

ROOK
MATTHEWS
SAYER



THE LANDLORD'S GUIDE TO SUCCESSFUL LETTING

July 2023



WELCOME

YOUR COMPLETE GUIDE TO ALL THINGS LETTINGS

This guide is intended to be read alongside our **'Terms and Conditions: Your Agreement'** and provides more detail of our services and some useful information.

It aims to provide you with advice for successfully letting residential property, including a summary of relevant legislation and regulations.

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SUCCESSFUL LETTINGS

BEST LETTING AGENT
BRITISH PROPERTY AWARDS



What rent to aim for

We will be happy to advise you on the current market rental value for the property. Please note that normally the tenant is responsible for outgoings such as gas, electricity, water (including sewerage and environmental charges), telephone, other fuel and council tax, and you will be responsible for outgoings such as service charges and ground rent.

Preparing your property for letting

There may be steps you could take to improve the prospect of a successful letting and to increase the rent. Ideally, the property should appear in good order externally and inside, be thoroughly cleaned and any necessary refurbishment and repairs carried out before prospective tenants are shown the property. We recommend neutral colour schemes and professional cleaning, as well as clearing the property of all personal effects. We can also advise on what furniture should be left in the property.

The aim is to make it easier for tenants to imagine themselves living there and helps the property to appeal to the widest possible audience.

For further advice on how to ensure proper evidence of cleaning and condition please refer to the information on check-in and check-out later in this guide.

You will also need a current Energy Performance Certificate (EPC) for the property and an EICR. EPC and EICR requirements are covered in more detail later.

Consents to let your property

If your property is subject to a mortgage, or is held by you on lease, you may be required under the terms of the mortgage or lease to ask the mortgage company or the freeholder (or head lessor) for permission to let the property. If you are unsure about your position or how to go about asking for permission then it is advisable to speak to a solicitor.

It will be a term of your buildings and contents insurance that you advise your insurer of your intention to let. Some insurers will not permit this or will require extra premiums or an increased excess.



Licence and/or planning permission requirements

Licensing and/or planning permission requirements are unlikely for the letting of a normal residential property to one occupant or family but if you have any doubt about the permitted occupancy of your property you should seek professional advice. Where you are letting in circumstances where the property will be a 'house in multiple occupation' (HMO) then many local authorities require registration of the landlord and licensing of the property. We can advise you whether the property is likely to qualify as an HMO and whether any registration or licence is required. More details are provided later in this guide.

There are numerous other legislative and regulatory requirements, some with significant penalties, for a landlord of residential property. It is very important that you are aware of these and we will provide a summary later in this guide.

Marketing your property

You will want your property to be marketed as soon and as widely as possible, but it is not lawful to start marketing without a current EPC (which we can arrange for you) which has to be provided to prospective tenants. You are not able to legally market or rent out a property with an EPC rating of F or G under the Minimum Energy Efficiency Standards (MEES). More details are provided later in this guide.

We will undertake a number of checks to ensure compliance with money laundering regulatory requirements and best practice.

We market to all applicants registered with us and we will also display your property on our own website, as well as Rightmove and Zoopla. We will erect a 'to let' board but please note that in certain circumstances you may need consent for this from persons with an interest in the property. There may also be restrictions in place under bye-laws or where the property is in a conservation area.

The right tenant

It is very important to check, as far as possible, that the prospective tenant has permanent employment or other secure income and a satisfactory credit history. It is not possible to guarantee that a prospective tenant will not default, or damage the property, or cause other problems, but the tenant should be required to complete a detailed application form (including providing employer and landlord references if possible) which should be provided to a reputable tenant assessment and credit referencing agency for processing. Sometimes the tenant may need to offer a separate guarantor who will also need to be assessed carefully. We will arrange this for you and you will be provided, on a strictly confidential basis, with a copy of the report (which will not contain background, verification of bank details or criminal record checks).

We are not responsible for the accuracy of any information contained in the references nor do we warrant that a tenant is suitable and/ or will perform the obligations contained in the tenancy agreement.

We will not make a recommendation, and the decision whether or not to accept the tenant is yours. Where circumstances permit we recommend that the landlord meets the prospective tenant.

Upon completion of the referencing process we will pass the references to you for approval before entering into the tenancy agreement. We will not enter into a tenancy agreement until you instruct us to do so.

Under the Immigration Act 2014 all landlords now have the legal responsibility to carry out a 'Right to Rent' check to ensure that a prospective tenant and other permitted adult occupiers have the right to live in the UK. We can assume responsibility where, as part of the services provided under this agreement, we undertake prospective tenant referencing on your behalf as set out above, we will assume responsibility for carrying out the initial right to rent checks.

Additional follow up checks will be required when either your tenant's right to rent expires or a permitted occupant or tenant changes during the tenancy. Where you have instructed Fully Managed service, we will undertake these additional follow up right to rent checks on your behalf.

Where you have selected our Tenant Introduction, or Rent Management service, you hereby accept full responsibility for carrying out any further right to rent checks that might be required under the Immigration Acts 2014 and 2016 and for any prosecution, fines and potential prison sentence for failing to comply with the legislation. In addition the Immigration Act 2016 introduces the obligation for landlords to evict any tenant whose time-limited Right to Rent has expired and not been renewed, and has introduced new rules to facilitate this.

We will charge you a fee once the tenant(s) have signed the tenancy agreement for carrying out both the referencing and the Right to Rent checks for the tenancy the cost to you is set out in the 'Terms and Conditions: Your Agreement' Additional Charges. You will not be charged for any tenant's failed application.

The tenancy agreement

For a residential letting the agreement used is normally an 'assured shorthold tenancy' (AST). The tenancy agreement is of course a contract binding on you and your tenant and you should ensure you are familiar with its terms.

You should be aware that there are also several important statutory obligations upon landlords as explained later in this guide.

It is very important to use an up-to-date and properly drafted tenancy agreement and to ensure that the form used is relevant to your particular let. It may be that your mortgagee, or superior lessor or landlord, will require certain terms to be inserted. If you are in any doubt you should speak to your solicitor. Subject to that we will provide a form of agreement which is regularly reviewed and updated by specialist lawyers. The cost to you is set out in the 'Terms and Conditions: Your Agreement' Additional Charges. We cannot accept responsibility for a tenancy agreement (or for any other documents) introduced by another party (e.g. by you, a tenant, a relocation company, or a solicitor) and which we have not prepared.

