

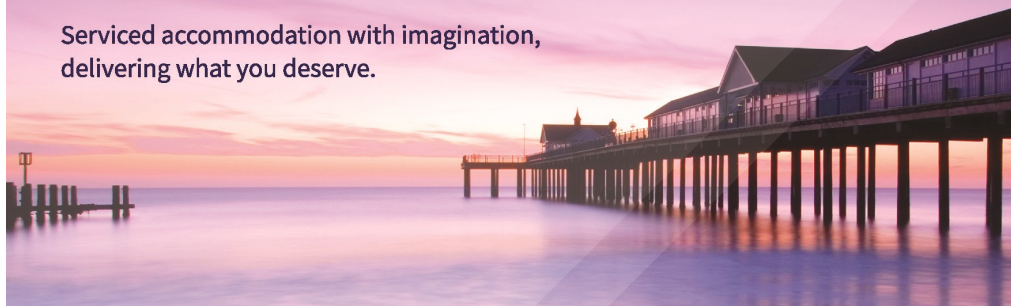
ELA News

December 2020





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DISCLAIMER

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Chairman's Welcome



Winter Edition

Even in these sombre and difficult times I would like to wish you all a happy and peaceful Christmas. What will the New Year bring to us and the nation? I fear we will have to live with Coronavirus for some time! The best case scenario is that one will have an annual jab for it as well as the flu jab.

Realising the problem with tenants not paying their rent and unhelpful Government court actions, I asked the office to put out the following letter to MPs. Any comments please let me know via the ELA office.

Dear Mr/Mrs/Ms ,

I am the Chairman of the Eastern Landlords Association which represents approximately 1400 private residential landlords across East Anglia and beyond. I am writing to you to make representations on behalf of that membership.

It is appalling how the Government keeps altering the criteria for landlords trying to gain possession of their property through the courts. Especially where this is because of non-payment of rent, some of it deliberate, some caused by Covid, but more often because of a lack of home economics.

In a civilised democracy, paying ones debt, whether for household goods, council tax or rent is a necessity. If an increasing sector of the populace cannot or do not pay, any Government will lose the respect of those who do, especially small business owners, which includes the private residential landlord.

The private residential landlord has, on average, 2.6 properties - hardly the privileged rich! They are providing a social need, which Local Authorities and the Government cannot fulfil or provide. The vast majority of landlords are providing decent homes for people, who need them at affordable rents. Landlords need support too!

Finally, as 2020 draws to a close with all of its ups and downs for us as landlords, despite the challenges that we all currently face with the worldwide pandemic, I still believe there is hope for optimism for the years ahead. There is no doubt that the demand for privately rented homes will continue to grow even if the economy faces a downturn over the next year or so. We all need to remain professional in how we run our property portfolios, as this will stand us in good stead in the times ahead. Never forget that we in the ELA are here for you, our members, and will continue to help, support and represent you with our staff over the telephone or by email whenever you need our guidance and services.

I would like on behalf of our staff and the directors, to wish everyone of you a very happy Christmas, and a prosperous and successful new year in 2021.

Charles Clarke, Chairman

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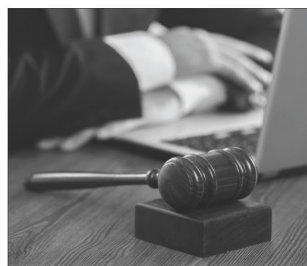
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NEWS ITEMS

Section 21 will remain until pandemic eases, government confirms

The government has confirmed its long-standing intention to scrap Section 21 eviction powers which currently sit with landlords - but the appropriate legislation won't be introduced until the worst of the pandemic passes.

Liberal Democrat MP Sarah Olney obtained this information from Housing Minister Chris Pincher in the form of a written Parliamentary question.

Pincher told Olney: "The government is committed to abolishing Section 21 through a Renters' Reform Bill, which will enhance renters' security and improve protection for tenants.

"Repealing Section 21 represents the largest change to renting in 30 years and it is only right that the reforms are taken forward in a considered manner.

"It is important that providing tenants with greater security of tenure is balanced with an assurance that landlords are able to recover their properties where they have valid reasons to do so. This is vital to ensuring the future supply of good quality housing in the rented sector.

