

May 2007

# Let's Talk

The newsletter  
for landlords  
in Wandsworth

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## Tenancy Deposit Schemes

**National Tenancy Deposit Schemes commenced on 6th April. The new regime, introduced by the Housing Act 2004 applies only to deposits received in respect of assured shorthold tenancy agreements on or after this date. The vast majority of Private Sector Lettings by non-resident landlords are ASTs and are covered. Parties cannot contract out of the provisions.**

From 6th April any deposit paid in connection with an AST must be dealt with in accordance with an authorised scheme. The landlord must make appropriate arrangements and serve notice on the tenant in a prescribed form within 14 days. The format and content of the notice must include details of the adopted scheme, the landlord's compliance with statutory provisions, and the operation of those provisions. There are two types of scheme, custodial and insurance.

Under the former, the deposit is paid to the independent Scheme Administrator who will distribute it in accordance with any agreement between landlord and tenant within 10 days of notification at the end of the tenancy. Where the parties can't agree, the Scheme Adjudicator will only release monies after resolution by themselves or final decision by a Court. The custodial scheme is self-financing and free to the parties.

The Insurance Scheme, is not free and the landlord

has to pay a membership charge towards the scheme provided. On taking out membership and signing undertakings to comply with directions from the Scheme Administrator, the landlord keeps the tenant's deposit throughout the tenancy. At the end of the tenancy either party should notify the Scheme Administrator whether there is agreement or dispute about the return of the deposit. If the tenant claims any deposit or part retained, the landlord must (within 10 days) pay the disputed amount (all or part) into a designated account under the scheme. Insurance maintained under the scheme covers failures by the landlord to comply with directions of the Scheme Administrator.

In the event of dispute, the Scheme Administrator distributes the disputed amount in accordance with adjudication under the Scheme's Alternative Dispute Resolution Arrangements or a final decision by the County Court. If necessary, a further direction is given to the landlord to pay any balance not already paid in. Insurance will make good any default and recovery sought against the landlord. The sanction against non-compliance with directions is loss of membership of the scheme (and a requirement to pay into the Custodial Scheme).

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There are provisions to deal with cases of non-communicating and co-operating parties at the end of the tenancy.

The aim of the scheme is to handle disputes as well as to safeguard deposits and each scheme is linked to an independent alternative dispute resolution service. The parties do not have to agree to use those schemes but if they agree to do so they will also agree to be bound by their decisions without recourse to the Courts. These schemes will be free of charge to the parties.

## **Enforcement:**

If a landlord receives a deposit and has not complied with the initial requirements or fails to give notice within the 14-day period, the tenant can apply to the county court for certain orders. The court has no discretion and, if it finds the landlord in breach, it must order:

- Return of the deposit to the tenant – or, in the case of a custodial scheme, payment of the deposit to the scheme administrator (see HA2004, s214(3)); and
- Payment to the tenant of a sum equal to three times the value of the deposit (HA 2004, s214(4)).

The court has no power to extend time limits. A landlord who gives notice outside the 14-day time limit, or who forgets to serve notice, will have to pay back the deposit plus three month's rent or more.

The other sanction for non-compliance is that under HA 2004, s215, no Section 21 (2 months) notice requiring possession under the Housing Act 1988 may be served while a deposit is held, otherwise than in accordance with one of the schemes. It may be that 'defective' deposits will emerge as a significant basis for tenants resisting possession claims in the county court and counter-claiming the

enhanced deposit penalty under HA 2004, s214(4). S21 provides an automatic right of recovery subject to valid notice. Its non-availability will mean having to rely on providing other, mainly discretionary, breach or fault-related grounds of possession.

## **Who will be running the schemes?**

The Government awarded contracts to three companies to run its tenancy deposit schemes:

**The Deposit Protection Service (The DPS)** – the only custodial deposit protection scheme – is free to use and open to all Landlords and Letting Agents. The service is funded entirely from the interest earned from deposits held. Landlords and Letting Agents will be able to register and make transactions online. The scheme will be supported by a dedicated call centre. For more information, visit [www.depositprotection.com](http://www.depositprotection.com) <<http://www.depositprotection.com/>>.

