

**St Mungo's**

**Code of Best Practice for Landlords**

11 March 2022

## **Introduction**

When you enter into an assured shorthold tenancy ("**AST**"), which is the most common type of tenancy agreement between landlords and tenants, you are entering into a binding contract. This involves you accepting various responsibilities, which this guide is intended to help you understand. This in turn should enable you to create a positive, trusting and non-contentious relationship with our clients.

Please note that this guide is intended to provide a brief high-level overview of some of the general issues that you may encounter as a landlord on a day-to-day basis, either before a tenancy (pages 2 to 6 inclusive), during a tenancy (pages 7 to 9 inclusive), or at the end of a tenancy (pages 10 and 11).

If specific issues or concerns arise in relation to your tenants, we would recommend that you seek legal advice from a solicitor who specialises in residential tenancies and landlord and tenant disputes.

## **Before a tenancy**

### **1. Engaging an Agent**

You may find it helpful to engage an agent to let and / or manage the property, particularly if you do not have the time to manage the property yourself – an agent will also know which terms in an AST are usual or not, which may assist in negotiations with tenants. You should check that the agent complies with all relevant regulations and ensure that they are a member of a professional body.

### **2. Accreditation Schemes**

We would recommend that you join a landlord accreditation scheme. These schemes provide training and support to property owners in fulfilling their legal and ethical responsibilities. Membership of such a scheme would signal to your tenants that you meet a set of professional standards. The National Landlords Association, the Residential Landlords Association and the Guild of Residential Landlords run national schemes and your local authority could advise you on schemes operating in your area.

### **3. Consents**

If you occupy the property under a lease, you should check the terms to see whether there are any restrictions on letting the property out to sub-tenants. This is because some leases will require you to obtain your property owner's consent before sub-letting the property. You must also make sure that your insurance provider and (if you have a mortgage) lender have consented to the tenancy if necessary.

### **4. Licences**

If you operate a small house in multiple occupation ("**HMO**"), which is a property occupied by three or more unrelated people who share facilities (such as the kitchen and / or bathroom), you must comply with the HMO Management Regulations.

A large HMO, which is a property occupied by five or more people in two or more households who share facilities, must be licensed with the local authority.

Some local authorities also require property owners to hold a licence to let out a property under an additional licensing scheme (covering small HMOs) or as part of selective licensing, which is a requirement for all rented properties in the local authority's area to be licensed.

You must give tenants a statement of the terms on which you live in the property – you must also obtain references from anyone wishing to occupy. If your property must be licensed, failure to license is a criminal offence, the tenant may apply for rent to be repaid and you will not be able to evict them.

### **5. Tenant Checks**

You will need to confirm the tenant's identity, immigration status, credit history and possibly their employment status. In England, you must check that all people aged 18 or over who are living in your property as their only or main home have the right to rent. You must carry out this check before the start date of the AST, either via a manual document-based check or a check via the Home Office's online checking service. You cannot insist on which option the tenant selects.

## **6. Equality Act 2010**

Under the Equality Act 2010, you must not discriminate on the grounds of race, religion, disability or sexual orientation.

You also have a duty to make reasonable adjustments to assist disabled people if requested to do so by (or on behalf of) a disabled tenant who has been put at a substantial disadvantage. This could involve, for example, installing a ramp or a lift. For existing tenanted properties and properties that are to be let, this duty includes making physical changes to the property. It also extends to changing how things are done and providing an auxiliary aid for the tenant.

Failure to comply constitutes discrimination against the disabled person. It will also constitute unlawful discrimination if you choose not to rent to somebody because they are disabled.

## **7. Length of Tenancy**

You must allow tenants to stay in the property for a minimum of 4 months.

If the tenancy is for more than 3 years, the document must be signed as a deed.

If the tenancy is for more than 7 years, we would recommend that you seek legal advice.

## **8. Preparing the AST**

We would request that you use our template AST.

If you do not use our template AST, you should seek legal advice on preparing and negotiating the AST. The AST that you use should:

- be fair;
- be in writing;
- cover everything that you have discussed and agreed with the tenant; and
- annex a plan that clearly shows the area over which you are granting the tenancy.

Prospective tenants should be given every opportunity to read and understand the terms of the AST and any related documents carefully, before agreeing to sign. In particular, you should not pressure or force them into a decision, should allow them to ask questions and suggest amendments, and should make sure that they understand the terms and conditions of the AST.

