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Protecting Tenant Deposits

As one of the 3 statutory schemes (of which ARIM is a member), The Dispute Service (TDS) recently published its annual report. Now in its second year of operation, we can share with you our own facts and figures as a comparison:

TDS

- tenancies registered increased by nearly 60% from 470,323 to 786,405.
- £700 million deposits
- tenancies terminated increased from 41,261 to 224,731
- deposit disputes increased from 1,901 in 2007-08, to 6,491 (2.89%) in the year to March 09.

ARIM

- tenancies registered 2383
- £2.32 million deposits
- tenancies terminated 996
- only 7 recorded disputes with a further 2 in the pipeline (0.9%)

In percentage terms, the volume of dispute cases is low, but TDS is anticipating a doubling of its case load



in the current year which will impact in many ways, not least in membership subscription rates.

The report highlights inadequate inventories, with cleaning being the major cause of dispute. ARIM continues to be committed to ensuring client assets are protected by:

- working in partnership with its letting agents to ensure all documentation accurately reflects the condition of the property, including gardens, on move-in and out

- including, as one its priorities for 2009/10, a full review of the "void" process to ensure efficiency of operation

Deposits held on Scottish tenancies are not currently impacted. However, it was announced by MSP Alex Neil on 24 September that a national scheme for safeguarding rent deposits is to be introduced in Scotland. As yet, no timescales have been given for its implementation but, as always, we will keep you posted.

For a full copy of the report go to www.thedisputeservice.co.uk

The BPF Tenancy Agreement Goes Live

In our Spring/Summer 09 edition of Property Insight, we reported on the introduction of a new model assured shorthold tenancy (AST) agreement developed by the British Property Federation (BPF). ARIM has adopted the new agreement as the standard default document for most Clients.

Although it is early days, it seems to have been well received. Its simplicity and use of plain English with clear explanation of responsibilities should make any future disagreements about "who does what" much easier to resolve.

A copy of the agreement is available on request.

Creation of the Property Standards Board

In response to Sir Bryan Carsberg's much awaited review of the residential property market in July 2008 a new industry standards initiative has been created.



The Carsberg Review sets out 30 main recommendations for improving the regulation within the industry and creating better competition. The overall aim is to make all parties involved in all tiers of the residential market more accountable and all transactions more transparent.

The RICS, ARLA and NAEA, who all backed the commissioning of the Carsberg review, have come together in response to these recommendations to create The Property Standards Board (PSB). The initiative was formally launched in the middle of September and the Board's ambition is to create a standard code of practice for estate agents, letting agents and property managers. It will aim to provide better clarity for consumers on all sides involved in buying, selling and renting a residential property.

Representatives from the RICS, ARLA and NAEA will form part of the Board for the short to medium term but the ideal is that the Board becomes wholly independent of these bodies as soon as possible. The long term plan is to gain Government approval for the PSB to become the UK's leading and most authoritative governing body for the residential sector, with the other organisations acting as advisors.

Around one third of all UK residences are rented, with the private sector accounting for around half of these (14% in 2008). Renting and letting is becoming more and more popular,

and provides a crucial housing alternative for a population facing a continuing uncertain economic climate. This economic necessity, coupled with changing social attitudes towards letting over buying, is making the UK private rented sector an increasingly significant element of the UK housing market, and is expected to continue to grow in the future.

It is predicted that over the next 20 years the number of households will increase 30% from 21.4 million to 27.8 million (Housing and Planning Key facts - Local Government Analytical Services Directorate). The same source also predicts that over the same period the number of one person households will increase by 40% to around 10.9 million. It is expected that a large number of these will be renting properties. Even if there is no increase on the third of people already living in rented accommodation, there will be at least 8.6 million households needing accommodation and therefore potentially a massive increase in demand for private stock, particularly as it is unlikely that there will be sufficient new social housing stock.

With this massive potential increase in demand for rental property, the PBS can be expected to focus on tenant protection through the regulation of letting agents. Presently around 50% of letting agents do not subscribe to any particular accreditation scheme or regulatory

body. Some landlords do not use any type of third party letting agent and presently, unless they volunteer for a type of accreditation, they are not regulated by anyone. This means that potentially over 50% of rental transactions fall outside the radar of any regulatory body. The PSB wants to change this by encouraging private landlords and non registered agents to volunteer to join the initiative and adhere to a code of practice. They would also seek to oversee the regulation of agents already signed up to existing schemes offered through RICS, ARLA, NAEA and NALS - hence the sector builds on its existing structure, rather than introducing a completely new regime, with the PSB being the linch pin.