You will need to decide on the term of the tenancy, our recommended initial term is for twelve months. The longer the term the longer the period for which you can rely on the rental income (assuming the tenant does not default). However you may have reasons for wanting to recover the property within a particular time frame and it is also important to bear in mind that the landlord is unable to increase the rental during a contractual term.

Later in this guide we explain what options are available to you when the contractual term expires and the circumstances in which you can increase the rent or recover possession (including where the tenant defaults).

Our 'Terms and Conditions: Your Agreement' provides authority for us to sign the tenancy agreement on your behalf although we will not do so until we have your written instructions that you are happy with the prospective tenant.

If you have chosen our Fully Managed or Rent Management service you agree to notify us of any change in your address so that we may inform the tenant as required under the 'Landlord and Tenant Act 1987'.



Tenant deposits

The Tenant Fees Act 2019 restricts the deposit that can be taken to 5 weeks rent, (6 weeks if rent exceeds £50,000 p.a.) and when an existing tenancy is renewed the deposit should also not exceed 5 weeks with any excess refunded to the tenant.

Tenants should be required to provide a deposit upon commencement of the Tenancy Agreement. We are registered under the Government approved Deposit Protection Service (DPS) for the protection of tenant deposits. Under our Fully Managed or Rent Management service, we will serve the Prescribed Information Notice and comply with the initial requirements of the DPS on your behalf, unless you give us prior written instructions to the contrary before we receive the deposit.

Where we are instructed on a Tenant Find service you have the option to instruct us to protect the deposit on your behalf, (see 'Additional Charges').

If you do not want us to protect the deposit on your behalf, it will be your responsibility to protect it as required by law. A valid notice seeking possession under section 21 of the Housing Act 1988 cannot be served on a tenant whose deposit is not protected under the deposit protection legislation.

A tenant and certain other persons affected (Relevant Persons) may apply through the courts for compensation of at least the amount of the deposit, and up to three times the deposit, if the landlord (or someone acting on the landlord's behalf):

- fails to give prescribed information within the Statutory Time Limit; or
- fails to comply with the initial requirements of an authorised scheme within the Statutory Time limit; or
- notifies the tenant or Relevant Persons that the deposit has been protected in a scheme, but the tenant or Relevant Person cannot obtain the scheme's confirmation that the deposit is protected.

Where you have selected our Tenant Find service and do not give us written instructions detailing your own scheme before a tenancy commences, we will register the deposit with the DPS and invoice you at the prevailing rate (see 'Additional charges').

Where we are instructed to protect your deposit...

We will lodge deposits relating to your properties to the DPS, we must comply with the rules of the Scheme, and this means that we will not be able to act on your instructions with regard to the deposit if those instructions conflict with the Scheme rules.

The Scheme rules are available to view and download from www.depositprotection.com.

A very important point for you to bear in mind is that we do not hold the money, the money is held by the DPS. This means that at the end of the tenancy the DPS will only pay money from the deposit if:

- both landlord and tenant (and Relevant Persons) agree in writing; or
- a full and final decision has been made by an adjudicator.

Where there is no dispute about the deposit at the end of the tenancy...

At the end of an assured shorthold tenancy (AST), we will liaise with you to ascertain what (if any) deductions you propose to make from the deposit, or have already agreed with the tenant.

Where you have selected our Fully Managed service we will help you to try and resolve any areas of dispute within a reasonable time (including obtaining quotations, estimates or arranging contractors on your behalf in accordance with your instructions).

Where you have selected our Rent Management or Tenant Find service, and we have protected the deposit on your behalf, you need to agree with your tenant what deductions, if any, are appropriate and once agreed you need to inform us in writing and we will advise the DPS accordingly.





Where there is a dispute about the deposit at the end of the tenancy...

You must use reasonable efforts to reach a sensible resolution to the dispute as soon as practicable after the tenancy ends.

Where you have signed up to our Fully Managed service or you have opted for us to prepare an inventory and perform a check-out and final inspection we will, subject to your instructions, submit to the DPS setting your reasons for claiming deductions from your tenant's deposit or for resisting a claim by the tenant.

If both parties cannot come to an agreement we will act on behalf of you as the landlord. Any further queries will be sent to adjudication with the DPS where evidence will be given from both parties.

Where you have selected our Tenant Find service and have opted for us to register the deposit on your behalf without opting for an inventory to be prepared and/or for a check-out and final inspection to be performed by us; it will be your responsibility to respond to your tenant's claim and to provide us with this along with any supporting evidence as necessary.

If the parties agree to adjudication, the adjudicators' decision is full and final; there is no right to appeal. Further information about adjudication is available from www.depositprotection.com

If we believe there are deductions due or that a full release should be made to the tenant, and we have advised you of this but you have not responded within 30 days of the tenant vacating, we must act therefore we will update the DPS in accordance with our suggestions and written confirmation will be given to you.

All monies will be returned to either party by the DPS within 10 days of written agreement from both parties to release part or whole deposit or of their adjudication.

If you order any work to be done at the property before a dispute has been resolved, you take the risk that the cost will not be included in any part of the deposit which may be returned to you. It is unwise to make any assumption about the outcome of a dispute over a deposit.

Time limit for submitting a dispute to Alternative Dispute Resolution...

The time limit for sending a dispute to the DPS for Alternative Dispute Resolution (ADR) is 3 months from the end of the tenancy in all cases. If no claim for ADR has been submitted within that time, the parties will need to negotiate a settlement or use some other means of resolving their dispute (for example, court proceedings).

Where the tenancy is not an assured shorthold tenancy...

In this case the deposit does not have to be protected by law. However, we can still register a deposit on your behalf with the DPS.

Inventory...

If it becomes necessary to take advantage of the DPS dispute resolution service (or any other form of arbitration) you will need to provide evidence of your claim. This will usually include a comprehensive inventory, check in and check out report. Awards can be automatically made in favour of the tenant, if such evidence cannot be provided.

Where you have signed up to our Tenant Find service and have not elected to have an inventory prepared by us but have opted for us to register the deposit on your behalf, we will not be able to submit any dispute on your behalf to the DPS, nor will we respond on your behalf to the DPS in answer to your tenant's registration of a dispute. It will be your sole responsibility to provide us with the necessary information within the required timeframe.

If we don't hold a deposit...

If you instruct us not to register your tenant's deposit for an assured shorthold tenancy, we may collect the deposit from the tenant, along with the first month's rent, on commencement of the tenancy. We will require you to provide us with details as to which tenancy deposit protection scheme will protect the deposit.