The AST should not include any terms that are unfair to the tenant. Such terms may include:

- Terms that require rent to be paid free of deductions, as this denies the tenant their right of set-off. If you fail to make a required payment to the tenant, the tenant should be able to deduct that amount from the rent.
- Terms that allow you to cancel or suspend the provision of any significant benefit under the AST, such as the right to use a shared bathroom or kitchen.

- Terms that allow you to excessive rights to enter the property. If you are allowed to enter, this should only be for certain purposes and at reasonable times.
- Terms that give your agent or surveyor the final decision on whether repairs have been carried out to a satisfactory standard.
- In fixed term tenancies, an absolute ban on both assignment and subletting.
- Terms that prohibit the tenant from keeping any pets.
- Forfeiture clauses that do not make it clear that you must obtain a court order before evicting the tenant.
- Any express terms limiting or withholding rights to implied terms, for example in relation to health and safety.
- Financial fees, charges or penalty charges that are prohibited by statute.
- Clauses that restrict the tenant's exclusive possession, for example by specifying that the tenant cannot change the locks.

Please note that, if the AST conflicts with the landlords' statutory duties, the legislation will prevail.

Generally, where your consent or approval is required, the AST should make clear that such consent or approval is not to be unreasonably withheld or delayed. If the tenant is required to do something, you should consider whether it is fair for this to be required only following a written demand by you or within a set period after you give notice. It is also usually fair for the AST to state that any costs you seek from the tenant must be 'reasonable and properly incurred' and that you must act 'reasonably'.

## **9. Utilities**

The AST should make clear who is responsible for bills such as electricity, gas, water and council tax. The tenant will usually pay for these and they must have a choice regarding the utilities provider.

## **10. Fees**

Most fees charged in connection with a tenancy are prohibited. These include fees for:

- holding the property;
- carrying out reference checks;
- viewing the property;
- setting up an AST;
- producing an inventory;
- leaving the property;
- third party fees; and

- anything done for someone other than the landlord or tenant but for which the landlord is required to pay the cost.

If you attempt to charge the tenant for these fees, you could face a fine of up to £5,000 and, if a further breach is committed within 5 years, up to £30,000 or prosecution – you may also not be able to obtain possession from the tenant.

The only permitted fees are:

- rent;
- a tenancy deposit which is refundable at the end of the tenancy, capped at 5 weeks' rent where the total annual rent is less than £50,000, or 6 weeks' rent where the total annual rent is £50,000 or above – you must place this in a government-approved scheme within 30 days;
- a refundable holding deposit (to reserve a property) capped at 1 week's rent, which must be returned to the tenant if the tenancy is not entered into;
- payments associated with early termination of the tenancy (when requested by the tenant);
- payments for utilities, communication services, TV licence and Council Tax;
- payments capped at £50 for the variation, assignment or novation of a tenancy;
- a default fee for replacement of a lost key or security device and late payment of rent – the latter must be limited to interest on the outstanding amount, capped at 3% above the Bank of England base rate (and, in Wales, with a grace period of 7 days); and
- a fee if the tenant wishes to end the tenancy early, although this fee must not exceed the loss incurred by you or reasonable costs to your letting agent if you are using one.

You can offer but cannot insist upon a deposit replacement product as an alternative to a cash deposit. You may also request a rent guarantee, i.e. someone to guarantee the rent paid by the tenant.

### **11. Mandatory Information**

You must provide the tenant in writing with your name and an address in England or Wales where you will accept service of notices. The rent is not 'lawfully due' from the tenant until you do so, so the tenant could withhold the rent and a court will not treat them as liable for any arrears. You should also ensure that the tenant has a telephone number for you that they can use in an emergency.

You must provide tenants with the following documents free of charge:

(a) The government's 'How to rent: the checklist for renting in England' as a printed copy or, if you agree, via email as a PDF attachment. You cannot evict the tenant if you have not provided this.

(b) If there are gas appliances, a gas safety certificate. You must also provide new tenants with a copy of the most recent annual gas safety check and the new certificate within 28 days of each check. This is needed for each appliance and you may not be able to evict tenants if you have failed to comply.

