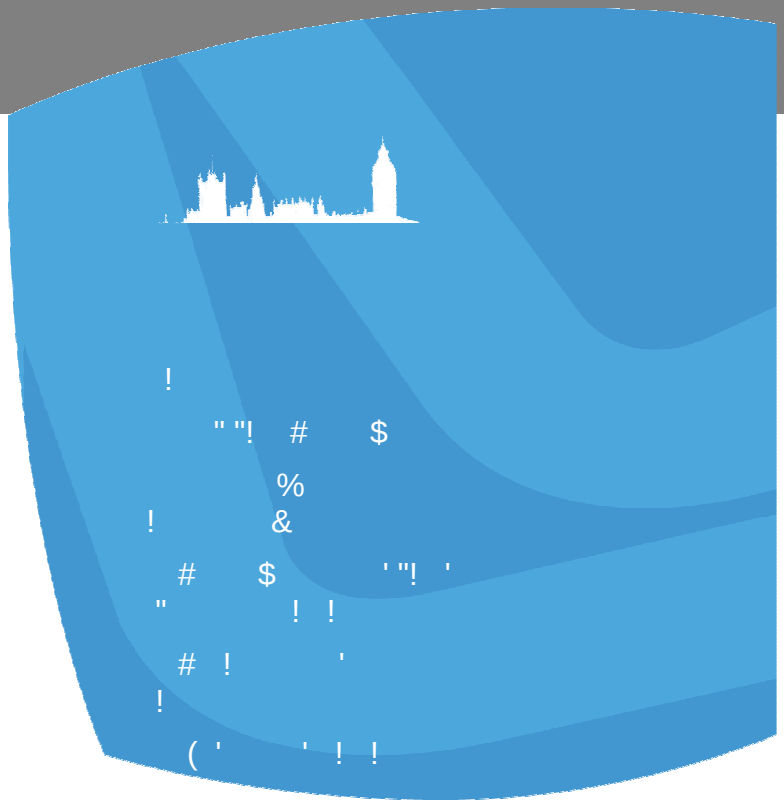

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Solicitor Tessa Shepperson answers landlords FAQ, This issue: How can I avoid making mistakes with Section 21 Notices?

Probably the most popular way for landlords to recover possession of their properties is via section 21 and the accelerated possession procedure. And probably the biggest reason why cases get chucked out by the court is problems with the possession notice!

How can you avoid this happening?

For reasons best known to them, the draftsmen who drafted up the Housing Act 1988 made the provisions for section 21 notices unnecessarily complex. Landlords have been cursing them for it ever since.

The first thing to remember is that there is not one type of notice but two. There are significant differences between the requirements for notices served DURING the fixed term of the tenancy and notices served AFTER the fixed term has ended.

If you serve a notice DURING the fixed term, it is quite easy

- The notice must give the tenant not less than two months notice, and
- It must not end before the end of the fixed term.

The reason why the notice cannot end during the fixed term is because the tenant has the right to live in the property during that time. So any notice saying otherwise will be invalid.

Therefore the length of the notice will depend on when in the fixed term you serve it. Say you have a tenancy which starts on 15 February for a fixed term of six months (i.e. ending on 14 August).

- If you serve the notice on 1 March then the expiry date in the notice must be on or after 14 August. So the notice period will be about 4 ½ months.
- If you serve the notice on 1 August, then the expiry date in the notice must not be earlier than 14 October.

In either case, it does not matter which day in the month the notice expires. I generally give a few extra days to allow time for service

If you serve a notice AFTER the fixed term it is a bit trickier

- The notice period must not be less than two months
- The notice must state that it is served pursuant to section 21
- The notice must state a date which is the last date of a period of the tenancy

It is the last one which causes all the problems. Most landlords just give two straight months, which unless they happen to hit on the right day in the month by chance, means that their claim will be chucked out by the court for having an incorrect notice.

How do you work out what the last day of a period of the tenancy is? It depends on when the tenancy ends. Under s5 of the Housing Act 1988, when a fixed term ends, a new 'periodic' tenancy springs into place immediately afterwards, on the same terms and conditions but running from month to month or week to week, depending on how the rent is paid.

So in our example the fixed term will end at midnight on 14 August. Therefore the new periodic tenancy will start on 15 August and will run from the 15th to the 14th day in the month, every month. So the last day of a period of the tenancy will be the 14th August.

If the notice is served on 10 September the date will need to be 14 November. If the notice is served on 16 September the date will need to be 14 December. The notice period actually given to the tenant will therefore be between two and three months, depending on when in the month it is served.

Saving clauses
One way to avoid making mistakes is to include some saving wording in your notice. This effectively says 'if the date given here is wrong then you work out the proper date like this' followed by wording saying how you work it out. Saving clauses are good as it means that even if you make a mistake, you will still be all right, so long as you do not start your court proceedings before the date worked out as per the saving clause.

You have to be careful with the wording of the clause however as I have known some cause problems in unusual situations.

Other problems
I don't have space here to go into too much detail but here are a few other things to watch out for:

- If rent is paid weekly the last day of the period will be a day in the week rather than a day in the month
- If rent is paid in some other day, for example quarterly, you may have to give a longer notice period. You should seek legal advice if you think this may apply to your tenancy
- It is VERY important that you are able to prove that the notice was served – DON'T send it by ordinary post – how will you prove it was ever received? The best thing is to hand it personally to your tenant in the presence of an independent witness (just in case they decide to lie about it later).
- Finally, if you give your tenant a new fixed term tenancy agreement, this will end the section 21 notice and you will have to serve another. So if you are unhappy with your tenant and think you may want to evict him due to bad behaviour – don't give him another fixed term!

You will find a lot more information in my new eBook 'Assured Shorthold Tenancies: Your complete guide to section 21', along with the forms for you to use. The book (which is an electronic book) can be bought online at www.yourlawstore.co.uk.