"We will bring forward the Renters' Reform Bill in due course once the urgencies of responding to the pandemic have passed."

The Renters Reform Bill was a key measure in the 2019 Conservative General Election manifesto some 11 months ago.

Lakhany v Prempeh, Appeal case [2020]

This was a Court of Appeal case concerning whether a notice seeking possession of residential property due to rent arrears had to contain the name and address of the landlord.

The landlord served a notice seeking possession on the defendant reliant on grounds 8, 10 and 11 from schedule 2 of the Housing Act 1988 on or around 23 April 2019.

The landlord subsequently issued a claim for possession on 13 May 2019 reliant on that notice.

The notice seeking possession was defective as it was a demand for rent and did not meet the requirement to record the landlord's name and address in accordance with Section 47 Landlord and Tenant Act 1987. This Section 47 states :

47 Landlord's name and address to be contained in demands for rent etc.

(1) Where any written demand is given to a tenant of premises to which this Part applies, the demand must contain the following information, namely—

(a) the name and address of the landlord, and

(b) if that address is not in England and Wales, an address in England and Wales at which notices (including notices in proceedings) may be served on the landlord by the tenant.

At the appeal hearing the tenant argued the following points and the Circuit Judge allowed appeal:

The hearing was not procedurally fair; The notice was invalid because it was a 'demand for rent' within the meaning of section 47 of the Landlord and Tenant Act 1987 and must state the landlord's name and address; and the notice was in breach of Section 8 of the Housing Act 1988 as it omitted the landlord's name and address as required on the prescribed form.

The tenant appealed to the Court of Appeal and the claim was dismissed. It was held that a section 8 notice based on rent arrears is not a demand for rent so therefore Section 47 did not apply. The prescribed form (Section 8 notice) did not require the landlord's name and address, stating at item 6 as it did:

"6. Name and address of landlord/ licensor.*

To be signed and dated by the landlord or licensor or the landlord's or licensor's agent (someone acting for the landlord or licensor) If there are joint landlords each landlord or the agent must sign unless one signs on behalf of the rest with their agreement."

This also dispatched the tenant's second ground of appeal – that the prescribed form required the landlord's signature and address. The prescribed form did not include any extra box or dotted lines for the landlord's name and address, if the

form was completed by an agent, nor did the form have any instructions to the effect that these details must be added.

Consultation launched with plans to extend Carbon Monoxide regulations

Private landlords in England will be required to install a carbon monoxide alarm in any room that has a fixed combustion appliance, such as a gas boiler or wood burner, under proposals unveiled in a new Government consultation.

Under the plans, which exclude gas cookers, landlords will also be required to ensure each prescribed alarm is in proper working order on the first day of every new tenancy, and repair or replace alarms if they are reported as faulty during the tenancy.

Landlords in England are already required to have a carbon monoxide alarm in any room that contains a solid fuel burning appliance, such as a coal fire or wood burning stove. This has been a legal requirement since 1st October 2015, when the Smoke and Carbon Monoxide Alarm (England) Regulations came into force.

This consultation end on **11th January 2021** and can be found here—<https://www.gov.uk/government/consultations/domestic-smoke-and-carbon-monoxide-alarms>

Insight into problems for tenants in shared flats and houses



A new survey gives an insight into problems involving tenants who share apartments and houses - and how those difficulties could spill over to rent and landlords.

The Barclays Money survey shows some flat-sharers lose an average £552 due to 'nightmare housemates' not pulling their financial weight, and no fewer than 54 per cent of those living in shared accommodation say they have become financially worse off as a result of an unreliable flatmate.

For 35 per cent of housemates, their co-habitants not cleaning up after themselves was the top pet peeve, followed closely by stealing food without replacing it (29 per cent) or inviting friends over without asking (28 per cent).

Three in 10 say they have lost their cool over their flatmate not

contributing to shared staple household items like toilet paper, tea bags and milk, and more than a quarter admit being angry over their flatmate not paying bills on time.

Almost half have had a good friendship go sour as a result of living with a friend.

Predictably, two thirds of people living in shared households found it more difficult during nationwide lockdown in March, with arguments becoming more intense.

Interestingly, six in 10 claim that lockdown has made them reconsider their preferences for a flatmate.