(c) Prescribed information regarding the approved scheme that the deposit is placed in. Failure to do so means the tenant could take you to court and claim between 1 to 3 times the amount of the deposit – you will also be unable to obtain possession from the tenant unless you refund the deposit first.

(d) Except for some HMOs, an Energy Performance Certificate (EPC) showing the energy performance rating of the property. All properties must usually have a rating of at least grade 'E' and the EPC must be provided at the earliest opportunity. You may not be able to evict tenants if you have not provided this and local authorities can impose penalties of up to £5,000 for breaches of these regulations.

## **12. Preparing the Property**

Before the tenant moves in, we would recommend cleaning the property to a professional standard and preparing a detailed inventory or check-in report (ideally including a photographic Schedule of Condition) recording the contents and condition of each room. A copy of this should be provided to and agreed with the tenant (and signed by both of you). The AST will often then state that the tenant is not required to return the property to you in any better state of repair than that shown in the inventory. This will make things easier if there is a dispute about the deposit at the end of the tenancy.

## During a tenancy

### 1. Landlord's Obligations under the AST

You will usually be obliged under the AST to:

- provide the tenant with suitable means of access to and exit from the property;
- allow the tenant quiet enjoyment of the property;
- keep in repair:
  - the structure and exterior of the property (including the drains, external pipes, gutters and external windows);
  - the installations in the property for the supply of water, gas and electricity and for sanitation (including basins, sinks, baths and sanitary conveniences);
  - the installations in the property for space heating and heating water; and
  - the cooker, washing machine, tumble dryer, fridge, freezer and dishwasher (if you have provided these appliances at the property);
- deal with any issues involving the supply of water, electricity, gas, sanitation and heating;
- maintain any appliances and furniture that you have supplied;
- seek the tenant's permission to access the property and give at least 24 hours' notice of any proposed visits (which should take place at reasonable times and with repairs carried out within a reasonable period of time);
- insure the property and any items that you own at the property against loss or damage by certain insured risks (e.g. flooding or fire); and
- make good any damage caused by those insured risks.

Failure to comply with any of your obligations under the AST will constitute a breach, for which the tenant may sue for damages or seek a court order for an injunction or specific performance.

### 2. Landlord's Obligations under Statute

You may have also statutory obligations and implied terms in relation to repair, as follows:

- if the AST is for a term of less than seven years, you must under the Landlord and Tenant Act 1985 keep in repair the structure, exterior and installations for the supply of essential services at the property (for example, the boiler);



- under the Homes (Fitness for Human Habitation) Act 2018, you must ensure that the property is fit for human habitation at all times – this may extend beyond mere repairs and include improvements (e.g. if there is damp, mould or cold resulting from a lack of damp proof coursing in a property or single pane windows); and
- under the Defective Property Act 1972, you must take reasonable care to keep the tenant reasonably safe from personal injury or damage caused by defects which have arisen due to your failure to maintain and repair the property properly.

Failure to comply with any of your obligations under statute will constitute a breach, for which the tenant may sue for damages or seek a court order for an injunction or specific performance.

### **3. Health and Safety Obligations**

You should check regularly to ensure that all products, fixtures and fittings that you have provided at the property are safe and that there have not been any product recalls. To prevent accidents associated with blind cords, blinds should be safe by design and not have looped cords.

You must have at least one smoke alarm installed on every storey of a property that you let out. If you have solid fuel appliances (such as wood burning stoves or open fires), you must also have carbon monoxide detectors installed.

You must ensure that any furniture supplied has the required fire safety labels and is fire resistant.

You must ensure that the water supply is in good working order and carry out a risk assessment to assess the risk from exposure to Legionella.

The property must be safe, healthy, free from things that could cause serious harm, and fit for human habitation at the start of and during the tenancy. If it is not in this condition, and any necessary repairs are not carried out within a reasonable time, the tenant can take you to court. The court could then make you carry out repairs and pay compensation. Tenants can also take action in the magistrates' court if the conditions at the property are deemed to be a statutory nuisance. The magistrates could order works to be carried out and compensation and / or a fine paid.

If the property is in an unsafe condition and you refuse to repair it, please bear in mind that the tenant may contact the local authority. The local authority have powers to make landlords deal with serious health and safety hazards and they could also report this to your local Trading Standards.