Tessa Shepperson is a solicitor and author, and runs the popular Landlord Law site at www.landlordlaw.co.uk. She also blogs at www.landlordlawblog.co.uk

Selective Licensing

Thanet District Council has designated an area of Cliftonville West and Margate Central Wards as a selective licensing area. The designation was made on 12th January 2011 and will become operative on 21st April 2011. There is a discount on the fee for early applications that are made before 30th June 2011 and a further discount for accredited landlords.

Thanet Council will be holding a series of landlord advice session over the next few months and welcome all landlords to come along to discuss this in more detail.
For more information on the scheme and for details of the dates of the landlord sessions please contact **Thanet District Council Housing Regeneration Team on 01843 577437**
e-mail housing.conditions@thanet.gov.uk
The proposal document can be viewed on Thanet District Councils website
www.thanet.gov.uk/housing/selective-licensing-scheme.aspx

Landlord Insurance – Rental Property Knowledge

For landlords, having adequate insurance is vital, and having a good understanding of property insurance will prevent you getting into trouble.

Using a reputable insurance company, one that's not going to hide behind legal loop-holes and the small print when it comes to a claim is also important. Think very carefully when given the option to buy cheap and save a few pounds, when further down the road you could lose thousands
At LandlordZONE we have worked with many reputable insurance companies and insurance brokers for over ten years - firms that have stood the test of time in the rental property industry. Specialist rental property brokers are there to advise you, especially if you have a not-so-typical property or situation. Insurance is a special form of **contract** between insured and insurer (policy holder and insurance company). In return for the payment of premiums the insurers will indemnify you against certain insurable (measurable) risks.

Indemnity means that the insurers agree to compensate you in the event of loss, such that you are left substantially in the same position financially after the loss as you were in before it - you cannot be allowed to profit from an insurance claim! In English law an insurance contract is one of **Uberrima fides** (of the **utmost good faith)**. What this means is that all material facts about an insured risk must be disclosed to the insurers at the time of completing the proposal form, or subsequently if the facts change.

If you **misrepresent** the facts about a risk to your insurers, or ignore the terms of the policy, they will quite happily take your premiums without question. However, in the event of a loss, everything is investigated - your insurance becomes void - in fact if you misrepresent material facts you are not insured! You must have an interest (**insurable interest**) in the thing insured. If you could insure something which you did not have an insurable interest in (ownership of) it would be possible to gain in the event of another's loss!

In the event of a claim and where the thing reinstated improves your position, the principle of **betterment** applies. In this case a financial payment is required of from you. For example, following a fire, it will not be possible to replace a roof in the same dilapidated condition as the old one. Following the principle of indemnity, the insured with a new roof is now in a better financial position than before, therefore betterment applies. The insured therefore must pay something towards the cost of the replacement.

There are exceptions to this as the betterment principle can be varied where the final compensation for loss is an **agreed value** beforehand, or where the policy is based on an agreed replacement of **new-for-old**. If more than one policy covers the same risk it is not possible for the insured to claim on both and make a gain. In this situation each of the insurers involved would be required to contribute a proportionate amount of the loss - this is known as the **principle of contribution**.

In the event of a claim, and where the insurers have fully indemnified the insured, the insured's original interests can be taken over by the insurers - this is known as the **principle of subrogation**. For example, where a third party causes damage to the insured's property, after the insurers have settled the claim, they can and often do pursue the third party for the cost of the damage they caused.

Being **under-insured** can have serious implications when insuring a property. This would mean that the replacement value of the property, or the value of the contents, has been understated on the proposal, thereby lowering the premiums paid. In an under-insured situation, in the event of a claim, the loss adjuster will **average** the compensation paid. The **principle of average** means that the amount of the claim payment will be reduced proportionately if the property was not insured to the full amount of its replacement cost. So, for example, a 25% undervaluation of your property will mean a 25% reduction in any claim payout.

An important point for landlords: if you rely on an insurance agent (broker) to complete your proposal form and to set or advise you on a **replacement value** (not the same thing as market value), bear in mind that the agent is *your* agent and not the insurance company's agent. Once replacement values (don't forget site clearance and professional fees) are established, insurance companies use indexation to increase the value year by year on renewal.

If your agent makes a mistake, misrepresents material facts or miscalculates values and replacement costs, then it is ***your*** mistake, not the insurance company's mistake. Your only redress therefore on facing a loss in this instance would be against your insurance agent on **professional negligence** grounds! For this reason most agents would leave the establishment of the replacement value up to you, the insured.

If your property is of standard residential design, then calculators (see the ABI Calculator - http://abi.bcis.co.uk) exist to determine approximate replacement values. However, in the case of commercial property, or any non-standard property, you may need a building surveyor to give an independent assessment of its replacement value. Remember that properties in conservation areas or ones that are listed will have substantially greater replacement values.

In the event of a claim the insurers will want to ascertain if the cause of the loss was an **insured risk**. Policy documents are very specific on the risks insured, so get some specialist advice on what should be covered. Policies often contain a number of exclusions – either generally or specifically in respect of accidental damage – including wear and tear, gradual deterioration (or gradually operating causes) and faulty workmanship or design. The **gradually operating cause,** such as, for example, badly deteriorated ridge pointing, which results in a strong wind ripping off the ridge tiles, and the insurer rejecting a claim through lack of proper maintenance.

The **principle of proximate** cause relates to this and is define as: The efficient cause which brings about a loss with no other intervening cause which breaks the chain of events.

An example of this might be where belongings were removed from a house in the event of a flood, stored in an outside yard and subsequently damaged by rain. Was the proximate cause of the loss of the belongings the flood or the rain?