A big majority - 80 per cent - would rather their flatmate was boring but paid bills and rent on time. Other important qualities for a flatmate to possess post lockdown, include being clean, honest and good with money.

Other issues for disputes include not replacing key household items when they finish, hogging the TV and broadband, bad bathroom etiquette, not recycling properly, leaving laundry around the house, or taking too long in the bathroom.



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NEW TENANTS – THE BASICS

The following short bullet points may be considered for when granting new tenancies

1. Consider using a letting agent to tenant-find, usually a one-off fee including credit checks and possibly a rent guarantee in place
2. Take a holding deposit off a potential tenant, whilst you carry out checks (this can be to a maximum of equivalent 1 weeks rent)
3. Don't fall for any hard-luck stories and don't offer your property to the first tenant who comes along
4. Good properties attract good tenants – the property should be up to a standard you wouldn't turn down for your own home
5. Use a credit reference agency to check address history, electoral roll, CCJ records and obtain employer / landlord references
6. Use a standard tenant application form (the ELA has a version of this) to make sure you capture at least National Insurance number, date of birth and some address history – essential if you need to trace later
7. You need a next of kin contact (for emergency purposes!!)
8. Look for at least one month rent and a tenancy deposit of at least the same in cleared funds. This can be a maximum of equivalent to 5 weeks rent. If tenants cannot afford this much are they worthwhile tenants?
9. Get guarantors signed up correctly by using a template guarantor agreement
10. Banks seldom provide references – instead ask to see at least two months bank statements and copies of at least two utility bills

Meetings and Legal Surgeries

Legal Surgeries 2020

Date: Wednesday, December 16th 2020

Date: Wednesday, January 27th 2021

Date: Wednesday, February 24th 2021

Venue: **All appointments are by telephone**

Time: 4pm to 6pm

15 minute appointments with Chris Fielding from [Foster's Solicitor's](#)
Contact the ELA Office to book your appointment on 01603767101 or
info@easternlandlords.org.uk

11. If you plan to ask an employer – ask them to confirm the salary stated by their member of staff and ask if the job is expected to be permanent or temporary, full or part-time.

12. Do not rely on tenants to set up a standing order – use the ELA form and then fill in your details later (to avoid identity theft) and send the form off to the tenant's bank

13. If the house is shared – carry out checks on all adults

14. Under-18s cannot legally sign an agreement – always have an adult named on the tenancy agreement or the tenancy can be granted to a third party, being a trustee for the under 18

15. Do not leave it up to the tenant to contact utility companies do it yourself at start and end of tenancy and take meter readings

16. If you do not have the time to produce a good inventory/condition schedule consider using a professional inventory clerk. If you do your own back them up with digital photos or video footage.

17. Do not allow tenants to overcrowd your property – you can state in the agreement the maximum number of occupants

18. Keep a close eye on rent payments – don't wait for tenants to get 2 months into arrears – deal with them the moment they miss a payment with a chase up letter. Back up everything you say in writing – you may need it in court.

19. Serve notice on bad payers – even if you don't follow it up with court proceedings

20. If a cheque bounces – insist on cash

21. Make the guarantor aware the tenant is in arrears – and that they will be liable if the tenant will not or cannot pay.

22. Be wary of issuing further fixed-term tenancies – you are safer allowing it to become periodic

23. If you need to evict or gain possession – seek advice – firstly with the ELA

24. If you are able to do it yourself you will save on solicitors' costs

25. Unless you are specifically advised to – use section 21 eviction notices – in most cases they are much quicker

26. Use section 8 only when you think there is a realistic chance of getting the arrears i.e. won't pay rather than can't pay

27. Visit the properties regularly – with due notice.

28. Don't leave empty properties for any length of time than is necessary, it encourages squatters

Above all remember that you are not alone we can help with most issues – just give us a call. 01603 767101

COVID-19: Coronavirus Act 2020 and the implications for recovering possession

The Coronavirus pandemic has seen wholesale changes in the way we live and work. It has also seen the UK government take unprecedented actions which have affected a range of sectors. The Coronavirus Act 2020 is just one of them.