You must in such circumstances provide your tenant with the statutory 'Prescribed Information' and a copy of your chosen schemes rules and register or lodge the deposit with your chosen scheme within 30 days of its being received by you (whether the funds have cleared or not). If you do not do so then the tenant can take legal action against you in the County Court which may result in an order that you must repay the deposit to the tenant or lodge it with an approved custodial scheme. In addition, you can be ordered to pay compensation to the tenant of an amount up to three times the original deposit. You will be unable to serve a notice to end the tenancy and to enable you to commence possession proceedings until you have complied with such an order.

Where you have instructed us not to register your tenant's deposit our standard form of tenancy agreement will not comply with the rules of the deposit scheme you have chosen. It will be your responsibility to ensure your tenant is provided with appropriate Prescribed Information, along with the scheme rules, and the protection certificate. You must also ensure that the necessary clauses are included in the tenancy agreement.

You should consult your deposit scheme provider to ensure full compliance with their scheme and the statutory requirements.

In either case you must meet all the deposit protection requirements within 30 days of its having been initially received by you or your agent.



Collection of initial rent and deposit

The agreement will of course specify the monthly rental (and that this is payable in advance) and the tenant's deposit. It is very important that, before the tenancy commences and the tenant is let into the property, the tenant has paid the first month's rent and the deposit. Where you have selected our services we will arrange this.



Rent processing during tenancy

The following information applies where you have selected our Fully Managed or Rent Management service. After collecting the initial rent payment, we will continue to process the rents received from your tenant throughout the tenancy. We will deduct any fees or expenses due, and electronically forward any balance due to you to your nominated UK based bank account.

We will endeavour to action all payments within two working days of the rent due date and being notified that the funds have cleared into our account. (Please remember that bank clearing times are usually three working days, but this may vary). We are unable to make payments into non-UK Bank accounts. You will need to provide us with details of a UK bank account. A full statement of account will be sent to you after the end of each month, so long as there has been activity on your account during that month. For speed and convenience we will email statements to you, so please supply us with an email address for this purpose. There will be a charge if you wish us to send hard copy statements in addition to the emailed ones - see 'Additional Charges'.

Where we are processing the rent and rent payments are late, we will issue reminder letters to your tenant(s) as follows: 7-9 and 14-16 working days after the due date. After 28-30 working days, a final reminder is sent advising the tenant that legal action may be taken. At this time, we will contact you and ask for your instructions, but we will not be actively chasing your tenant for outstanding rent after this time. You may wish to deal with the matter yourself or consult a solicitor.

Please understand it will always be your responsibility to take legal action, instruct a solicitor or protect your position. We will assist you where possible, but once a solicitor has been instructed we will take no further action other than assist where appropriate.

Please note we will not be held responsible if your tenant fails to pay the contractual rent.

Income Tax

Under current UK tax legislation you have an obligation to declare all rental income received on any property in the UK to H M Revenue & Customs (HMRC). For all landlords (where we process rent), we will provide you with a statement of income and expenditure on an annual basis to help you with your tax situation. (See 'Additional Charges').

Resident landlords...

Under the Finance Act 2011, paragraph 18 of schedule 23, we have a legal obligation to inform HMRC of all rent collected on behalf of landlords by tax year. (See 'Additional Charges').

Non-resident landlords...

A letting agent for a non UK resident landlord (or the tenant where there is no letting agent and the rent is more than £100.00 a week) must deduct tax at the basic rate from the landlord's rental income unless HMRC permits payment without deduction.

Online non-resident landlord forms...

Under the Non-Resident Landlords Scheme (NRL), landlords can apply directly to HMRC - Charity, Assets & Residence – Residency Dept. - for approval to receive the rent without tax being deducted, by completing an online NRL form. NRL1i for individuals, NRL2i for companies, NRL3i for trustees. These online forms are available on the HMRC website www.hmrc.gov.uk/international/nr-landlords.htm.

The old paper based NRL forms are no longer available, applications can only be made online.

Separate applications have to be made by each owner of a property, including husbands and wives. Applications can be made any time, including before you leave the UK, or before the tenancy has started. If HMRC grants an approval they will write directly to us and issue us with an approval number for you – this is the only way we can stop retaining tax. Where approval is granted, this does not mean that the income is exempt from UK tax, only that tax does not have to be deducted prior to payment. The approval is not transferable and must be in the name of the current letting agent handling the rent.

Where we are processing the rent and are required to deduct tax, we will submit quarterly and annual returns on your behalf and prepare the final certificate. We will make a quarterly charge for doing this (see 'Additional Charges'). Although you may give a 'c/o address' for correspondence, we are required by HMRC to hold your actual residential address on file.

Where HMRC has issued an Approval to a Non-Resident Landlord, we are required to submit an annual return to HMRC, and we will make an annual charge for this submission (see 'Additional Charges').

Our 'Terms and Conditions: Your Agreement' explains what requirements have to be met before we are permitted to account for rent to landlords resident overseas without deduction of tax. If you would like further information relating to the Non Resident Landlords' Scheme (NRL) please let us know or talk to your accountant.

Inventory/check in/out procedure and cleaning

We strongly recommend that an inventory of contents and schedule of condition is prepared before a tenancy starts. This provides vital evidence in the event that the tenant is found to have caused any damage or removed any items and for that reason it is best to employ a professional inventory clerk. Without a credible inventory it may be very difficult to make any court claim against the tenant for damage or theft and the landlord's attempt to claim against the tenant deposit may be rejected. However please note that normally the inventory does not include the testing of appliances, testing the central heating system, or moving furniture.

Where you have selected our Fully Managed or Rent Management service, we will prepare an inventory on your behalf in order to provide you with the best possible service. The cost to you is detailed in the Terms and Conditions: Your Agreement 'Additional Charges' section. Where you have selected our Fully Managed service we will conduct a check out at the end of the tenancy. The cost to you is detailed in the 'Additional Charges' section.

We strongly recommend that the property is professionally cleaned prior to the commencement of the tenancy, so that this can be noted in the schedule of condition. Without this it is becoming increasingly difficult to make any claim against a tenant's deposit for cleaning at the end of a tenancy. We also recommend that the receipted invoice for any pre tenancy cleaning is retained as additional proof. This will set the required standard of cleanliness for the property on the termination of the tenancy, subject of course to wear and tear.

Should we find the property is not to a suitable cleaning standard when we attend for the first inventory, we will instruct a cleaner and we will invoice you. we can arrange for quotes for a cleaning service. The cost of this is detailed in the 'Additional Charges' section.