If the owner had made every attempt to protect the items quickly then the proximate cause would be deemed to be the flood. If however, the owner had neglectfully left the goods unprotected for an excessive length of time, the proximate cause would be deemed to be the rain. Landlords should also check the **occupancy clause**. Read the insurers' policy carefully on occupancy, because a property that's unoccupied for greater than say two weeks could render the cover invalid.

Last but by no means least, loss or injury sustained by a **third party**, resulting from access to or occupation of a building can result in horrendous claims for damages. You really must make sure your landlord's insurance policy has this cover included.

Tom Entwistle is editor of LandlordZONE.co.uk

LandlordZONE®
RENTAL PROPERTY KNOWLEDGE

Fraudulent Letting Agents

Growing concern has been expressed about the activities of 'fly by night' letting agents who run off with landlords' and tenants' money. The Property Ombudsman, Christopher Hamer, said of one case, where his investigation had revealed systematic misappropriation of client funds affecting at least 64 landlords, that Trading Standards and police had to be put under pressure to take action. Hamer has made a fresh call for more control over the actions of residential lettings agents, saying there is appetite in the industry for formal regulation.

Whilst the number of lettings offices voluntarily covered by his scheme climbed to almost 8,000 by the end of 2010, he said he remains concerned that agents who do not sign up to the TPO Code of Practice can continue to operate, potentially to customer detriment. "Many agents conduct their business by following the TPO Code of Practice, but there are still too many who are operating without that commitment to standards and without any external controls over what they do with client money," Hamer said. He also revealed that the Code of Practice for letting agents has still not been approved by the Office of Fair Trading despite his submitting it three years ago. It means that, unlike estate agents, letting agents cannot display the OFT logo. From this summer, the Code of Practice will include a requirement for lettings agencies to hold a separately designated client account to protect money the agencies receive.

Hamer said: "There can be no excuse for client money not being held in separate and properly audited client accounts, so that it is less easy for unscrupulous agents to misappropriate it. Furthermore, there needs to be an obligation that such monies are protected by suitable client money insurance.

"An appropriate regulatory regime could ensure that the necessary separation of client and business money is enforced. "An agent who uses client money because they are operating on the edge of viability and needs to bolster the business, or more worrying still is using the money for personal enjoyment, is entirely unacceptable and against the law." Last year, Hamer investigated 1,338 new referrals – 646 sales and 672 lettings, with the remainder related to HIPs and residential leasehold management. It was a record number of complaints – the highest ever recorded in the 20 years of the scheme's existence and 28% above the previous peak in 2008 of 1,043. They arose from a total of 11,794 enquiries, compared with 11,165 during 2009 and 11,201 during 2008. The largest single cause of complaint was communication failure between the agent and consumer (214) followed by complaints handling by agents (163) and sales details / advertising / marketing (138).

South-East England was the source of most complaints (26%), followed by South-West England (13%) and the eastern region (12%). Wales generated only 3% of the total, a figure matched by Northern Ireland and Scotland combined. At the end of 2010, TPO had 8,008 member firms operating 11,321 sales and 7,851 lettings offices. This compares with 7,332 member firms operating 10,577 sales and 7,276 lettings offices at the end of 2009 and 6,322 member firms with 11,215 sales and 5,100 lettings offices at the end of 2008. Of the 525 lettings cases closed last year, there were 323 awards made to the complainants.

Ian Potter, operations manager of ARLA, backed Hamer's call for regulation, calling it well overdue. Potter said: "The absence of regulation means the consumer is left vulnerable, with nowhere to go when there is service failure or fraud. "We believe that the Government must look again at introducing regulation, in order to eradicate unprofessional, unqualified and unethical agents from the marketplace and increase protection for both tenants and landlords." For more info visit: www.rla.org.uk

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5 WAYS TO AVOID THE VOIDS

UK landlords lose nearly £4billion every year because their rental property is standing empty. It's not just loss of rent that hits their pockets: mortgages, service charges and utility bills all still have to be paid.

1. Advertise with photos. Our tenants tell us the kitchen and living room are what they want to see most, followed by the garden if you have one.

2. What's your unique selling point? We know of one landlord who fits all his student properties with Jacuzzi baths: needless to say, they're always the first rooms on campus to be filled.

3. Complete repairs and decorating work. If something needs fixing, or redecorating, do it before you show the property. Promises that "it'll be fixed before you move in" are worth nothing.

4. Every lead's a hot lead. The average tenant looks at only three or four properties before they decide to rent, so getting them to view quickly can be crucial. Don't let interested people move onto the next property.

5. Be seen. You can have the most desirable property at the lowest rent, but if no one gets to see it, it will stay empty. The days of relying on shop windows and local papers are gone: your target market is on the internet, and you should be too. 92% of tenants now start their property search on the net, so it's crucial that they can find you.

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Section 21 eviction notices – can they be served by lettings agents?

New Ombudsman decision

A landlord's letting agent is not a free agent. The landlord needs to have authority to act. In this case, the Property Ombudsman upheld a complaint against a letting agent that served a section 21 notice on a tenant without the knowledge or consent of the landlord.