**Tenancy Deposit Solutions Ltd (TDSL)** is an insurance-based scheme run in partnership between the National Landlords Association and Hamilton Fraser Insurance. For more information, visit [www.mydeposits.co.uk](http://www.mydeposits.co.uk) <<http://www.mydeposits.co.uk/>>.

**The Tenancy Deposit Scheme (TDS)** is an insurance-backed deposit protection and dispute resolution scheme run by The Dispute Service. It was established in 2003 to provide dispute resolution and complaints handling for the lettings industry, including a voluntary deposit scheme for regulated agents which TDS will now absorb. It is primarily designed to enable letting agents to continue holding deposits, but landlords can also join the scheme. For more information, visit [www.tds.gb.com](http://www.tds.gb.com) <<http://www.tds.gb.com/>> or call 0845 226 7837.

## **Regulatory reform (fire safety) order 2005**

This order came into force on the 1st October 2006. It places duties on the responsible person to carry out a Fire Risk Assessment and prepare an Emergency Plan. It applies to common parts such as staircases in flats or conversions and also any fire alarm used throughout the building.

The risk assessment should be thorough and systematic and identify what the hazards are, who is at risk and whether the existing fire

protection measures will be adequate. It must be formally recorded if the person employs 5 or more people, the premises are licensed or an inspector requires it. The person undertaking the assessment must be a competent person such as a fire alarm service engineer.

Practical fire safety guides are available from [www.shop.communities.gov.uk/DCLGshop](http://www.shop.communities.gov.uk/DCLGshop) or by telephoning the DCLG bookshop on 0870 830 7099.

# email

As part of the Council's drive towards both greater efficiency and reduced use of natural resources, we are trying to make more use of e-mail to communicate. If you would prefer to

receive future mailings by e-mail please let Frank Whittle know and he will amend the database which we hold for these mailings: [fwhittle@wandsworth.gov.uk](mailto:fwhittle@wandsworth.gov.uk)

## HMO Licensing

**Of all the changes introduced by the Housing Act 2004, this appears to have caused the most concern amongst landlords who were worried about additional costs and bureaucracy.**

A common misconception has been that if an HMO needs to be licensed, then additional works, such as extensive fire protection, will be necessary. In fact, if an HMO requires any works to bring it up to standard these will usually be a requirement of the new Housing Health and Safety Rating System (HHSRS) whether or not the property needs to be licensed.

On the question of the fee, this pays for a 5 year licence and in Wandsworth, ranges from £900 to £1,500 with discounts available if the landlord is accredited. The annual cost is therefore quite modest.

Whilst some Councils have introduced additional discretionary licensing for other forms of housing, such as student lettings, Wandsworth Council has no plans to enforce anything more than the minimum mandatory scheme.

Some landlords have indicated that they will be leaving the HMO market and quoted a combination of the fee and extra works they anticipate being required as the reason. We hope that the above information helps them to make an informed choice when considering their future letting strategies.

At the end of March 2007, the Council had received 236 applications for licences of which 196 had been issued. Approximately 2/3rds of the applications related to properties which the Council had not been aware of. So far, our inspection programme has found that most of the properties have only minor shortcomings and we have not had to refuse a licence. Having dealt with the high volume of initial work, we are now following-up on information relating to properties whose owners may require a licence but haven't applied.

If you do own or manage an HMO and suspect that it may require a licence please call us on 020 8871 6171 or visit our website at [www.wandsworth.gov.uk/Home/EnvironmentandTransport/EnvironmentalServices](http://www.wandsworth.gov.uk/Home/EnvironmentandTransport/EnvironmentalServices)

Please remember that failure to obtain a licence can lead to a fine of up to £20,000.

## Landlord Grants

The Council offers a range of assistance to landlords to help bring properties up to the Decent Homes standard. The main assistance is a grant of up to £5,000 per property for landlords who belong to the London Landlord Accreditation scheme (see elsewhere in this newsletter). Over the last 2 years we approved 42 such grants with a total value of £200,000. Because of high demand we have had to restrict portfolio landlords to no more than £20,000 of approvals per year.