Council tax and utility suppliers

Council tax will normally be paid by the tenant, however, please note that you will remain liable for payment of council tax where you retain any part of the assessed property for your own use or where the letting is categorised as a house in multiple occupation (HMO). In such cases it is important that the tenancy agreement provides for appropriate contributions to be recovered from the tenant(s). This also applies if the property is not the sole or main residence of the tenant.

A landlord will also be liable for council tax if part of the property is retained or the initial fixed term of the tenancy is for less than six months or the tenancy is allowed to continue at any time on a month by month basis although some Councils do not enforce this rule.

The law does not permit a landlord to require a tenant to use any particular utility supplier. However we recommend comparing tariffs and if appropriate accounts can be changed to a new supplier before the tenancy starts or during the tenancy with the tenant's agreement. We will supply you with meter readings (where applicable) as long as the inventory clerk has been able to access the relevant meters at the time of the check in and/or out.

Under the Water Act 2003 a landlord cannot refuse a tenant's request to install a water meter to the property. Once a meter has been installed, it is not possible to revert to the previous rated system. Section 45 of The Flood and Water Management Act 2010 places an obligation on the landlord to provide the tenant's contact details to the water company. We will only do this on your behalf where you have selected our Fully Managed service.



Energy Supplier...

The Landlord hereby authorises the Letting Agent, as its agent, to appoint OVO Gas Ltd, OVO (S) Gas Limited and OVO Electricity Ltd (together “OVO Energy”) SSE Energy services is currently trading as part of OVO Energy Limited, as the electricity and/or gas supplier for the property; however, this will not prevent the Landlord from changing to a different energy provider if desired.

OVO Energy, currently trading as SSE Energy Services, is a subsidiary of OVO and will provide customer service and support for all aspects of the energy account(s) while the property is supplied by OVO Energy.

The Landlord agrees that the Letting Agent may pass the Landlord’s name and contact details to OVO Energy for the purposes of:

- (a) registering the electricity and/or gas meters at the property with OVO Energy, providing electricity and gas to the property and administering the Landlord’s account;
- (b) registering the Landlord with the relevant local authority for the payment of council tax; and
- (c) registering the Landlord with the incumbent water supplier to the property. The water supplier may contact the Landlord in order to provide further information about its services and products and conclude an agreement with the Landlord for those services and products.

OVO Energy will use the Landlord’s name and contact details only for the purposes set out above. OVO Energy will comply with its obligations as a data controller in the Data Protection Act 1998, the General Data Protection Regulation ((EU) 2016/679) and any other data protection legislation which is enacted in the UK and will handle the Landlord’s data in the manner set out in OVO Energy’s standard terms and conditions and/or privacy policy. OVO Energy will not share the Landlord’s details with any third party other than the relevant local authority and incumbent water supplier, and will hold the Landlord’s details for the duration of any contract with OVO Energy. The Landlord is reminded of their rights under the General Data Protection Regulation to access, rectification, erasure, restriction of processing, and portability of their data. If the Landlord is dissatisfied with the manner in which OVO Energy handles their details they may lodge a complaint with the Information Commissioner’s Office. If the Landlord has any questions regarding the details or use of the Landlord’s data held by OVO Energy, the Landlord may contact OVO Energy at 1 Rivergate, Temple Quay, Bristol BS1 6ED or www.ovoenergy.com/help.

Visiting the property

It is very important that the landlord visits the property from time to time to check that it appears to be in good condition and to ensure there are no obvious signs of damage by the tenant or of other unsatisfactory tenant behaviour. The tenancy agreement will provide for the landlord to be permitted to view inside the property at stated intervals on reasonable notice.

If you have selected our Fully Managed service we will make visits as described in the 'Terms and Conditions: Your Agreement' or we may arrange this with contractors, or agents. The aim is to assess the general condition and decorative state of the property (excluding lofts, garages, outbuildings and basements - unless classed as formal living accommodation under Building Regulations). These are not surveys, do not cover latent inherent or structural problems, and do not form part of an inventory check. Periodic visits will be carried out during the tenancy, subject to access being granted by the tenant, and that it is safe to do so with no other local or national restrictions are in place. Please note that we are unable to use any keys to the property without the tenant's express consent and are unable to force entry.

If your property is vacant it is important to ensure it is secure and visited regularly (and that insurers are notified). If this is inconvenient for you then please ask for details of our additional services.

Repairs and maintenance

Where you have chosen our Fully Managed service we will instruct contractors on your behalf. We act as your agent so that the contract will be directly between you and the contractor. Any recourse in relation to the works or to payment for the works will be between you and the contractor. We cannot accept responsibility for commissioning repairs or maintenance if we are holding insufficient funds.

We will not commission major works, such as re-roofing or replacement of a boiler, without your first approving the estimate. In such cases or if the works need to be inspected, then an arrangement charge will be payable (see 'Additional Charges') but we do not accept responsibility for the quality of the work.

In the case of minor work required to meet your responsibilities under the tenancy agreement, we will, on your behalf, authorise contractors to carry out work up to £180 (inc VAT) provided we are in funds. If practicable, for example if there is no urgency, we will obtain your prior consent to incur any greater expenditure.

You should arrange for any boilers, stoves and any other appliances using solid fuel, gas or oil to be serviced annually by a qualified contractor in order to ensure they are working efficiently and safely. Should you require us to arrange this please confirm in writing.

Where you have a warranty for a newly built property, or a repair/maintenance/service agreement for the property or for a boiler or other goods, then you must advise us if these include a requirement to employ a named contractor or to obtain prior authority for repairs. If we are not aware of this then we cannot accept liability if your warranty or service agreement is invalidated.

We do not accept responsibility for the quality of the works or any other default of a contractor.

Unfortunately we cannot make any payment from your rental balance to contractors or suppliers not instructed by us.

Major repairs or other works...

A landlord should advise the tenant of any major repairs, construction or maintenance works due to be carried out to the property, or to adjoining properties, as these could breach the tenant's right to "Quiet Enjoyment". Should you be aware or deemed to be aware, this might give your tenant grounds to take action against you for breach of contract.



When a tenancy expires

The tenant may leave the property on the expiry of the tenancy without the requirement to give prior notice to the landlord.

The law provides that, even where the term of a tenancy has expired, the tenant may remain in the property on the same terms unless a notice to terminate is served on behalf of the landlord. Such notice will take effect on a date not less than two months after it has been served and not before the expiry of the tenancy term. This notice is known as a Section 21 notice and must be in writing in a prescribed form.

