housing (Tenancy Deposits) (Prescribed Information) Order 2007 makes it mandatory to provide the tenant (or any third party providing the deposit on behalf of the tenant) with certain prescribed information about the deposit holding provisions.

  This can be conveniently given in the form of a leaflet published from time to time by the relevant Tenancy Deposit Scheme but it must also appear in the tenancy agreement.

- ✓ **to provide dispute resolution machinery** for resolving disputes over the deposit.

  All schemes offer independent dispute resolution services.

Landlords are free to choose the scheme they wish to use but in all cases where the deposit falls within the regulations they must within the prescribed 30 day timeframe:

- ✓ provide the Prescribed Information

- ✓ safeguard the deposit in accordance with the rules of their selected Scheme and
- ✓ inform the tenant by providing details of the applicable Scheme.

Failure to observe these requirements within the specified time limits attracts significant sanctions which include a possible block on regaining possession.

The tenant can apply for up to 6 years after the end of the tenancy for a sanction to be imposed even if the deposit was returned in full. Apart from ordering immediate return of the deposit, the court can also impose a penalty of up to three times the amount of the deposit.

For a short guide to the Tenancy Deposit Schemes published by the government see:
https://www.gov.uk/tenancy-deposit-protection/overview

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