

Property Matters

March 2009

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Please contact us if you have any queries.



If I can help with any of the issues in this E-Briefing then please contact me on the number or email address below.

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Serving Notices on Family Intervention Tenancies

Most housing practitioners will be aware that Family Intervention Tenancies (FITs) were recently brought in under the Housing and Regeneration Act 2008 (HRA) and came into force on 5th January 2009.

FITs provide a 'last chance saloon' for problem families to work with agencies to put a stop to their anti-social behaviour, however there are a number of steps involved in starting, managing and ending a FIT that landlords must get right.

Notice to begin a FIT

Before tenants are asked to enter into a FIT they must be served with a written Notice by the landlord. There is no template Notice however, under Section 297 of the HRA, it must include the following 6 pieces of information:

- The reasons for offering the tenancy to the tenant
- The details of the property for which the tenancy is to be granted.
- The other main terms of the tenancy (including any requirements as the tenant in respect of behaviour support services)
- The security of tenure available under the tenancy and any loss of security of tenure which is likely to result from the tenant agreeing to enter into the tenancy
- That the tenant is not obliged to enter into the tenancy or (unless otherwise required to do so) to surrender any existing tenancy or possession of a dwelling-house
- Any likely action by the landlord if the tenant does not enter into the tenancy or surrender any existing tenancy or possession of a dwelling-house

Important Note: Failure to serve the above Notice before the tenant enters into the tenancy means that it will not be a FIT.

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Serving Notices in Family Intervention Tenancies cont...

Guidance

Communities and Local Government (CLG) guidance on the use of FITs states that efforts should be made to ensure any information is presented in a user-friendly form so as not to distract from the key information specified above. Also, if a landlord is aware that tenants have difficulty in reading or understanding information they are given, the landlord should take reasonable steps to address this. This should include consideration of mental capacity and the Disability Discrimination Act.

Landlords should offer clear explanations as to what a FIT involves and the CLG Guidance also suggests that there should be included in the Notice helpful information on other sources of advice including details of third parties (not involved in family intervention) who can give independent advice. This is especially important when dealing with families who have multiple and complex needs and whose behaviour may mean that a FIT is the last option for them.

Further details on FITs can be found on our website at <http://www.whiteheadsols.co.uk/bulletins/bulletin46.pdf>

Gas Safety: New Scheme to replace CORGI regulations

From 1st April 2009, landlords and employers should check that anyone carrying out work on gas appliances or flues is registered under the new Gas Safe Register. CORGI registration will no longer carry any statutory force and there is no grace period.

In the commercial sector, failure to check that an installer is registered under the Gas Safe Scheme may mean a breach of the Building Regulations 2000 and Regulation 3 of the Gas Safety (Installation and Use) Regulations 1998.

If landlords in the residential sector (including Registered Providers of Social Housing) fail to use a person on the Gas Safe Register to carry out appliance checks they will be breaching not only the Building Regulations 2000 but will also be in breach of Regulation 36 of the Gas Safety (Installation and Use) Regulations 1998.

In other words....***make sure you carry out gas safety inspections and ensure they are done by registered engineers!***

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Variation of Tenancy Agreements

The case of *The Governors of Peabody Trust v Reeve* (High Court of Justice Chancery Division 2008) concerned the variation of a tenancy agreement in its standard form.

The Peabody Trust had the following clause in its standard form of tenancy agreement:

“Altering the Agreement

5(a) With the exception of any changes in Rent, this Agreement may only be altered by the agreement in writing of both the Tenant and the Trust.

(b) The terms of this Agreement may be varied by the Trust by a notice of variation served on the Tenant and the provisions of Section 103 of the Housing Act 1985 shall apply to this Agreement as if this tenancy were a secure tenancy provided that in no case shall the variations be such as to be properly regarded as creating a new tenancy”

Unfair Terms

The terms and conditions of a tenancy agreement are governed and regulated by the Unfair Terms in Consumer Contract Regulations 1999 (“the Regulations”).

What’s more, considerable guidance is available from the Office of Fair Trading in its 2005 publication “Guidance on Unfair Terms in Tenancy Agreements”.