If the landlord serves a valid notice to terminate the tenant's right to occupation and the tenant remains in occupation, then the tenant may not be evicted without an order of the Court (and any form of physical interference with the tenant or with the tenant's peaceful occupation of the property is unlawful). We strongly recommend that in such circumstances you take specialist legal advice.

Where instructed we will look to renew the tenancy and apply a suitable rent review.

Where the tenant vacates the property by agreement, or in accordance with a court order, it will be necessary for the deposit to be returned to the tenant unless the landlord files a claim (which may be for outstanding rent or damage to the property or its contents) more details are set out below.

When a tenant defaults

Where a tenant is in breach of the terms of the tenancy agreement (for example by failing to pay the rent or persistently paying late, by damaging the property or contents, or by making unlawful use of the property or creating a nuisance to others) the landlord is entitled to serve a formal legal notice requiring the tenant to correct the situation within two weeks. If the tenant fails to respond adequately within that time then possession proceedings can be commenced.

If the tenant remains in occupation after any court order takes effect then eviction is only possible using a duly authorised bailiff and in accordance with the order. You should be aware that the courts do not always grant possession orders promptly and in some cases will allow the tenant to remain in occupation if arrears of rent are paid. The court may also take a less serious view about damage to property or contents than the landlord expects. It is also often the case that a tenant who is in default will submit a defence or counterclaim to the court which may, for example, allege defects in the property or lack of maintenance or repairs. Consequently possession proceedings can become complicated, protracted and expensive.

The landlord may then be prejudiced by the delay in being unable to re-let the property, or to recover arrears or the cost of repairs from a tenant (who may be unable to pay or difficult to trace irrespective of the court order).

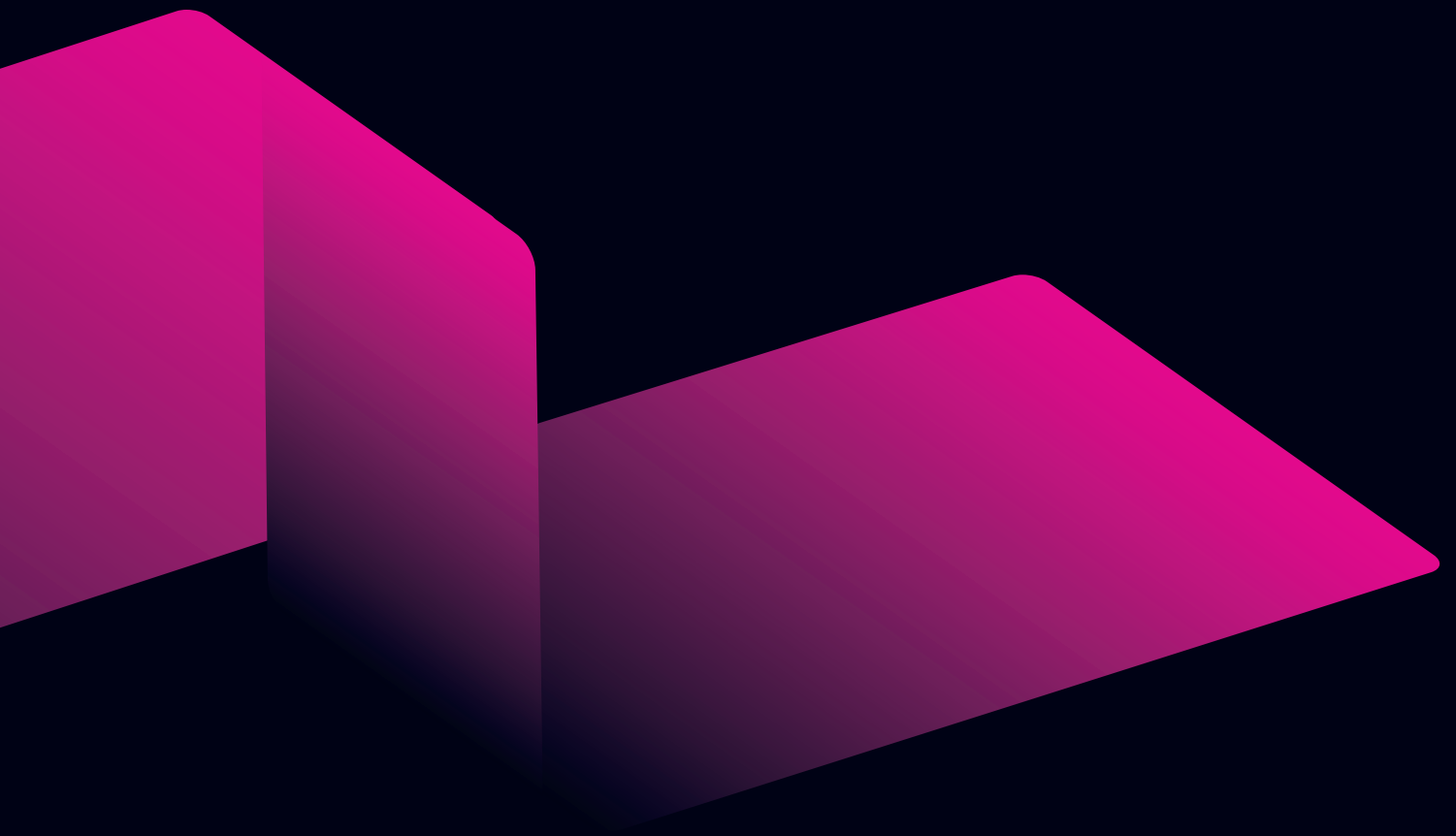
For possession proceedings you will need to seek independent legal advice. We will not be responsible for any legal action that may ensue between you and your tenant at any stage during or following the tenancy.

Nothing in this guide should be taken as constituting legal advice and we strongly advise landlords to seek specialist legal advice in relation to obtaining possession and recovering arrears of rent and cost of repairs.





SAFETY



Safety Requirements

We have mentioned earlier some instances where the law imposes obligations and constraints upon landlords. The following information is intended to offer you a summary on how the law affects your responsibility to take care of your property and its contents in order to ensure the safety of all who might happen to be there whether tenants or visitors. This information on safety is for your guidance but is not exhaustive and should not be relied upon as legal advice. It does not limit your responsibility to your tenant.

Please note that you should speak to your insurer to make sure you have adequate cover in relation to the death or injury of an occupier or anyone else who might be in the vicinity of your property. We can explain the protection available if you take out landlord's buildings and contents insurance.