The Council also provides Coldbuster grants for heating and energy efficiency to private tenants who are in receipt of a qualifying benefit. The grant maximum is £6,000 and the

works are administered by our partners Creative Environmental Networks who can be contacted on 0800 358 6668. Landlords can apply on behalf of their tenants. Since becoming available in April 2004, 27 such grants have been paid to private tenants. Finally, for tenanted properties situated in the two Renewal Areas (one centred on Mitcham Lane, SW16 and the other opposite Clapham Junction station) landlords can obtain an Environmental Grant of up to £2,500 to improve the frontage of their properties through decorating, new walls etc. For more information on all grants please call 020 8871 6171.

# Council prosecution under section 1(3a) protection from eviction act 1977

One of the Housing Aid Centre's main aims in advising and assisting parties to a private sector tenancy dispute is to avoid a situation where it has to use its statutory powers of prosecution in respect of offences of harassment and illegal eviction under the Act. However, in cases of serious violations of occupiers' statutory rights the Council take legal action. The Centre advises landlords and tenants on equal terms and if there are problems, doubts and headaches on tenancy issues, an early call to us 0208 871 6842/0) might offer relief and enlightenment.

A recent prosecution for harassment had unusual features. There was no dispute that the tenant was deliberately deprived of essential services (gas and electricity) at a time when the landlord wanted to complete a quick sale with vacant possession (Agents having failed to serve the necessary notice and apply for a Court Order to end the tenancy). Whilst not denying the disconnections, the landlord himself denied personal responsibility. The Council had evidence that the landlord was party to the harassment, but depended upon evidence from a neighbour and from the prospective purchasers of the lease. Unfortunately, for various reasons the witnesses could not testify and the Council's case showing complicity of the

landlord could not be proven. However, it was still possible to prove an offence in the landlord's failure to take positive action to restore the supply. The landlord pleaded guilty to withholding a service reasonably required for occupation and was fined £500 with costs.

A landlord can commit the offence of harassment if:

- (a) he does acts likely to interfere with the peace or comfort of the residential occupier or members of his household, or
- (b) he persistently withdraws or withholds services reasonably required

for the occupation of the premises in question as a residence,

and (in either case) he knows, or has reasonable cause to believe that conduct is likely to cause the residential occupier to give up the occupation of the whole or part of the premises or to refrain from exercising any right or pursuing any remedy in respect of the whole or part of the premises.

In terms of legal process, it is worth pointing out that the only way in which a landlord can end an assured shorthold tenancy is by a Court Possession Order on statutory grounds. A valid notice does not end the tenancy but only facilitates a Court claim. It is also necessary to enforce a Court Possession Order by Court Bailiff's Warrant where an ex-tenant defies a Court Order.

## New fire and amenity standards guide

The Council has been working with the Fire Authority in producing a working guide for landlords of HMOs. The guide provides updates which take account of the most recent legislation and, apart from detailing fire and amenity standards, also deals with the new Management Regulations, Licensing and risk assessment of properties.

The guide is available on the Environmental Services website at [www.wandsworth.gov.uk/Home/EnvironmentalTransport/EnvironmentalServices](http://www.wandsworth.gov.uk/Home/EnvironmentalTransport/EnvironmentalServices)

## London landlords' day

This annual event, which is organised by a partnership of London Councils and University housing staff, was held on the 23rd September last year and attracted approximately 600 landlords. The feedback was generally excellent and this year's event will be held the 6th of September at London Olympia. The event is free and there will be a wide range of information standards and seminars which should be of value to all involved in property letting and management. To find out more, visit the same website as for the London Landlord Accreditation Scheme.

## London landlord accreditation scheme

By now most of you will be aware of this scheme which has been operating in London for nearly 3 years. Wandsworth has been one of the most active boroughs in promoting the scheme and hosting training events and at the end of March there were 206 accredited landlords with property in the borough.

The scheme has recently been extended to include Agents. There are a number of advantages to joining:

- London-wide recognition as a good landlord.
- Access to grant aid.
- Discount of £100 on HMO Licence fees.
- A one day training event together with a comprehensive reference manual.
- Improved knowledge of effective property management.
- Regular newsletter with updates on legislation and various landlord events.
- Discounted materials and services.

