

# Landlord & Tenant Law Update

Issue 1 2010

## New decision on penalties for failure to protect deposits

A recent High Court ruling has resulted in a controversial decision about the requirement to pay deposits in relation to Assured Shorthold Tenancies into a tenancy deposit scheme.

### The Facts

A landlord of residential property instructed Hannells Lettings Ltd to act for them as agents in relation to an Assured Shorthold Tenancy granted 28 February 2008. The tenant paid the deposit due on 4 March 2008. The deposit was lodged with the DPS on 19 May 2008 and the tenant was notified of this on 21 May 2008 (that is, beyond the 14 day period commencing from receipt of the deposit by the landlord).

### The Law

The Housing Act 2004 includes the following provisions:

- (i) Any deposit paid to a person in connection with a shorthold tenancy must, as from the time when it is received, be dealt with in accordance with an authorised scheme;
- (2) A landlord who has received a deposit must give the tenant and any relevant person such information relating to the authorised scheme applying to the deposit;
- (3) Such information must be given to the tenant and any relevant person within a period of 14 days beginning with the date on which the deposit is received by the landlord;
- (4) Failure on the landlord's part to comply with the "initial requirements" of an authorised scheme may result in the tenant being awarded sum of money equal to three times the amount of the deposit.

### Basis of Claim

The tenant sued the landlord and the letting agents for failure to pay the deposit into an authorised scheme and notify the tenant that it had done so within a period of 14 days.

The Court was asked to consider (amongst other issues):

- Could the letting agents be held liable, or did liability rest with the landlord?
- Did the fact that the deposit was paid into an authorised scheme, albeit outside the 14 day period, have any bearing on the tenant's entitlement to compensation?

### The Decision

The Court decided that due to the wording used in the Act the letting agents could be held liable.

As to the issue of the tenant's entitlement to compensation, the Court held:

- The Act itself does not impose a requirement to pay the deposit into an authorised scheme within 14 days of receipt; only to provide the tenant with details as to the authorised scheme (see above)
- Although the authorised scheme rules required that the deposit be lodged with them within 14 days of receipt, this was not expressed to be an "initial requirement"
- Consequently the landlord, or the landlord's agent's, failure to lodge the deposit within 14 days did not represent either a contravention of the Act or a breach of the TDS rules
  - The fact that the deposit was paid into an authorised scheme (and the tenant provided with information in relation to that scheme) in advance of the trial meant that the tenant had no entitlement to compensation

### Conclusion

Whilst the decision does appear to rely upon a correct interpretation of the relevant statutory provisions, in practice it means that there may be little incentive for landlords to register deposits until such time as their tenants threaten court proceedings. It is possible that the decision will go to appeal.



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## Government plans for private rented sector

In May 2009 the Government published a consultation paper on the Private Rented Sector. In February of this year the Government responded to the consultation by publishing "The Private Rented Sector: Professionalism and Quality – Consultation: Summary of Responses and Next Steps" (which can be viewed online at [www.communities.gov.uk](http://www.communities.gov.uk)).

In this document John Healey, the Housing Minister, announced a number of proposals, including:

- Funding for a new free "housing hotline" offering guidance and assistance to tenants
- Launch of on-line directory of landlords, to enable tenants to compare landlords
- Requirement that written tenancy agreements become mandatory
- Tenancy rights extended to shared accommodation and short-term let tenants, including many students and seasonal workers
- A National Register for Landlords (see previous editions of



Letting Agents Newsletter)

- Better regulation of letting and management agents

The government now plans to work closely with landlord and tenancy groups in order to conclude a framework of legislation, which will allow the proposals to be implemented. Of course, whether anything comes of initiatives may depend upon the outcome of the General Election!

## Foxtons - Unfair Terms: the final chapter?

The Court Order made in December 2009 in the Foxtons case has recently been made available by the Office of Fair Trading. Foxtons had until 29 January 2010 to appeal the High Court's decision, but decided not to (despite early indications that they would). The Court Order resulted from a judgement handed down by the High Court in May 2009, which ruled that Foxtons' standard terms of business were unfair. The Office of Fair Trading had begun legal action against Foxtons following complaints from landlords about exorbitant commission fees being charged.

The effect of the Court Order is as follows:

- Foxtons is prevented from relying on renewal commission terms which were not flagged up to clients at the outset, except where Foxtons remain instructed to manage the property.
- Foxtons is prevented from relying on terms which entitled them to charge commission in the event that the landlord sold the property to the tenant.

- Foxtons is prevented from relying on terms which entitled them to charge commission in the event that the landlord sold the property to a third party where the tenant remained in occupation.

Foxtons has had to amend their terms of business accordingly. They have had to make the renewal commission terms more transparent; reduce the amount of renewal commission chargeable; limit their ability to charge renewal commission to two renewals.

Foxtons' amended terms entitle them to charge commission where the tenant remains in occupation after the term expiry, but provides that the landlord will be paid a pro-rata refund in the event that the tenant leaves before the expiry of the renewed term.

The OFT has said that it will use the decision to put pressure on other letting agents who are relying on terms adjudged to be unfair by the Foxtons ruling.

## Health & Safety obligations

Reports of landlords facing fines for health and safety breaches continue to emerge:

An Oxfordshire landlord has been **fined £8,000** plus costs for failure to ensure gas appliances were safe. The landlord was prosecuted by the HSE for contraventions of the Health and Safety at Work Act 1974 and the Gas Safety (Installation & Use) Regulations 1998.

A London landlord has been **fined £15,000** for failure to register a four-storey house as an HMO and eleven contraventions of HMO management regulations. The landlord was prosecuted by Lewisham Council. The landlord

had been in the process of converting three of the floors into self-contained flats and the property (containing fourteen occupants) was said to resemble a building site

A Haydock landlord has been **fined £6,000** plus costs by Magistrates for failure to comply with an Improvement Notice issued by St Helen's Council Environmental Health Officers. The Improvement Notice had stipulated a number of serious health and safety hazards, which resulted in the tenant having to live in "sub-standard" and unsafe conditions.

Private sector landlords need to be aware of their responsibilities for the health and safety of their tenants and the implications of failing to comply with their duties.