Court Decision

When reviewing the above clause in the tenancy agreement, the High Court decided that the intention of the Peabody Trust to unilaterally alter the agreement in clause 5(b) was unlawful under the Regulations. The reason for this was that the contractual terms had not been individually negotiated and, contrary to the requirements of good faith, caused a significant imbalance in the parties’ rights and obligations arising under the contract to the detriment of the tenant as a consumer (Regulations 5(1)).

The majority of RSLs in their standard agreements have an alteration clause which provides that (excluding rent changes) the agreement may only be altered in writing by both the tenant and the landlord. Such an alteration clause does not fall foul of the Regulations. However, if you have a clause similar to clause 5(b) set out above or a different variation clause it is important that you check whether that term in the tenancy agreement is lawful.

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Rates relief for businesses

On the 9th March 2009, the Non-Domestic Rating (Collection and Enforcement) (Local Lists) Regulations 2009 (the 2009 Regulations) come into force and amend the the Non-Domestic Rating (Collection and Enforcement) (Local Lists) (Amendment) (England) Regulations 1989 (the 1989 Regulations). The new Regulations allow backdated liability for rates to be paid in instalments when a valuation officer alters the rating list retrospectively.

In the 2008 Pre-Budget Report, the Government announced that it intended to give companies more time to pay certain backdated business rates bills that had been issued before 31st March 2010.

Qualifying businesses facing such bills will now be able to pay their backdated liability in equal, interest-free instalments over a period of up to 8 years, rather than immediately.

The measures are intended to reduce the adverse impact backdated rates would have on a business' cash flow in the current economic climate.

If you need advice on this, please get in touch.

New Course for 2009

Leasehold Management Skills

This new course is designed for both new and experienced leasehold managers and those who manage *them*. We provide an update on current topics and changes in legislation and take a practical approach to solving problems. These sessions are very interactive and allow leasehold managers to get some 'all-hallowed' free advice!!

For further details, please email training@whiteheadsols.co.uk

Lunchtime Seminar Programme 2009

This year, Whiteheads will be holding the following seminars. If you and your colleagues would like to attend, please email neil.whitehead@whiteheadsols.co.uk and you will receive a booking form. These sessions are offered FREE OF CHARGE but are on a first-come first-served basis.

Property Matters

25th March – Salford (Contour Group) (11:00 start)
 May – London (TBC)
 22nd April – Bristol (Places for People)
 11th June – Leeds (Leeds Federated)
 10th June – Gainsborough (Acis Group)
 21st September – Preston (Community Gateway)
 20th October – Bournemouth (Raglan Housing) (10am - 1pm)
 4th November – Gainsborough (Acis Group)
 8th December – Bolton (Regenda)

Disrepair

17th March – Manchester (Harvest Group)
 14th May – London (Places for People)
 4th June – Sheffield (Parkway Housing)
 9th June – Bristol (Places for People)
 25th June – Wakefield (Chevin Housing)
 10th September – Preston (Places for People)
 20th October – Bournemouth (Raglan Housing) (1pm- 4pm)
 25th November – Gainsborough (Acis Group)
 3rd December – Bolton (Contour Group)

ASB / Nuisance

30th March – Manchester (Harvest Group)
 26th March – Leeds (Connect Housing)
 20th May – London (Places for People)
 17th June – Leeds (Pennine Housing 2000)
 25th June – Bristol (Places for People)
 7th September – Preston (Community Gateway)
 9th September – Leeds (Leeds Fed)
 6th October – Bournemouth (Raglan Housing) (10am-1pm)
 12th November – Sheffield (Arches Housing)
 26th November – Wakefield (Chevin Housing)
 2nd December – Bolton (Regenda Group)

Housing Management

20th March – Salford (Contour Group) (12:00 start)
 May – London (TBC)
 25th June – Leeds (Connect Housing)
 23rd June – Sheffield (Arches Housing)
 17th September – Preston (Places for People)
 6th October – Bournemouth (Raglan Housing) (1pm-4pm)
 19th November – Sheffield (Parkway Housing)
 11th December – Bolton (Regenda Group)

All of the above sessions will commence at 10:30 and finish at 13:30 unless otherwise stated.

A buffet lunch will also be provided. Please advise us of any dietary requirements.

The programme will be distributed approximately a month before each session and delegates are invited to submit topics of general interest they would like to be covered.