Since 29th August 2020, a Section 21 notice served must give tenants at least 6 months' notice of the fact that the landlord requires possession. Where a landlord has given a tenant a valid Section 21 notice after 29 August 2020, the notice will now remain valid for an extended period of 10 months from the date it is given to the tenant. Please be aware that there may well be a hearing because of the Covid-19 restrictions, under normal circumstances there would not normally be a hearing.

Under Section 8 possession proceedings the amount of notice required to be given has also been extended for nearly all of the Grounds, such as :

Ground 1: Landlord wants to move in—6 months

Ground 7b: No right to rent in the UK - 3 months

Ground 8, 10 & 11: Rent arrears at the time of service of notice and possession proceeding

(a) 4 weeks where arrears are at least 6 months

(b) 6 months where arrears are less than 6 months

Ground 12: Breach of tenancy agreement—6 months

Ground 13: Tenant deteriorated property—6 months

Ground 14: Nuisance/annoyance, illegal/immoral use of property - None - proceedings may be commenced immediately after service of notice.

When making an application to the court, the recently published Practice Direction 55C must be followed which now includes the requirement for a notice about what is known about the tenant's circumstances and covid-19. For all claims, the notice is to be served on the tenants at least 14 days before the hearing date and two copies taken to the court.

For accelerated claims (Section 21 process), the notice is to be attached to the court papers when submitting the claim.

On 5th November the Government announced that no bailiff enforcement action would take place and evictions will not be enforced until the 11 January 2021 at the earliest.

The only exceptions to this will be the most egregious cases, including where tenants have demonstrated anti-social behaviour and serious rent arrears, which would be at least 6 months arrears.

As you cannot evict the tenant in the short term at present, it may well be worth claiming the arrears as a debt through the Small Claims Court. If successful, you would obtain a County Court Judgment (“CCJ”) for the arrears. Once you have a CCJ against your tenant (or the guarantor if there is one) you can consider methods of enforcement. This can be applied for online through Money Claim Online website or by completing court form N1. The court fees are based on a sliding scale depending how much you are claiming.

For court proceedings applied for before 3 August 2020, if no possession order has been made, the claim will not be listed, relisted, heard or referred to a Judge until one of the parties (usually the Claimant landlord) files and serves a written notice (a “reactivation notice”). Once the reactivation notice has been filed and served the other party will have 14 days to reply.

The claimant filing and serving the reactivation notice must set out the following in their notice:

Confirmation that they wish the case to be listed, relisted, heard or referred to a Judge;

The knowledge the party has as to the effect of the Coronavirus pandemic on the Defendant and their dependents (except in proceedings relating to an appeal); and,

In possession claims based on rent arrears, the reactivation notice must also be accompanied by an updated rent account for the previous two years.

On 18th November Helpland who can assist in gaining possession carried out an online presentation for our members. Once you are in receipt of your possession order they can assist in requesting the order be transferred to the High Court. This application would take 10—20 days and once permission from the court is obtained (£66 cost for this action) then High Court Sheriffs will set a date for possession approximately 14 days later. You will be advised of the date of eviction and advised to attend with a locksmith to change the locks.

The bottom line is that High Court enforcement is likely to result in recovery of possession of a property 3-6 weeks more quickly than the County Court equivalent, at an additional cost of £600 - £1,000



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I, the undersigned, hereby apply for membership of the Company and agree to the Guiding Principles. I understand that Memorandum & Articles of Association are available upon request but agree to an obligation contained in clause 7 of the Memorandum of the Company to contribute up to a maximum sum of £10 to the Company's assets in the event of the Company being wound up. I also understand that some of the information given on this application form will be held on a computerised database in accordance with the Company's notification under the 1998 Data Protection Act.

Membership Fee £70

Please complete this application form and return it to :

1 Sprowston Road, Norwich NR3 4QL or email to info@easternlandlords.org.uk

If there is insufficient room to answer any question fully, please continue on a separate sheet.

Please note that membership applications are usually processed in the office within a few days, with final acceptance from the Executive Committee who meet regularly.

FULL NAME: **Mr / Mrs / Miss / Ms**

OCCUPATION: Landlord ☐ Agent ☐ Other (please specify):

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If the answer is 'Yes' to any of the above please tick the box ☐ and provide details on a separate sheet.

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☐

In the areas listed below our members have periodic meetings and at many of these guest speakers are invited to provide information specific to landlords

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Can important documents like tenancy agreements be signed electronically?