The PSB also wants to look at landlords who can potentially be targeted by cowboy agents. Landlords most affected are the smaller buy-to-let landlords who have invested in property during the boom but have no real technical experience. They leave themselves open to being misled by unscrupulous letting and managing agents who may, for example, inflate contractor costs.

The outcome of the PSB's work in the future will hopefully be the voluntary regulation of the whole residential sector and improving protection for all consumers involved - as Carsberg recommended, setting standards, creating competition and regulation and capacity for redress for the 21st Century.

The focus in tackling areas of greatest risk within the sector started with the Housing Act 2004. Since then, a range of bodies, including the Law Commission, Shelter and the Citizens' Advice Bureau have all made proposals for further change. Add into the mix, the Rugg Review, and surely the time is ripe for the delivery of a confident PRS with continued growth in professionalism, tackling bad landlords and managing agents, and enhancing consumer experience, all underpinned by a robust safety net.

Health & Safety

Revised ACoP

Whilst there has been no real new initiative this year, there is one particular issue that has surprisingly kept a very low profile considering the potential impact.

A revised Approved Code of Practice (ACoP) affecting domestic water systems means that any home is impacted. Previously, domestic properties were not affected because the old Code applied only to those installations with a 300 litres or greater capacity. However, that limit is now removed.

Legionella bacteria can multiply in hot and cold water systems and any storage tanks, spreading via shower heads and taps. High throughput and low volumes reduce the likelihood of bacteria reaching dangerous concentration, but there is a requirement to carry out a risk assessment to identify and assess potential sources of exposure. This would then lead to control measures being put in place to deal with any identified risks.

The scope and implication is potentially enormous but few appear to be proactively approaching the subject. We are in discussion with an Environmental Consultant to see if there is a way of resolving the obligation without enormous expense. More to follow in due course.

Return of VAT to 17.5%

The standard rate of VAT will revert to 17.5% from 1 January 2010. The temporary decrease to 15% effective from 1 December 2008 was announced as part of a group of measures in last November's pre-Budget report, aimed at stimulating the economy.

All businesses and individuals will be affected from the start of next year. Anyone that is unable to recover fully the VAT that they incur will see an increase in costs.

Whilst the rate increase was expected, it is disappointing that once again the change in VAT rate comes at a difficult time for business.

OFT versus Foxtons

Few will have failed to miss the outcome of the long awaited case of the Office of Fair Trading (OFT) v Foxtons. The case centred on the reasonableness of commission payable to the London-based agent where they had been instrumental in negotiating the initial let – (i) on the renewal of a tenancy, although not involved in negotiating the renewal terms and/or (ii) on the sale of the property to this tenant, regardless of whether or not it had had a hand in the sale.

Foxtons' contracts had demanded an 11% renewal commission if a tenant stayed beyond the initial one-year tenancy, and charged 2.5% of the value of the property if the tenant went on to buy it. The High Court judge, Mr Justice Mann, concluded in finding the case against Foxtons to be proven, that the clauses within their letting contracts were ambiguous and the levels of commission were excessive.

The Foxtons case has not had the consequence of illegitimatising this practice, nor did Mr Justice Mann seek to do this, irrespective of the ambitions of the OFT. Whilst the National Landlords Association (NLA) would of course like to see renewal fees banished, RICs and ARLA are not advocating this as best practice. They continue to insist on

transparency from all their members and full disclosure of all and any fees.

As it stands, some agents, generally limited to London, where competition is fierce for good quality tenants, do continue to charge renewal fees even when not involved in the renewal negotiation, but maybe not for much longer.

ARIM is currently engaged with more than 100 letting agents across the UK mainland, with around 20 of those London-based. Where ARIM is managing the relet process, we have seen a change in behaviour and fee levels, particularly reflecting our endeavours to manage avoidable expenditure. The majority of London agents that ARIM use do not now charge a renewal fee.

For those letting agents that do insist upon a renewal fee without doing anything to earn it, perhaps those seeking the services of such agents, like us, should make a stand and refuse to accept them.



Shelter Update

You will recall from our last edition of property insight that ARIM launched a charity appeal to raise funds for Shelter, as part of our 10th anniversary celebrations.

The intention was to run the appeal up to the achievement of the fundraising target of £10,000, with ARIM matching the

fundraising efforts of the ARIM office with the highest total raised at the point the target is reached.

