Property insight

Spring 11

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Inventory providers

One effect of the growth in rental values has been the increase in the size of deposits held as "security". With the average monthly rent for a flat now being £1,120, and for a house £1,882 (ARLA Website - news report) the value of that security and the implications for damage claims has a different focus.

The general increase in consumer awareness on the holding of deposits means that we have to be ever more vigilant in managing the condition in which a vacating tenant leaves the premises. It is crucial that any inventories withstand challenge and the consequential scrutiny by the particular Tenancy Deposit Scheme and the legal system. Where a tenant challenges a proposed deduction for dilapidation a robust, formally recorded, inventory and schedule of condition provides the clearest evidence to defend a position successfully. Without such, the tenants will find themselves in a more advantageous position.

Following a pilot scheme ARIM has secured the services of two specialist providers to ensure consistency of approach and full compliance with TDS requirements.

The inventory and schedule of condition record a full report of each room supported with suitable photographic evidence. In addition, it details, among other things, meter readings, keys returned and alarm codes. It also contains clear guidelines on how carpets, appliances, windows and gardens should be left and the standard of cleaning expected.

The documentation is prepared at check-out, giving recommendations for works which, if implemented, are reflected in revisions issued at check-in. The majority of cases (subject to the terms of the tenancy agreement) allow for the cost of the check-out to be covered by the departing tenant.

As Ian Potter, Operations Manager of ARLA, states **"A well put-together inventory can give both landlords and tenants peace of mind throughout the occupation period....."**

If you require further details, please contact your Client Services Manager.

Clear guidance on fire safety

Fire safety in purpose-built blocks of flats understandably continues to have high profile. The Local Government Group is working alongside local authorities, private sector landlords, tenants' organisations, housing and environmental health professionals, and fire and rescue services to develop appropriate national guidance.

The guidance will hopefully clarify across the whole sector, a number of complex issues and uncertainties, particularly in relation to risk assessment and fire safety management, and ensures that residents get relevant advice from their landlords and their agents on what to do in the event of a fire.

The Department for Communities and Local Government (DCLG) and the Electrical Safety Council are funding the exercise and expect to publish definitive guidance in July which will complement existing fire safety guidance.

A consultation draft is now available and views from within the housing sector are being actively sought.

Block management

A Guide to living in Flats

The Association of Residential Managing Agents (ARMA) and the Leasehold Advisory Service (LEASE) have recently updated and launched one of their key guidance booklets **"Living in Leasehold Flats".** This recognises the complexity of living in a private leasehold flat partly because of the often complex regime (particularly relating to service charges) which is regularly subjected to legislative change and also the perceived conflict between the freeholder, the agent and the lessee (and more so where other parties are involved).

The guidance provides a timely overview of the legal, financial and practical framework and is perhaps even more relevant following the government announcement last year to drop plans to regulate the sector further.

Please speak to your Client Services Manager if you would like a copy of the guide.

An Accounting Guide to Service Charges

An extensive and detailed guide to accounting for residential service charges has been published by the Institute of Chartered Accountants in England and Wales (ICAEW) in conjunction with ARMA and the RICS. This has initially been published as a consultation technical release. Consultation is now closed but ARIM will keep you updated as and when the final version is released.

Changes to Factoring (leasehold property management) in Scotland

With over a third of Scotland's population residing in flats and apartments (CIH Scotland, The Property Factors Bill – A Summary), it is not surprising there are a number of concerns about the quality of services managing communal areas.

To address this, the Scottish Parliament introduced The Property Factors (Scotland) Bill on 1 June 2010. This has three key provisions:

- **A mandatory registration scheme**

  This will require every person appointed as a property factor to pass a 'fit and proper person' test. The register would be funded by an annual registration fee paid by property factors.

- **A statutory code of conduct**

  This will set out basic minimum standards of practice for all registered property factors. Homeowners would rely on these in their day-to-day dealings with their property factor. In extreme cases any factor falling below the minimum standards could be de-registered, preventing them from causing ongoing detriment to homeowners.

- **An accessible dispute resolution procedure**

  It is expected that a Property Management Committee will be set up to hear disputes between homeowners and factors. This Committee would have the power to ensure compliance with any contracts and minimum standards of practice, and where appropriate, require the factor to make a compensatory award or refund to the homeowner.

Full implementation is expected on 29 September 2011.

Deposit protection comes to Scotland

Legislation introducing a tenancy deposit protection scheme was passed by the Scottish Parliament last month and will become law later this year. The provisions of the Tenancy Deposit Scheme (Scotland) Regulations 2010 will apply to all private landlords and letting agents.