With the current restrictions due to Covid, it would be very convenient and timely to accept documents relating to tenancies and other business contracts that have been signed electronically and transmitted electronically, rather than using the usual face-to-face signing and exchange using pen and ink.

But just how legal are these e-signatures on a document, and more importantly how would electronic signatures stand-up in court? Would you be prepared to accept a tenancy agreement attached to an email with an electronic (typed) signature on it?

Yes, says the law, electronic signatures are perfectly legal because today we have something called the Electronic Communications Act 2000 which clarifies the situation somewhat.

Even so, many people would still be quite apprehensive about accepting documents signed in this way, especially if they are from the older generation – the younger generations of course are far more accepting of new technology and instant communications via email and text.

It is the case however, that some documents need a signature and witness, so physical signing and witnessing is necessary, for example for documents signed as a deed involving leases of

longer than 3 years, and property titles etc.

To quote directly from the EC Act: Electronic signatures and related certificates.

(1) In any legal proceedings—

(a) an electronic signature incorporated into or logically associated with a particular electronic communication or particular electronic data, and

(b) the certification by any person of such a signature, shall each be admissible in evidence in relation to any question as to the authenticity of the communication or data or as to the integrity of the communication or data.

(2) For the purposes of this section an electronic signature is so much of anything in electronic form as—

(a) is incorporated into or otherwise logically associated with any electronic communication or electronic data; and

(b) purports to be used by the individual creating it to sign.

(3) For the purposes of this section an electronic signature incorporated into or associated with a particular electronic communication or particular electronic data is certified by any person if that person (whether before or after the making of the communication) has made a statement confirming that—

(a) the signature,

(b) a means of producing, communicating or verifying the signature, or

(c) a procedure applied to the signature, is (either alone or in combination with other factors) a valid means of signing.

Quite clearly the electronic signature has legal standing providing certain other requirements are met, in particular that a confirmation statement is made, the parties are identified and the document is date-stamped, which it would be in any case if accompanied by an e-mail audit trail as evidence of receipt.

Ironically, the accommodating audit trail could give more certainty to the signature and the intentions of the parties than would a traditional pen and ink signature. That's because a tenants can and sometimes have done in court, denied they have signed a document. Faced with this, unless other supporting evidence is available, such as a witness statement, any judge would err on the side of caution and take the tenant's word.

Although there are third party signature services such as those offered by Adobe, which act as a sort of independent escrow service, this is not necessary for one offs, and it would be usual for landlords to send documents attached to an email on which the tenant/s can either upload a facsimile signature, or simply type one.

The key to all this is that common sense is required. So long as the process used generates a clear audit trail showing the intentions of the parties, based on the

electronic communications between them leading up to the agreement signing, and that dates are clearly stated – it's advisable to type out a date in full so that, even though the email is electronically dated, the date on the documents cannot be doctored. For example, instead of 19/06/20 write The 19th of June, 2020

The exception to all of this as stated above, is where a document needs a witness. For example, tenancies of more than three years and guarantor agreements must be prepared and signed as a deed with a witness statement and signature. Witness statements therefore cannot be signed electronically.

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Carbon Monoxide alarm regulations amended— Consultation

There may be new and stricter legal requirements on the way for private landlords with regards to Carbon Monoxide alarm installation according to a consultation document issued by the government.

For just over five years it's been compulsory for landlords in England are already required to have a Carbon Monoxide alarm in any room that contains a solid fuel burning appliance, such as a coal fire or wood burning stove.

Until now the government has encouraged landlords to fit them in all rooms with gas appliances too.

Much of the new consultation document is aimed at the social renting sector - considered behind the private rental sector in this regard - but the document gives some useful background information.

Private landlords in England will be required to install a Carbon Monoxide alarm in any room that has a fixed combustion appliance, such as a gas boiler or wood burner, under proposals unveiled in a new Government consultation. Under the plans, which exclude gas cookers, landlords will also be required to ensure each prescribed alarm is in proper working order on the first day of every new tenancy, and repair or replace alarms if they are reported as faulty during the tenancy.

Landlords in England are already required to have a Carbon

Monoxide alarm in any room that contains a solid fuel burning appliance, such as a coal fire or wood burning stove.