The Furniture and Furnishing (Fire) (Safety) Regulations 1988 as amended...

These regulations apply to soft furnishing such as mattresses, padded headboards, bed bases, sofas, sofa-beds, armchairs, cushions, pillows, furniture with loose or fitted covers, children's furniture, garden furniture which may be used indoors, etc. All such items are required to meet certain minimum fire safety standards and to display approved labels.

Exemptions: furniture/furnishings manufactured or reupholstered before 1950 and after 1989. When you instruct us to market your property to let, you give us authority to remove, at your expense, any item that does not comply or does not have an approved fire label attached.

Gas Safety (Installation and Use) Regulations 1998...

It is a criminal offence to let a property with gas appliances, installations and pipe-work that have not been checked by a properly qualified and registered engineer. You will need to provide us with a copy of a current Gas Safety Record before the tenancy commences or we can arrange this for you. The tenant must be given a copy of the report within 28 days of the inspection being carried out and in the case of a new tenancy the tenant must be given a copy of the report at the time they take occupation. If you are found guilty of non-compliance, you will have a criminal record and also face a fine or imprisonment, or both. It is important that you check the report when receiving it from the contractor to ensure that all gas appliances are listed on the report and that they have been passed as safe. Any recommended remedial works should be carried out before the start of the tenancy.

We cannot put a tenancy in place unless you have provided us with a current safety check or you have instructed us to arrange this on your behalf. If you do not provide us with a new check before the last one expires we will instruct a test on your behalf with one of our recommended contractors without further reference to you and make any necessary deduction from your account

Landlords can obtain a Gas Safety Record up to two months before the current certificate expires and keep the same expiry date, so not losing the unexpired balance of the previous Gas Safety Record.

Electrical Equipment (Safety) Regulations 1994...

Any person supplying electrical equipment with a rented property must ensure that it is safe, will not cause danger and satisfies the requirements of the regulations. All electrical equipment must be safe and constructed with good engineering practice. The landlord is responsible for providing an instruction booklet for each item of electrical equipment.

Portable Appliance Testing...

All electrical appliances should be Portable Appliance Tested (PAT) before the commencement of a tenancy and regularly thereafter as directed by the electrical engineer.



The Electrical Safety Standards in the Private Rented Sector (England) Regulations 2020...

Under the above regulations, all let property in England must have a fixed wiring test, and any remedial works undertaken. Tests must be carried out every 5 years and the regulations state that properties must meet the 2018 edition of the IET Wiring Regulations (BS 7671:2018).

No new tenancy can start without the test undertaken and remedial work completed.

The electrical safety check report must be provided to the tenant before the new tenancy starts, so needs to be put in hand well before the intended letting is to start. We advise commissioning an electrical check as soon as the decision is made to market the property.

The most common form of electrical test in use is the Electrical Installation Condition Report (EICR). These are only valid for 5 years. An Electrical Installation Certificate for the whole property is acceptable, but not if only for part of the property. Please note these Electrical Installation Certificates are now only valid under these Regulations for 5 years, even if the Certificate states a longer period.

For clarity urgent remedial works are classified under the Regulations as “urgent remedial action” means such action identified in a report under regulation 3(3) as “is immediately necessary in order to remove the danger present and risk of injury”. We understand that anything on an EICR which is deemed either C1 “danger present” or C2 “potentially dangerous”, must be rectified or if a FI “Further Investigation Required” item it must be investigated and if required rectified. With regard to C3 “Improvement recommended”, these are recommendations only. No new tenancy can start with any outstanding C1, C2, or FI items on the EICR.

In cases where remedial works are required, these must be carried out within 28 days of the inspection. Once carried out the remedial works need to be certified and this confirmation certification and the original EICR must be provided to each tenant and to the Local Housing Authority within 28 days of completion. A Local Housing Authority can request a copy of an EICR report and this must be provided within 7 days.

Failure to comply could result in the Local Authority issuing a Civic Penalty notice against the landlord of up to £30,000.

We will ask you whether you will be arranging for Fixed Wiring and PAT tests yourself, or if you require us to arrange these on your behalf. The cost of any safety tests will be charged to you and we must be in cleared funds to carry these out.

Electrical Installation Condition Report for Houses In Multiple Occupation (HMO)...

It is mandatory for any property designated as an HMO, whether or not it requires a licence, to have a current satisfactory Electrical Installation Condition Reports (EICR). A new satisfactory report must be obtained when the current one expires.

Please note: If the property is in our opinion an HMO (whether or not it requires a licence), we will on your behalf instruct a qualified electrician to carry out a new EICR when necessary if you have not notified us that you are arranging this or you do not provide the new EICR in time.

Building Regulations Part P (Electrical Safety In Dwellings)...

Works, repairs, maintenance, etc. on 'electrical installations' in certain areas of a property are known as 'notifiable works' and as such must only be completed by a 'competent person'. Failure to comply with these regulations is a criminal offence, which could result in a fine and/or imprisonment.

Building Regulations (Smoke Alarm) 1991...

It is mandatory to fit mains-powered smoke alarms in new residential buildings constructed after June 1992 - one on each floor.

A mains-powered alarm is not a requirement in older properties, but since October 2015 it is mandatory to have at least one alarm installed on each storey where there is a room wholly or partially used as living accommodation, which must be tested at the start of every tenancy. If the smoke alarm is battery operated you should make sure the batteries are working and the alarm is fully functional at the start of the tenancy. By signing our 'Terms and Conditions: Your Agreement' you acknowledge that you are aware of your responsibility for providing smoke alarms.



Smoke and carbon-monoxide alarms...

In England Landlords must install at least one smoke detector on each floor of the property that is classified as living accommodation (including bedrooms and bathrooms). A carbon monoxide alarm must be installed in any room which is used wholly or partly as living accommodation and which contains a fixed combustion appliance, including wood burning stoves, gas/oil boilers and fires but not ovens and hobs.

Alarms must be tested and confirmed as working on the first day of the tenancy.

For appliances installed before October 2010 there is no specific requirement for certification, however landlords must check that they are safe before and during each letting, and as part of this we strongly advise that the chimneys are swept every year.

Since October 2015 there is a legal requirement that carbon monoxide detectors must be installed in any room where there is a solid fuel heater and tested at the start of each tenancy. By signing our 'Terms and Conditions: Your Agreement' you acknowledge that you are aware of your responsibility for the safety of any solid burning appliance and confirm that any such appliance installed in the property is safe.

Legionnaires disease...