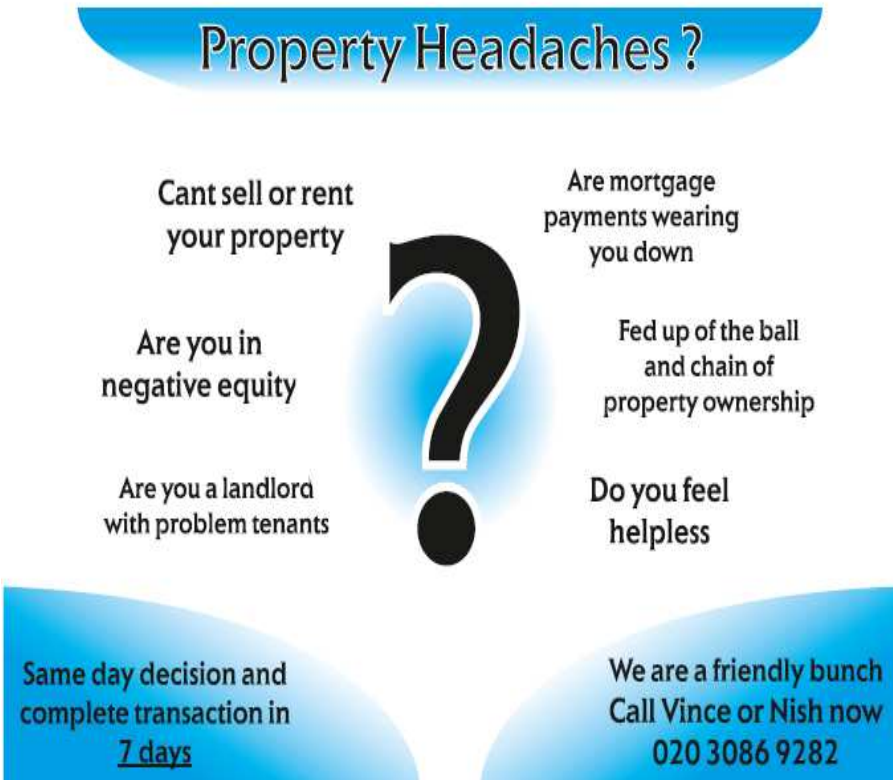
What happened?

- Tenants let a property under an Assured Shorthold Tenancy. The landlord used a letting agent.
- The landlord emailed the letting agent to say that he wished to terminate his contract with them. The letting agent took this to mean that the landlord wanted his tenants evicted. In fact, the landlord wanted to terminate his contract with the lettings agent.
- The letting agent served a 'section 21 notice', requiring possession to be given up, on the tenants and demanded that they leave the property which, it seems, they then did.
- Subsequently, the tenants complained to the Property Ombudsman.

What did the Ombudsman decide?

- The Ombudsman upheld the complaint.
- The letting agents had served a section 21 notice without the knowledge or consent of the landlord. It was therefore invalid.
- The Ombudsman also upheld the tenants' complaint about how the lettings agent responded when the tenants made a complaint to them. The lettings agent insinuated that the tenants had decided to leave the property of their own free will. That was wrong. The agent's record keeping was also poor.
- The Ombudsman awarded the tenants £400.

For More info visit www.housingandpropertylawdaily.co.uk



London Borough of Hillingdon Landlord Forum 2011 Dates

- **Wednesday 14th September 2011** - Committee Room 6 – 6pm-9pm
- **Tuesday 13th December 2011** - Committee Room 6 – 6pm-9pm

All Foroums will be held at : **The Civic Centre, High Street Uxbridge, UB8 1UW**
To register your interest, please email your details invites and agenda details for each forum they should email their details to Findersfee@hillingdon.gov.uk

Letting agent not at fault for being duped by conman landlord

New Ombudsman decision

By its nature, deceitful behaviour is hidden. In this case, the Property Ombudsman considered how far a letting agent needs to go to check whether a 'landlord' really does have the right to let a property. The Ombudsman decided that, in a case without warning signs, reliance on an identity check that was a few months old was sufficient. The tenant's subsequent loss at the hands of a deceitful fake landlord was not something for which the letting agent could be held responsible.

What happened?

- A 'landlord' and his partner split up. As part of a court-ordered settlement, the former home was transferred to the partner.
- The landlord instructed a letting agent to let the property. A tenant was found, a tenancy agreed and a deposit paid. But the tenant could not of course move in. The landlord had no authority to grant a tenancy and so the 'tenant' had no right to occupy the property.
- In addition, the 'landlord' failed to pay the deposit into an authorised deposit protection scheme and the tenant was unable to recover it.
- The tenant complained to the letting agents. She asserted that they were at fault by failing to verify that the landlord had authority to let the property.
- The tenant complained to the Property Ombudsman.

What did the Ombudsman decide?

- The Ombudsman rejected the complaint. The letting agent made sufficient enquiries into the supposed landlord's authority to let the property.
- The landlord stated in his Agreement with the agent that he had a legal right to let the property. But that was not the only evidence relied on by the landlord. Previously, the agent had conducted an identify search on the landlord which confirmed his registered address as being at the property.
- Clearly, therefore, the Ombudsman considered that, taken together, the landlord's statement and the earlier identity check were sufficient grounds for the agent to proceed on the basis that the landlord had the right to let the property. A fresh identity check was not required.
- As there was nothing obviously suspicious about the landlord to put the agent 'on notice', the agent had done enough to check the landlord's authority to let.
- The Ombudsman also cleared the agent of any blame in relation to the protection of the tenant's deposit. The tenancy agreement stated that it was the landlord's responsibility to protect the tenancy deposit. It was not the agent's fault that the landlord pocketed the deposit.
- However, the agent was found to be at fault in his handling of the tenant's complaint. The tenant was not acknowledged nor responded to even after the Property Ombudsman became involved. For that, the Ombudsman awarded £195 compensation.

Click here for more residential landlord and tenant cases.

London Borough of Tower Hamlets 2011 Landlord Forum Dates

TOWER HAMLETS

Representatives from the Housing Benefit Section will be at the next Tower Hamlets Landlord Forum to explain the impact in more details. It would be an opportunity to find out how the changes will affect your tenants.

LL Forum - **Wednesday 12 October 2011, 13:00 P.M - 16.30 P.M**

Venue: **ROOM RR101 ,ALBERT JACOB HOUSE, 62 ROMAN ROAD, LONDON E2 0PG**

For further info, please email: Geoffrey.Nevett@towerhamlets.gov.uk **Tel: 020 7364 3558**

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What does network referencing mean?