You can respond to the consultation at any time up to January 11, and you can see the document here.

<https://www.gov.uk/government/consultations/domestic-smoke-and-carbon-monoxide-alarms>

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Fair wear and tear explained

There is a very fine line between what can be happily termed 'fair wear and tear' and what constitutes 'damage'. The Dispute Service web site details case studies relating to disputes between landlords and tenants on this very subject matter and it is quite evident that there is plenty of scope for landlords and tenants to be treated far from fairly if good practice is not followed. A meticulous and consistent approach to check ins / check outs / inventories and interim visits should be an absolute priority for landlords and letting agents. Correctly undertaken, these will deliver the vital foundation for a successful and uncontested tenancy by providing all the necessary supporting documentation to avoid any dispute between the landlord and tenant in relation to discussions which refer to the condition of the property and its contents.

An independent inventory management company is far better equipped to provide an unbiased and objective assessment of a property and this applies throughout the period of the tenancy. Tenants are likely to respond better to someone that is not linked to the landlord in any way and whose judgment is not clouded by any existing or historic business relationship. It is essential that the landlord is appreciative of the need to make allowances for depreciation – whilst accepting that he / she cannot use the tenancy as a means of 'betterment' ie seeking out replacement of damaged / missing items with new ones (unless the items were brand new at the start of the tenancy).

The tenancy agreement

The type of tenant eg family, professional couple, single occupancy, students, will have a huge bearing on the anticipated overall wear and tear on items in a property. For example, a family of four is likely to use a washing machine more often than a professional couple and therefore this needs to be considered and reflected in the decision. Likewise a medium quality carpet with a professional couple living at a property would last for typically 5 years, whereas a family occupancy would reduce the lifespan to typically 3 years.

The length of occupancy will also need to be taken into consideration – the impact of a two-year occupancy may vary enormously to the toll of a 6- month occupancy. Equally, when a tenant has enjoyed a five-year stay in the same property, it becomes very difficult to prove unacceptable wear and tear. Consent for smokers or pets in the property will have implications on the expected condition of the property at the end of the tenure.

The tenancy agreement may contain specific clauses relating to the required care and attention of particular items / amenities which the tenant has access to during the term of their stay. Care of the garden is often the cause of debate between landlord and tenant. In the majority of cases the garden will be treated as an 'outdoor room' and as such, should be returned to the landlord in the same condition / state of maintenance as when the tenancy agreement / inventory is first signed. This is an accepted requirement regardless as to whether or not the tenants have chosen to take advantage of the garden facilities.

Inventory & Schedule of Condition reports / Check Ins

When a tenant moves into a property they should accompany the inventory clerk round the property to agree the content of the inventory report – and where necessary, the clerk will record any agreed amendments on the inventory (such as items listed but not found to be present in the property, a difference in opinion re cleanliness or damage). Any outstanding issues should be noted on the check-in report eg missing manuals, further cleaning required, missing keys, any other concerns. The inventory and check-in report should be signed by both parties ideally on the day the tenant moves in. Problems often occur where letting agents fail to chase up receipt of these signed documents when a formal check in has not taken place, since the tenant can potentially make changes to the property during that period which will then not be listed on the original inventory / check-in reports.

Visits to check on the condition of the property should be undertaken every 3-4 months. Disputes relating to fair wear and tear often centre around common themes which include:

Cleanliness

What one person deems to be acceptable may be considered to be substandard by another. The important point to remember when it comes to assessing cleanliness is that agreement is reached at the check in stage. The landlord or agent need to ensure the receipt for the professional clean at the check-in is provided although the tenant must be given the opportunity to clean the property to an acceptable standard themselves at the end of the tenancy.

Fixtures and fittings

Tenants need to be made aware of the

fact that if they choose to introduce new items, which need to be fixed to the walls, agreement must be received from the landlord in advance. Failure to do this will result in the landlord asking for these items to be removed and making a claim to restore the wall back to its former state.

Brand appeal

Most items in the property will have a pre-determined life span but this will also be influenced by the quality of the product, accepting that certain brands have an enhanced reputation for withstanding wear and tear, which is usually evidenced by an extended warranty. If a landlord chooses to furnish the property with cheaper, non-branded goods, it is only fair to accept that these may not last the duration of the tenancy.

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