The Health and Safety Executives have issued a new Code of Practice for assessing the risks of Legionella in residential property. We recommended that as a landlord you should carry out a risk assessment of your property prior to any letting especially if there are open water tanks, redundant pipes, cooling systems or a swimming pool. We request that a copy of any written risk assessment is provided upon instruction. By signing our 'Agreement for Letting Services' you acknowledge that you are aware of your responsibility for the safety of the tenant at the property and confirm that you have considered all risks regarding Legionnaires Disease. Should you want us to arrange a Legionella Risk Assessment on your behalf please confirm this in writing. The cost of this will be advised at the time as this is carried out by a third party. Further information is available at

<http://www.hse.gov.uk/legionnaires/symptoms.htm>

Oil Central Heating...

We require any oil fired central heating boilers to be checked and serviced before a tenancy starts and annually thereafter by an OFTEC registered engineer

General safety...

It is your responsibility to ensure that the property you are offering for letting is safe and meets the requirements of the Housing Health and Safety Rating System, and if you are not certain whether your property complies then you should seek independent professional advice from a Health and Safety expert.



According to the Association of Residential Lettings Agents, there are over 200 pieces of legislation (and rising).

Our 28 person strong team is perfectly positioned to advise you on your property needs.

LAWS & REGULATIONS



Other relevant law and regulation

Homes (Fitness for Human Habitation) Act 2019...

In England this Act now gives tenants the right to take direct legal action against their landlord if their property is in such poor condition that it is 'not fit for human habitation' at the beginning and throughout the duration of a tenancy, they can seek damages plus request that the property is brought up to a good state of repair.

The Act sets out what will be considered under this legislation, namely Repair; Stability; Freedom from damp; Internal arrangement; Natural lighting; Facilities for preparation and cooking of food; Water supply; Drainage and sanitary conveniences; Ventilation; and facilities for the disposal of waste water, plus any of the 29 hazards covered in a Housing Health and Safety Rating Assessment.

Landlords are well advised to ensure their property is in a good state of repair and that any issues with heating, hot water, damp, condensation and ventilation are identified and remedied. Defending a tenant's claim could prove to be expensive with having to instruct lawyers and expert witnesses, therefore we recommend any issues of disrepair are investigated immediately and rectified.

Houses in multiple occupation (HMO)...

Broadly an HMO will exist when one building (e.g. a house) or part of a building, (e.g. a flat), is lived in by two or more individuals who do not live together as a single household and who share one or more basic amenities. It can also apply in certain circumstances to a building, or part of a building, which consists of self-contained flats but which was not converted to the standards set by the 1991 Building Regulations and still does not comply with those regulations. It is a statutory requirement that an EICR is obtained for such properties. This report must be renewed every five years and will involve the inspection of all existing electrical installations.

Mandatory licensing...

Some HMOs are subject to mandatory licensing, and if your property is affected by this you must supply us with a copy of the licence to enable a tenancy to proceed. An HMO is subject to a mandatory licence if all of the following apply:

- The building or part of the building (see above) is classed as an HMO, and
- It is occupied by five or more people, who form two or more households, who are sharing one or more basic amenity.

Where you have let out your property to five or more people, who form two or more households, or propose such a letting you must have obtained a license or risk prosecution and a significant penalty.



Minimum Room sizes...

In England councils are able to set minimum bedroom size standards and also introduce limits on how many people can live in each bedroom of a licensed multiple occupancy home. Councils will be able to use national minimum standards or apply even tougher requirements in order to address specific local needs.

The national minimum standards for bedrooms will be for 1 person 10 years old or above will have to be no smaller than 6.51 square meters, and those slept in by 2 people over 10 years old will have to be no smaller than 10.22 square meters. Rooms slept in by children of 10 years and younger will have to be no smaller than 4.64 square meters. You must ensure that any licensed property meets the national minimum standard or that imposed by your local council.

Waste Storage and Disposal for HMOs...

In England landlords are required to provide adequate waste storage facilities in line with their local authority's rules. If they fail to do so they could face a fine.

Additional licensing...

Local authorities have the power to introduce additional licensing for HMO properties and are permitted to set different criteria to those for mandatory licensing. Typically these criteria will be more stringent and will differ from one local authority to another.

It is the owner/landlord's responsibility to apply for any required HMO licence and comply with the HMO legislation as detailed in the Housing Act 2004 and the Management of HMOs (England Regulations 2006). This includes obtaining an EICR and the need to carry out a fire safety assessment of the property and keep a log of the findings.

Smoke alarms must be checked and maintained in full working order, all necessary fire safety equipment should be provided and means of escape clearly indicated and kept free of obstruction. It is a landlord's responsibility to ensure that any fire extinguisher provided to the property is serviced on an annual basis and a record kept of this. In order to be issued with an HMO licence both the landlord and any managing agent will have to meet the 'fit and proper person' requirements. As members of ARLA, we meet this requirement.

A licence may not be transferred to another person. The cost of an HMO licence is subject to local housing authority discretion.



Penalties for non-compliance with the HMO regulations...

There are potentially significant penalties that can be imposed for either breaching (management or occupancy) conditions of the licence or for operating an HMO without a licence:

- Financial penalties up to £20,000.
- Civic Penalty Notice of up to £30,000 per offence.
- A Section 21 Notice is invalid until a licence is obtained.
- In extreme cases, a tribunal can additionally order that rent be repaid to tenants.

Some local councils may require all HMOs to have planning consent for change of use from “family” use to “HMO” use.

For further information and to clarify if your property requires a licence/planning consent please contact your local housing authority.

Selective licensing...

In certain parts of the country local authorities now require every let residential property within a selected area to be licensed whether or not it is an HMO. Before introducing additional licensing, a local authority must demonstrate that there is a particular market need to justify such a scheme as part of its overall local housing strategy.

As with other licensing schemes local authorities can charge a fee for issuing a licence and failure to comply with the licence conditions can lead to a penalty being imposed on a landlord.

Housing Health and Safety Rating System (HHSRS)...

It is the landlord’s responsibility to ensure that properties are let in a suitable condition. This is a “health and safety risk assessment” method of inspecting and approving rental accommodation.

Minimum Energy Efficiency Standards (MEES)...

Under The Energy Efficiency (Private Rented Property) (England and Wales) Regulations 2015. All properties with an EPC rating of F or G are now classed as “unrentable”, including those already rented out and will need to be brought up to a minimum E rating.

The landlord will need to make improvements to the energy efficiency of the property, in order to achieve this an assessment needs to be carried out to firstly ascertain what works have been carried out since the EPC was produced which would raise the rating and secondly, what improvements are required to raise the EPC band to a minimum level of E.