Network referencing is the newest concept for professional referencing developed by Landlord Referencing Services LLP (LRS) and is available at www.landlordreferencing.co.uk It was designed in order to combine the growth of internet Social networking and to specifically satisfy the needs of property professionals and their prerequisite to take references prior to offering any tenancy agreements.

The concept of network referencing is simple; 1000's of professionals within the same field uniting their information about their tenants both good and bad in order to assist one another in protecting themselves against any further damages or losses on any new contract of tenure in the future.

Charity St Giles Trust

A spell in prison severely disrupts someone's life and currently around one third of people are homeless on release. Charity St Giles Trust works with prison leavers and ex-offenders to help them resettle, with the aim of reducing re-offending and helping people move their lives forward in a positive way.

Having somewhere stable to live greatly increases the chances of someone being able to successfully resettle and rebuild their lives. With an extremely limited stock of social housing available, St Giles Trust has developed a successful project working with landlords and lettings agents in the private rented sector in London who are happy to let their accommodation to people who have recently been released from prison. It is similar to other projects run by housing and homelessness organisations across the country who have established links with private landlords as a source of accommodation for their clients. With the right kind of support, they can make very good tenants as they welcome the stability after frequently experiencing trauma and chaos in their lives.

Hundreds of people are released from prison back to London each week and St Giles Trust has successfully housed the majority of its clients in private rented properties. The vast majority of these are single men who are usually the lowest priority for social housing. Joy Wylie, who runs the Private Rental Sector Project at St Giles Trust, says: "Understandably, there are some stereotypes about people who have been in prison but in our experience most of our clients are just very grateful to have somewhere to live and simply want to keep their heads down and get on with their lives. Most make excellent tenants and are keen to make the most of the comforts of their tenancy after the grimness of sharing a ten by ten foot cell. It is not generally an opportunity they want to mess up."

Prospective tenants at St Giles Trust are vetted to make sure they are suitable for a private rented tenancy. Though the charity does not provide a management service, it will act as a single point of contact in the initial stages of the tenancy and support the tenant.
Most people released from prison will be reliant on housing benefit and St Giles Trust will always seek to ensure that the rent is paid directly to the landlord where this is the case. However, benefits cannot cover deposits but our clients can claim a crisis loan for rent in advance.

If the tenant is on benefits, the maximum amount of rent that can be sourced through housing benefit is the local housing allowance. However, some of St Giles Trust's clients progress to paid employment once they are resettled and gradually reduce their dependence on benefits.
St Giles Trust is always looking for decent studios, one-bedroom flats and rooms in shared houses in which to house their clients. We are looking for properties all over Greater London. Any landlord or lettings agent who is interested in finding out more should **contact Joy Wylie on 020 7703 7000, mobile 07976 781750 or email joy.wylie@stgilestrust.org.uk**

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Court of Appeal ruling raises this question: what is the point of tenancy deposit legislation?

The Court of Appeal has already decided that the 14 day 'rule' for complying with tenancy deposit rules does not really mean what it says. A landlord can avoid a financial sanction by complying with the rules at any time up until the hearing of a tenant's claim for a sanction payment. Now, the Court has gone one step further and decided that, once a tenancy has come to an end, no sanction award can be made at all. Therefore, a landlord who has never complied with the deposit legislation can end up facing no adverse consequence under the Housing Act 2004.

What happened?

- Two joint tenants took an Assured Shorthold Tenancy of a flat in East London. They paid a deposit of around £6,000.
- The landlord should have protected the deposit by using an authorised tenancy deposit scheme in accordance with the Housing Act 2004. But the landlord did not do so.
- The landlord simply kept the deposit in his bank account. When the tenancy came to an end, the landlord returned £5,000 of the deposit to the tenants, retaining about £1,000 to cover alleged cleaning and disrepair costs.
- The tenants brought a claim for recovery of the remaining deposited sums. They also brought a claim under the Housing Act 2004. That Act provides for a sanction of three times a deposit where a landlord has failed to comply with its tenancy deposit rules. The Act specifies that the tenancy deposit rules are to be complied with within 14 days of the date on which the deposit is received by the landlord.
- Ultimately, the Housing Act 2004 sanction claim came before the Court of Appeal.

What did the Court of Appeal decide?

- The Court of Appeal held that the tenants' tenancy deposit sanction claim failed.
- The sanctions elements of the tenancy deposit legislation had already been deprived of much of their effectiveness through the Court of Appeal's decision in *Tiensia v Vision Enterprises Ltd*.
- *Tiensia* held that a landlord could avoid a sanction by complying with the tenancy deposit rules at any time up until the hearing date of a tenant's claim for a sanction payment. In other words, a tenant does not have the automatic right to a sanction payment once 14 days had elapsed from payment of the deposit without it being protected in an authorised deposit scheme.
- The present decision further deprives the sanctions provisions of their effectiveness. The Court of Appeal held that a court has no power to make a sanctions order once the tenancy has come to an end.