If the tenant has a serious complaint about the property and the local authority has sent you a notice ordering you to make repairs (known as an "improvement notice"), you may not be able to evict the tenant with a section 21 notice (i.e. a no fault eviction) until 6 months have passed since the notice.

Failure to comply with a statutory notice is an offence. Depending on the notice, local authorities may prosecute or fine you up to £30,000. Local authorities also have powers to apply for banning orders, which prevent landlords letting out property if they are convicted of certain offences. If you receive a banning order, you will be added to the national Database of Rogue Landlords and Property Agents.

### **4. Mandatory Information**

You should provide tenants with the following documents:

(a) A record of any electrical inspections, which are required every five years, including proof of the safety of electrical installations and fixed appliances. You should also carry out portable applicable testing (PAT) on any electrical appliances that you provide and supply the tenant with a record.

(b) Evidence that smoke alarms and any carbon monoxide alarms work on the first day of the tenancy. Failure to comply with this requirement can lead to you facing a civil penalty fine of up to £5,000.

## **5. Tenant's Payment of Rent**

Tenants who are entitled to Housing Benefit or Universal Credit may receive assistance from the government to pay their rent. If a tenant is having difficulty paying their rent, you can request payment of rent from the tenant's Universal Credit by applying for a 'Managed Payment to Landlord' using the government's 'Apply for a Direct Rent Payment' service. You should always use this formal mechanism and should never use the tenant's own log in details for the Universal Credit website.

Please also note that it is unlawful for you to refuse to let to somebody who is receiving Housing Benefit or Universal Credit. You also cannot refuse to provide the tenant with keys simply because the direct payment of the housing cost element of Universal Credit has not yet been set up.

If the tenant is experiencing financial difficulties, you should try to be helpful and sympathetic and encourage them to speak to you. You should work together to agree a repayment plan if the tenant is unable to fully pay their rent. In particular, possession action through the courts should always be a last resort, as it is extremely costly and time consuming – please see the following section for details.

## **End of tenancy**

### **1. Options**

If the tenant wants to stay at the end of the tenancy, you will need to consider whether you want them to:

- a) leave the property;
- b) sign a new fixed term AST; or
- c) have a 'rolling periodic tenancy', which means that you carry on as previously but the tenant can leave at any time by giving notice (normally one month's).

Please note that renewal fees are prohibited and that you can only increase the rent by:

- agreement;
- as set out in the AST; or
- by following a procedure set out in law.

You must give the tenant proper notice if you want them to leave, with the length of notice period depending on the grounds being specified and the term of the AST. You can only legally remove the tenant from their home with a court order for possession and a warrant that has been executed by a court bailiff or sheriff. You must also normally allow any fixed period of the tenancy to have expired, unless there is a break clause or you have grounds for eviction.

If the correct procedures are not followed, you may be guilty of harassment or illegal eviction and could face criminal prosecution. The tenant could also bring a claim in the county court for reinstatement and compensation. Furthermore, the tenant could apply to the First-Tier Tribunal for an order requiring you to repay rent and the local authority could apply to the Tribunal for an order banning you for a certain time period from letting out properties in its area.

If you are taking possession action against a tenant who may become homeless as a result, you should advise them to contact the housing department of your local authority immediately.

### **2. Returning the Deposit**

You can withhold part of any rent deposit to compensate for any damage caused to your property or for furnishing or reasonable cleaning costs, but not for reasonable wear and tear. You should carry out an end of tenancy inspection, ideally with the tenant present, and with the inventory agreed at the beginning of the tenancy to hand. You should note anything that you consider to be missing, damaged or insufficiently clean, take photos as evidence and try to reach an agreement with the tenant.

If nothing is being withheld from the deposit, you should return it as soon as possible. If the deposit is protected by an insurance-backed scheme, you must return it within 10 days of you and the tenant agreeing how much you will retain. If the deposit is in a custodial scheme, you must respond promptly to any request received from the scheme, to enable the scheme to deal appropriately with the deposit.

### **3. Tenant's Possessions**

If you wish to sell or dispose of any of the tenant's possessions that have been left in the property at the end of the tenancy, you must give the tenant reasonable written notice of your intentions. The costs of removal, storage and disposal may be deducted from any sale proceeds. However, you should preserve the proceeds of sale for a reasonable time following disposal.