The web site [www.londonlandlords.org.uk](http://www.londonlandlords.org.uk) has full information on the scheme.

## New controls on smoking in public areas

You will have probably read in the newspapers that from the 1st July all enclosed public places in England will be smoke free.

Apart from pubs, clubs, offices etc, it also has implications for those managing or owning certain residential properties. Whilst private dwellings are generally exempt from the new law, it will apply to the common parts such as access hallways and shared kitchens. The owner will be required to display a no-smoking sign at the entrance to such areas which must read, 'No smoking. It is against the law to smoke in these premises'. The ban will also extend to vehicles used for work and there will be regulations detailing the circumstances in which signs must be displayed in such vehicle. If landlords would like more information the Council's Environmental Services and Community Safety website has a section on this topic.

[www.wandsworth.gov.uk/smokefree](http://www.wandsworth.gov.uk/smokefree)

## Energy performance certificates

From 1 June 2007, as part of the Home Information Packs, anyone buying a home will get a certificate giving clear advice on its energy efficiency and running costs.

The certificate will also give an energy efficiency rating and advice on further improvements that can be made. Landlords may wish to note that from the 1st October 2008, all properties will have a certificate when they are made available for letting. We will keep you informed of this new requirement when we have further details. What is clear is that energy costs will increasingly become a factor when tenants are looking for a property and it makes sense for landlords to look at ways in which they can enhance the thermal performance of their properties. If you would like more information on how to improve your property please visit the website of our partners, Creative Environmental Networks at [www.cen.org.uk](http://www.cen.org.uk) where you will also note the section on landlords.

## Landlords fined for letting unfit flats

A landlord and her managing agent have both been fined £10,000 each for letting two flats in Balham which had been classed as unfit for habitation and made the subject of Closing Orders. The flats had been closed in 2005 but continued to be let in defiance of the Orders and the Council considered that prosecution was the appropriate action.

It is quite rare for the Council to make Closing Orders (now replaced by Prohibition Orders) but where they are made a common feature is the illegal conversion of non-residential space. If you do have such space and believe it can be converted into residential use, please make sure that you consult the Council's Planning and Building Control Services before going ahead with any work. Trying to undo the work of a poor conversion can be more expensive than doing it right in the first instance and you won't then run any risks of having enforcement action taken against you.

# Disability Discrimination Act 2005 (DDA 2005)

New duties in relation to lettings to disabled persons came into force on 4th December 2006. A landlord or manager may be required to provide or allow an auxiliary aid or service where it is necessary for reasonable enjoyment of premises or use of facilities and can be safely installed.

Regulations under the Act give examples of auxiliary aids and services, as including provision of furniture, furnishings, equipment and other chattels, replacement of taps or door handles, and provision or adaptation of doorbells. The new duties do not extend to any measures involving removal or alteration of physical features which are defined as features arising out of design or construction, features of approach, exit or access to premises, fixtures, and physical elements or qualities of land comprised in the premises.

Similar duties are imposed as regards variation of terms of tenancy which would unreasonably interfere with a disabled person's use or enjoyment of premises or facilities.

New rights are introduced regarding tenants' improvements and adaptations where these are likely to facilitate the enjoyment of premises by a disabled person and a tenancy agreement stipulates the granting of consent by a landlord. There is an onus on a landlord to justify (in writing) the withholding of consent or the imposing of any conditions to consent. If consent is unreasonably withheld, it must be taken as given. The Act makes provision for guidance and conciliation services by the Disability Rights Commission.

Further information on the legislation is available on the website [www.disability.gov.uk](http://www.disability.gov.uk), and from the Disability Rights Commission website [www.drc-gb.org](http://www.drc-gb.org).

Grants may be available towards provision of disabled facilities for individuals who have had an assessment by an Occupational Therapist (more information available from Environmental Services 0208 871 6171).

## Wandsworth Landlords' Open Day 6th June

The Council will be holding this event in the Civic Suite on Wandsworth High Street starting at 1pm with a repeat evening session at 6.30pm.

There will be plenty of information stands and two very good speakers who will discuss the local market and the effect of changes brought in by the new Housing Act.

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