The Court's ruling meant that the present tenants were not entitled to a payment of three times their deposit even though the landlord had never complied with his tenancy deposit obligations. Their landlord had got away with not complying with those obligations

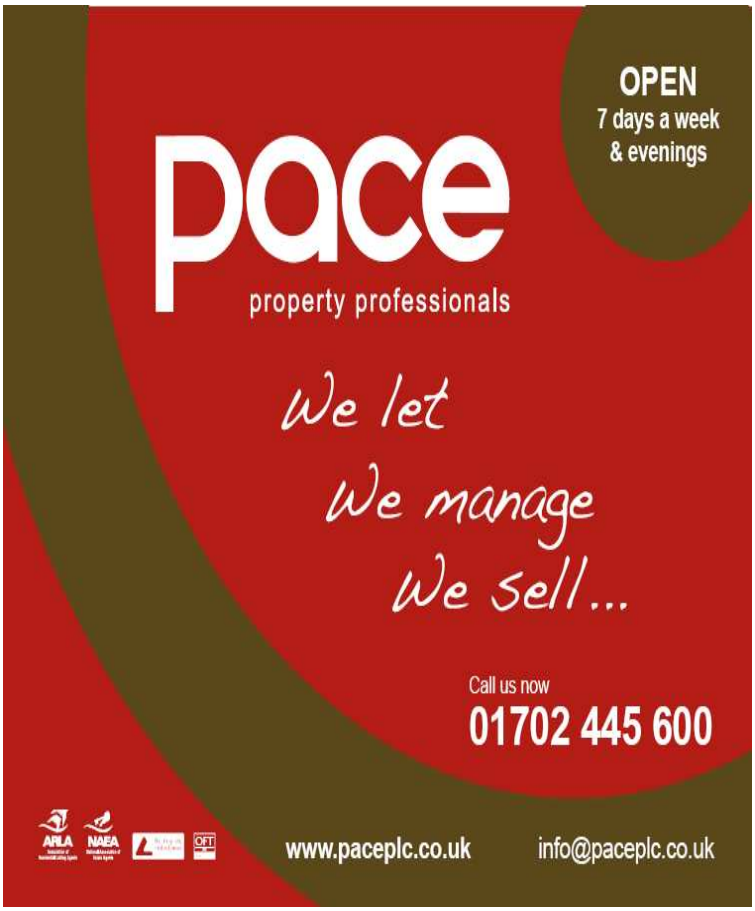
Click here for more residential landlord and tenant cases

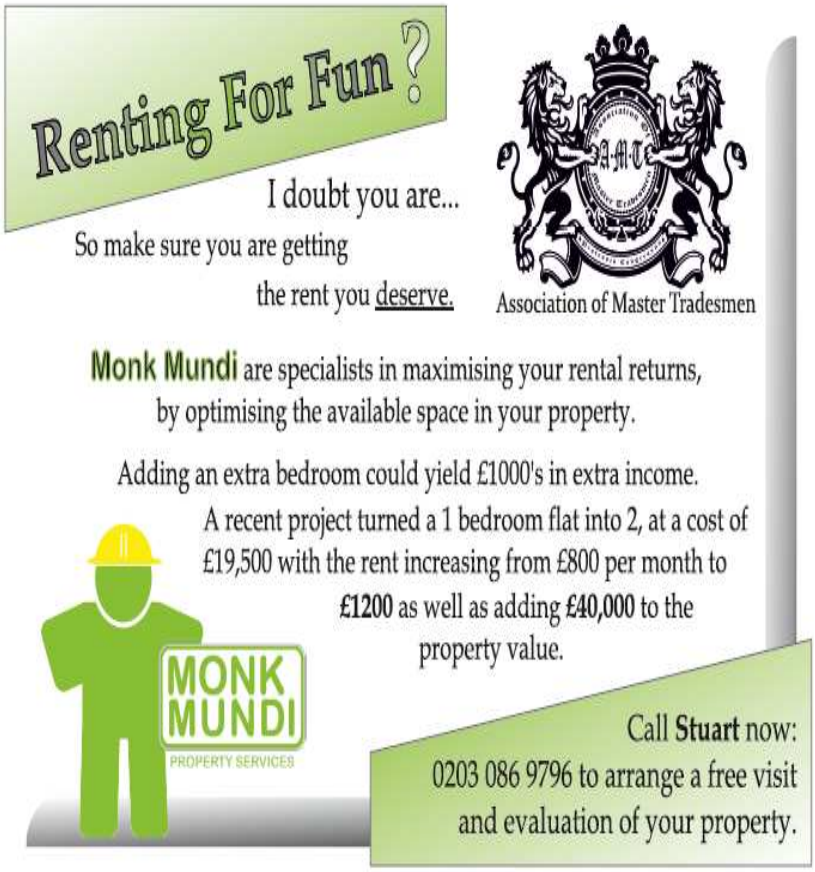
Tenant demand 'on the increase

Demand for rented property in the UK is continuing to rise, new figures have shown.

According to statistics compiled by Paragon Group, nearly half of landlords in the nation reported increasing demand in the first quarter of 2011. The study revealed that 49 per cent of proprietors witnessed higher numbers of tenants in search of their properties, while only five per cent of those questioned said it was decreasing.
Nigel Terrington, chief executive at Paragon, noted demand has escalated of late, adding: "This is expected to rise due to a number of factors, including social housing reforms, lifestyle choices, low numbers of first-time buyers and wider demographic changes."

This movement is contributing elevated rents, while a lack of available mortgage finance is strangling the chances of the sector expanding further, Mr Terrington pointed out. Earlier in the month, a study conducted by the Bank of Scotland showed that buying property is a more affordable option than renting, as the cost of buying a house is beginning to slide.