There is some funding available for the recommended improvements, which can be one or a combination of the following:

- A Green Deal Plan;
- Energy Company Obligation;
- Funding provided by government, local authority or third party at no cost to the landlord;

Where funding is available to cover the cost of the recommended improvements the landlord will be required to undertake them.

The “no cost to the landlord” exemption is no longer available.

Under the rules’ landlords are expected to contribute up to £3,500 (inc. VAT) per property to make energy efficiency improvements to raise a property’s EPC rating to a minimum of an E.

If the cost to achieve an EPC E exceeds £3,500, landlords will be able to register a ‘high-cost’ exemption on the PRS Exemptions Register providing that they submit three separate quotes from different installers that evidences a higher cost.

These regulations come with some fairly heavy fines for noncompliance, £2,000 if the breach is for less than 3 months rising to £4,000 if the breach has been going on for 3 months or more.

We would be happy to discuss and explain this with you in greater detail.

Deregulation Act 2015...

Under the Deregulation Act 2015, where a tenant has reported a repair then this needs to be adequately responded to and addressed within 14 days otherwise the tenant can escalate this to the local authority. The local authority can take action and serve a Relevant Notice, at which point a Section 21 notice cannot be served for 6 months. It should be noted that a Section 21 cannot be relied upon if served before the Local Authority take action and they subsequently do so. N.B. This applies in England only, not in Wales.

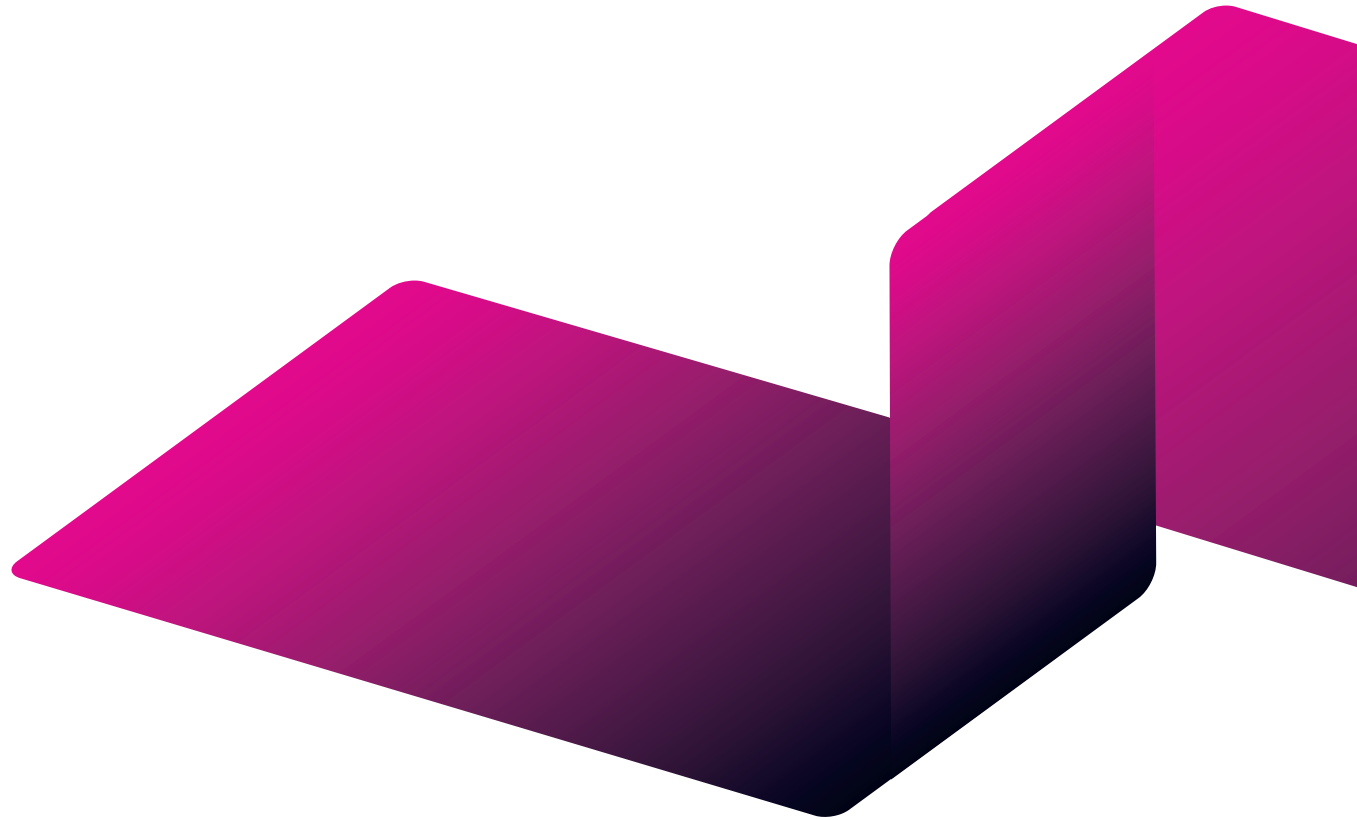
In addition under this Act where a property is located in England you will have a legal requirement to provide your tenant before the tenancy starts with a current valid EPC, Gas Safety Record (if applicable) and a copy of the Government's "How to Rent" Document, an EPC has a 10 year shelf life so will need to be renewed and provided to your tenant if it expires before the tenancy ends. Failure to do so will result in your being unable to serve a Section 21 notice to regain possession. Where on initial letting you instruct us to provide our tenancy agreement we will supply the required documentation to your tenant.

Land Registration Act 2002 Additional Addresses for Service...

We recommend that you as a landlord should provide to the Land Registry with up to 3 addresses (not including the property to be let) so you can be informed if an application is received which may affect your legal rights to the property. Further information can be obtained from the Land Registry 0300 006 0411 or from the website www.gov.uk/protect-land-property-from-fraud.

Sale of property whilst tenanted...

Should you sell the property whilst still tenanted, you need to instruct your solicitor to deal with all matters relating to the apportionment of the rent between you and the purchaser, bearing in mind the rent might have already been paid to you. Where we are managing or collecting the rent, we will also require written confirmation from the solicitor on what date the purchaser is entitled to start receive the rent. We will not become involved in any rent apportionment. The deposit will need to remain protected with the scheme that was used at the tenancy commencement.



For more information please contact us at
info@rmsestateagents.co.uk
or call your local branch.



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