Fundraising activities have included:

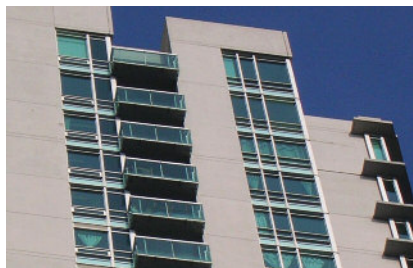
- walking the Rob Roy Way
- cycling the South Downs Way
- climbing Scafell Pike and Ben Lomond
- hosting a race night
- playing a mixed 6-a-side football match
- losing weight through a personal slimathon

We have already smashed our £10,000 target, but we are going to continue the fundraising efforts until the end of the year. We estimate that we will actually be handing over close to £17,500 to Shelter early in the new year, with some further opportunity for them to claim gift aid to supplement this.

We would like to take this opportunity to thank all clients and suppliers that have supported our fundraising efforts so far, either by taking part, donating prizes or sponsoring events.

Housing (Scotland) Bill

The Housing (Scotland) Bill, to be introduced in early 2010, will end the right-to-buy rights of social housing tenants residing in new build or housing association properties.



Aside from social housing sector matters, there has been consultation on whether to include provisions on some private housing sector issues. Potentially in scope are:

Landlord registration

- Giving a local authority a power to obtain information from people connected with a property, in order to enable or assist it to exercise its landlord registration functions. This would be on the model of section 186 of the Housing (Scotland) Act 2006.
- Increasing the maximum fines for landlord registration offences, to bring them in line with the provisions on HMO licensing in the 2006 Act.
- Including information in the register about landlord registration applications that have not yet been processed or approved and cases where an applicant has been refused or deregistered. This could make the register more useful for tenants, neighbours and other members of the public.
- Allowing a local authority to charge a fee for the addition of an agent to a registration.

HMO licensing

- Changing the definition of a licensable HMO to deal with the problem of short-term lets, where residents are living and working in Scotland, particularly as regards the accommodation of migrant workers.

- Making planning permission (where it is required) a requirement for the grant of an HMO licence.

Disrepair in privately owned houses

- Maintenance powers – giving local authorities the power to pay a "missing share" in relation to a maintenance account for common maintenance, on behalf of owners who are "unwilling" to pay; to charge owners for drawing up maintenance plans where they fail to do so; and to charge owners for the cost of registering maintenance documents.
- Charging orders and repayment charges – a technical amendment to reintroduce a right of appeal against charging orders; and giving local authorities the power to charge owners the registration costs relating to repayment charges.
- Enforcement powers – removing the requirement that Housing Renewal Area draft designation orders must be approved by Scottish Ministers; extending situations where local authorities can provide assistance to include demolition; and ensuring energy efficiency measures are included as possible "improvements" which can attract assistance and be specified in work notices.

We await the outcome of this consultation. A number of other private housing matters that could be taken forward in primary legislation have emerged, particularly from their Review of the Private Rented Sector, which was published in March. These issues are more complex with wider implications and would require detailed discussions with stakeholders in order to develop fully considered policy positions and may involve a PRS stakeholder working group.

Issues Facing Housing Associations May Present Opportunities for the PRS

According to an article published by the Telegraph on 29 August, fears are growing that housing associations will have to sell off thousands of social homes to meet the interest bill for their debts in the face of falling rental income and tumbling house prices.

Housing associations own half of the 4.8m social homes in the UK, but are facing a dramatic loss of income next year that could damage the provision of low-cost housing in Britain. Under their charter, associations set rents that track retail price inflation each September. In August RPI was -1.3% and in September -1.4%. At that level, the sector would lose an estimated £172m in a year.

Housing associations receive half their funding from the state and half from a mixture of rental income, low-cost property development for sale, and bank loans. According to the Tenant Services Authority (TSA), 59 housing associations are already entirely dependent on selling properties to cover their interest bills and 160 associations rely on sales for at least 25% of their interest cover. The sector as a whole made a profit after tax of only £319m last year to reinvest in housing.

The TSA said the sector is already planning asset sales including shared ownership units and right-to-buy properties of £1.4bn over the next 12 months.

However, although the amount of planned property sales has risen by £300m in the past three months, the TSA has yet to see evidence of associations having to sell rented social housing beyond what is in the financial plans. They believe that most associations are in a position to weather the downturn and not have to sell assets.

The Communities and Local Government Select Committee also insisted that housing associations remained a good place for long term investment with the majority of them offering the strong fundamentals of low gearing and steady income.

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