What are the LHA changes? A brief re-cap

The LHA changes announced in the Emergency Budget on 22nd June 2010 include the following

- **From April 2011, LHA rates will be capped at £250.00 per week for a 1 bed, £290 for a 2 bed, £340 for a 3 bed and £400 for a 4 bedroom property**
- **From April 2011, the £15 excess that some customers can receive under the LHA arrangements will be removed.**
- **From April 2011, the removal of the five bedroom LHA rate so that the maximum LHA rate is the four bedroom rate**
- **From October 2011, LHA rates will be set at the 30th percentile of local rents rather than the median (50th percentile)**
- **From 2013/14, LHA rates will be uprated on the basis of the Consumer Price Index (CPI)**
- **From 2011-14 there will be staged increases in non-dependent deductions to bring them up to the level they would have been had they been fully uprated since 2001**
- **From 2013/14, working age people in social housing will no longer be able to claim HB on a property deemed bigger than their needs**
- **From 2013/14. HB award will be reduced to 90% after 12 months for claimants of Job Seekers Allowance (JSA)**

The discretionary housing payment (DHP) budget will rise in 2011-12 by £10 million and in subsequent years the Government will treble its allocation to £60 million per year. This will provide local authorities with substantial support in helping customers through the transition period and help avoid evictions. For more info please visit www.parliament.uk

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- encourage credit union accounts for non HB direct clients

For more information please contact the Procurement and Development Team.
Private Housing Partnerships
Room 111, Islington Town Hall, Upper Street, London N1 2UD, **T** 020 7527 6089, 6073, 6081
F 020 7527 6085, **E** landlords.enquiries@islington.gov.uk **W** www.islington.gov.uk

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Landlords braced for disrepair claim surge following tenant-friendly Court of Appeal ruling

New case law

As a result of this Court of Appeal decision, residential landlords must ensure that they respond quickly to reports of damaged plasterwork. The Court clarified a point that had been legally uncertain for some time. It was whether landlords' statutory repairing obligations extend to internal plasterwork. The Court held that they do. It is a ruling that is likely to enhance the viability of dampness-related claims.

What happened?

- Ms Grand let a flat from Mr. Gill under an assured periodic tenancy (which arose automatically upon the expiry of her fixed-term Assured Shorthold Tenancy). It was in Hillingdon, West London.
- Ms Grand brought a disrepair claim against her landlord. She said that the flat had been afflicted by damp and mould for around 3 years which was made worse by a faulty heating system. One consequence of this was that the plasterwork in the flat was badly damaged. The judge who heard the claim accepted Ms Grand's account.
- The judge went on to decide that the damp was principally caused by a design defect in the flat. But the landlord was not responsible for that under his statutory repairing obligations in s.11 of the Landlord & Tenant Act 1985 (*Quick v Taff Ely BC*, 1986).
- The landlord was however responsible for ensuring adequate heating. That obligation was breached. One consequence was that the damp and mould was worse than it would otherwise have been. This was because poor heating allowed condensation to develop.
- The judge turned to consider damages. He decided that the distress and inconvenience of living in a damp flat was worth £2,000 per annum. So, for the 3 years that totaled £6,000. However, the landlord was only responsible for 10% of the damp. That was the proportion of the overall damp problem caused in the judge's opinion by the faulty boiler. The rest of the damp was caused by a structural defect for which the landlord was not responsible. So the actual award for damp and mould was £600.
- As regards to the faulty heating/boiler, the judge awarded £1,750 for 207 days when the boiler was proven not to have been working. Further periods of inadequate heating over the three years attracted an additional award of £2,900 per annum. This meant that in total Ms Grand was awarded £5,250 plus another £350 for breach of the covenant of quiet enjoyment.
- Ms Grand appealed to the Court of Appeal. She argued that the judge had failed to recognise that the mere existence of damaged plasterwork was itself a free-standing breach of the landlord's repairing obligations.

What did the Court decide?

- The Court of Appeal allowed the appeal.
    - Amongst the landlord's obligations under s.11 of the Landlord & Tenant Act 1985 was a duty to keep in repair the "structure" of the dwelling. The key issue was whether the flat's plasterwork formed part of the structure. If it did, the mere fact of damage to the structure would have activated the landlord's repairing obligations and the first instance judge would have erred by failing to recognise that.
- The Court of Appeal held that internal plaster finish is part of a dwelling house's structure. It overruled the decision to the contrary in *Irvine v Moran* (1992). Accordingly, once the plasterwork in Ms Grand's flat had been damaged as a result of its damp-inducing design defect and Ms Grand had notified the landlord of the problem, the landlord was liable to repair it. He failed to do so. The judge who heard this case made an error by not recognising this additional breach of the landlord's repairing obligations.
- The Court of Appeal increased Ms Grand's compensation by £750 to take account of that additional breach of the landlord's repairing obligations

- A separate issue in this case concerned interest on Ms Grand's compensation. The judge at first instance awarded no interest although it was sought. The Court awarded 2% interest as from December 2007 which was the date that the landlord repaired the faulty boiler.

Can landlords now expect to face an increase in disrepair claims?

- This case has increased the damages that will be awarded on many disrepair claims. For that reason, it will make more disrepair claims viable and so more likely to be brought.
- In addition, another recent Court of Appeal decision has increased the prospect of tenants obtaining 'no win no fee' agreements for bringing disrepair claims (for details of that case, see Issue 72 of the Housing & Property Law Review). Taken together with the decision in the present case, the result is likely to be an increase in disrepair claims faced by residential landlords.

Case name: Grand v Gill, May 2011. For further details, including judiciary and citation details, see Issue 74 of the Housing & Property Law Review (Arden Davies Publishing).

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Reap what you sow

Before I ramble on I just want to point out I make no apologies for my poor grammar as my wife recently pointed out. This has prompted me in acquiring the services of a PA. We have a lovely Hungarian lady who helps out with the kids in the morning and it turned out her stay in the UK was to come to an abrupt end because her contract as a Nanny with a Streatham Family was to be cut short. This would not do as our kids have great fun with her and it allows my wife some breathing space. So my wife suggested I take her on as a full time PA, she has web design experience along with an Economics degree and her English is excellent. Before some of you start shouting at the page I did advertise for a PA before hand but no one British was interested as I was looking for a virtual PA where the hours would be sporadic in the short term. So as a result she is on my company pay roll, she's happy to have continued employment in the UK and our family is too! By helping her out we have benefited, her bill for my new website is half what I was quoted by my current developer and in the long term she may take over the management of our portfolio.