The Tenancy Deposit Scheme (TDS) will be 'free at point of use' with the operational costs funded from the interest paid on deposits held. It is estimated that the first TDS will not be operational until at least the beginning of 2012. No potential provider of TDS has been made public but the legislation does outline the following:

- The only scheme that will be approved by the Scottish Government will be custodial. This removes the option, available in England & Wales, for agents or landlords, to hold deposits themselves.
- It is believed that all existing tenancies, regardless of start date or tenure, will require deposit protection.
- Landlords and agents will have 30 days to protect a deposit received on a new tenancy and to notify the tenant.
- When a tenancy is terminated, landlords and agents will have 30 days to apply to the TDS for any monies they believe are due to them. If no claim is made the deposit will be returned in full to the tenant.

The Scottish Government, estimate that between 8,000 and 11,000 tenants have £3.6m of their deposits wrongly withheld every year, so the new proposals have been welcomed by Shelter and the National Union of Students. The National Landlords Association (NLA) agrees but with caution. They believe the scheme should at least provide the same availability of products as their English and Welsh counterparts.

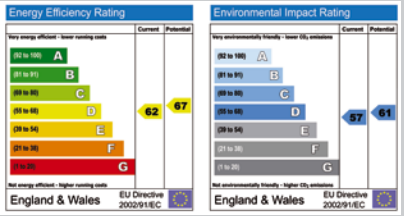
TDS is intended to be in place by this time next year and ARIM will certainly be planning the implementation of the scheme to ensure compliance.

A change in the law on EPCs

The government is proposing changes to the current EPC (Energy Performance Certificate) regulations.

Current legislation requires that the EPC is in place within 28 days of marketing. The new proposals plan to reduce this so that Trading Standards Officers will have the power to request proof that the certificate has been ordered and to view the actual EPC 7 days after marketing has commenced.

Trading Standards currently have the power to require the "relevant person" (vendor or landlord) to produce copies of the EPC for inspection. The new proposals extend that power to include persons acting on behalf of the vendor/landlord - e.g. estate agents, agents, letting agents or managing agents.



And finally it is proposed that the full EPC will need to be attached to all written particulars which means that any recommendations from the EPC are included in the marketing materials.

LHA & budgets

There have been a number of government initiatives recently which will have some direct impact on the housing market.

Local Housing Allowance (LHA)

You will recall from our last issue of Property Insight, a number of changes are to be implemented over the next five years. The following relevant matters became law as at 1 April 2011:

LHA is now calculated using the 30th percentile. Until now the Valuations Office Agency (VOA), has collected rent data for accommodation with a size range from a shared room to five bedrooms. The middle rent for the range of room sizes is the median (50th percebtile). From 1 April 2011, the VOA will provide LHAs at the bottom third of the market for that area.
The assessment of the rent ranges has traditionally disregarded the exceptionally high and exceptionally low rents before assessing the 50th percentile.

This will presumably continue to apply to the 30th percentile. This effectively means 3 out of 10 properties in any area would be affordable to Housing Benefit tenants under the LHA level defined as opposed to the previous ratio of 5 in 10.

Legislation on paying tenants direct has been relaxed. The government has now said that landlords will be paid direct, for a maximum of two years, *as long as their rents are affordable.*

These changes apply to all new claims and existing claimants on their next review or following a significant change in their circumstances.

Rent "caps" (the maximum rent covered by LHA) are now in place

£250 per week – 1 bedroom

£290 per week – 2 bedroom

£340 per week – 3 bedroom

£400 per week – 4 bedroom

Abolition of 5 room rate

Budget

This included: Disaggregation of stamp duty on bulk house purchasing; Potential changes to the UK Reit regime; Simplification of the Planning system.
It will be some time before we will see the impact of these changes. But, in general, the industry has welcomed the proposals. Liz Peace, chief executive of the British Property Federation, said: **"This is a budget that the property industry will want to get behind. It has a general thread that is supportive of enterprise and a number of issues on which our industry can genuinely feel it is being supported."**

HSE safety update – flues in voids

The introduction of fan-assisted gas appliances in the mid 1990's allowed gas central heating boilers to be installed away from external walls. This meant that builders could make better use of space in new-build and refurbishment properties by locating boilers on internal walls. The flues to these boilers were, in some cases, routed through voids in the ceiling spaces and in some cases through stud partitions.

What seemed like simple flexibility on installation has since caused aggravation and problems as it is not so easy to check its integrity both in terms of whether it is correctly installed or whether it is still in good condition and compliant with current legislation.

A **"revised technical guidance"** has been issued which requires inspection hatches to be fitted in properties where the flue is concealed within voids and cannot be inspected. Landlords have until 31 December 2012 to arrange for these hatches to be installed. Any engineer working on affected systems after 1 January 2013 will advise the landlord that the system is **"At Risk"** and switch the supply off.

Rest assured that ARIM is working closely with contractors to deliver competitive pricing and ensuring full compliance.

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