I've completed on 4 deals since my last article, a 1 bed flat in the LB of Barking & Dagenham which needed a week completion which was sold on in 2 weeks via a local agent. My business partner worked on this one and I have to say I wasn't convinced that selling it through one agent was the right decision however true to his word we sold it in record time with £20k gross profit. The second deal was a 2 bed house in Doncaster which needed a complete refurbish and arranging into a 3 bed. We paid £50k with an OMV (open market value) of £80k with works and turning it into a 3 bed OMV of £120k. The icing on the cake was the works cost us £7k as my business partners tenant who has been nurtured to life is now starting his own refurbishing business and feels he owes us his life. Furthermore, his son is interested in buying pending a mortgage application. This tenant had attempted suicide twice, lost a son, had a marriage breakdown and now has cancer but was saved by my business partner. He now reads Rich Dad Poor Dad, had his rent arrears paid off by The British Legion (sourced by my bus partner as the tenant is ex army), and is now refurbishing our house at a minimal cost to us while hopefully selling to his son. I don't think many Landlords out there would have gone to the lengths to help him out.

The third deal was a studio flat in New Cross with a 78 yr lease requiring a complete refurbishment. I bought it at £72k for cash with an OMV after works of £115k. The layout had to be changed as one had to walk through the bed area to reach the kitchen. We arranged for the current owner to serve notice on the Freeholder to acquire an automatic 150yr lease extension at a peppercorn rent for £5600 plus £400 legal costs, I nearly fell off my chair, what a Freeholder being reasonable!! The works cost £6300 and will be rented out at £700pm giving a yield on MV of 7.3%. The final deal which is completing on the 9th June is a 3 bed Mid Terrace house in Thornton Heath bought for £152,000 with an OMV of between £200k - £210k after £5k works and a rental of £1200pm (we are keeping the current tenants). This deal was a referral from an accountant I had met 9 months ago regarding a client of hers who was in financial trouble and was looking to offload her portfolio but it turned out she managed to sort out some debt restructuring.

About 2 weeks ago the same accountant had another client who was facing bankruptcy by the IR in 2 weeks and repossession by her lender in a matter of days. The accountant had lost my card but remembered my logo and thankfully came across my website on Google. Apparently, she was so impressed by our initial meeting she felt confident we could help her client. Even though I was away on holiday for 2 weeks, after various long distance calls between myself, my business partner and my lender we got the deal done. This will be rented out long term and remortgaged in 6 months time.

On other news we have decided to sell our St Austell house at auction in July. We have been told to expect £170k - £200k which would give us £14k -£44k gross profit. It's a shame as I was looking forward to the development experience, however, what we didn't envisage was the hostile reception we received from the local Estate Agents, they don't take kindly to Londoners stamping their mark on their patch even though we would have created work and homes for the locals. We are still waiting on the council planning decision on the property in Orpington; I managed to remortgage my Croydon flat on 5.19% fix for 2 years with a £940 arrangement fee at 70%LTV and in terms of a credit line with a well known lender, waste of time. The Chairman, of all people was citing information to me that was available 3 years ago!

I nearly managed to achieve my 2 deals per month until one of them pulled out. I saw the vendor in mid May and received a signed option agreement for £200k for a 2 bed house in Wimbledon witnessed with an OMV

of £265k and 2 weeks later received a blunt call saying he received a higher offer and was pulling out. He didn't allow me to match it and had delayed telling me for 3 days in which time I had spent money on searches. He refused to accept he had signed anything so I have left it to my solicitors to deal with. It's a shame as after works of £30k the OMV would have been £320k. If the vendor had been polite and professional, in other words had some social grace I might have said okay let's forget about it and move on. However, when I make an agreement be it on a legal document or just my word I like to think I will always fulfil my obligation which I expect in return. Yes, Yes I know in the real word this doesn't occur however I like to work on a certain moral grounding which is how I work with most of my suppliers.

The Property Boardroom is now venturing into a new phase where we are looking to buy at auction as a group. This is great however I have reservations that 8 people may complicate things, time will tell. Lastly, I haven't been successful in buying any land development projects though I have sowed the first seeds, lets hope my PA will release some of my time to reap the rewards!

Tim Hodges
Private Landlord

London Borough of Redbridge

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Thanking you in advance for all those who wish to reply.

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HOUSING SERVICES

Newham Landlords in new accreditation scheme

The Council's Private Sector and Housing Needs services combine to roll out regular accreditation training courses during 2011-12. Approved training is provided in partnership with London Landlord Accreditation scheme (LLAS).

Although accreditation is voluntary, this improvement follows on from the 2010/11 H&PP service objectives to simplify the historic Newham accreditation scheme. The training targets landlords who provide properties to the Council's Bond Scheme and those who let licensable properties within the Neighbourhood Improvement Zone.

The next date is **15 th July 2011** at East Ham Town Hall. In picture with the landlords is the LLAS trainer Maxine Fothergill.

Contact Tony Jemmott - Private Sector, Ext 31868http://www.newham.gov.uk/Housing/HousingOptionsAndAdvice/PrivateLandlords/

Useful Links

RLA www.rla.org.uk
SLA www.southernlandlords.org
LHA https://lha-direct.therentservice.gov.uk/Secure/Default.aspx
NLA http://www.landlords.org.uk/

TDP (Tenancy Deposit)
http://www.depositprotection.com/Default.aspx
Landlordzone http://www.landlordzone.co.uk

Accreditation Network UK (ANUK)
http://www.anuk.org.uk/
Landlords UK

Links, guides, forums and information
http://www.landlords-uk.net/

Fire Protection Centre
http:/www.fireprotectioncentre.com/
LLAS
www.londonlandlords.org.uk

DCLG: http://www.communities.co.uk
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http://www.direct.gov.uk/HomeAndCommunity/fs/en

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