

Mistakes (some) Landlords Make and the Steps They Should Take...





Introduction...

Who am I?

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Introduction...

Who are we?

- Landlord Support Legal Solutions
- SRA regulated law firm.
- Real solicitors with more than 10 years' experience.
- **Practical** and **cost-effective** legal solutions for private residential landlords and lettings agents.
- Keep fully abreast of changes in landlord law and procedure – **FAQs**, **blogs**, **mailing list**.



LandlordSupport
Legal Solutions



Introduction...

Fixed-fees

	Landlord Support	Landlord Assist	Legal for Landlords	The Landlord Group	Harrowells
Tenancy Agreement	£110	-	-	-	-
Legal Letter	£35	£46.80	-	-	-
Notices	£85	£114	£159	£89	£180
Accelerated Proceedings	£670	£1,075	£1,158	£895	£1,015
Standard Proceedings	£930	£1,075	£1,278	£995	£1,855
Warrant	£210	£265	£430.80	£299	£230



Introduction...

This evening's training?

Mistakes (Some) Landlords Make and the Steps They Should Take

- Number of scenarios for our protagonist landlord...
- Who has inadvertently fallen foul of the law whilst intending to do his best.
- Our landlord is fictional, but these are all **REAL** examples that Landlord Support has dealt with in the last few months!

We hope to help you avoid some of the same pitfalls as our landlord...



The Landlord...

- Mr 'Giveitago'
- Mr G has been a private landlord for 5 years.
- Portfolio of 5 properties.
- Accountant by day and feels confident in his ability to learn and pick up important points that determine his responsibility as a landlord quickly.
- He keeps up to date by researching on the internet, networking with other landlords, and with guidance from his lettings agent who part manages his properties.



The Bad Tenant...

- Mr Terry Bull-Tennant
- 1 Madeup Street, Faketown





Issue One

Visiting the Property

- 6 months' worth of unpaid rent.
- Mr G wants to discuss with Terry Bull-Tennant.
- Terry Bull-Tennant is not picking up the phone so Mr G thinks it is worth a visit to the property.

Which of the following should Mr G do?

- a) Go around to the property, knock on the door. When there is no answer use the spare key to enter and check the property.
- b) Call Terry Bull-Tennant one last time. When he does not answer, go to the property and let himself in.
- c) Write to Terry Bull-Tennant letting him know of a proposed visit to the property.



Issue One

Visiting the Property

Which of the following should Mr G do?

- a) Go around to the property, knock on the door. When there is no answer use the spare key to enter and check the property.
 - b) Call Terry Bull-Tennant one last time. When he does not answer, go to the property and let himself in.
 - c) Write to Terry Bull-Tennant letting him know of a proposed visit to the property.
- Right to quiet enjoyment.
 - Check the AST!





Issue Two

Gaining Entry

- After correctly writing to Terry Bull-Tennant to inform him of the intention to visit the property, Mr G does so at the proposed date and time.
- There is no answer when knocking, and, to Mr G's astonishment, the locks have been changed!

What should Mr G do?

- a) Call a locksmith, get the locks changed and remove Terry Bull-Tennant's possessions from the property.
- b) Get the locks changed and then provide Terry Bull-Tennant with keys for the new locks.
- c) Call the police to report the change in locks – changing the locks is tantamount to stealing his property.





Issue Two

Gaining Entry

What should Mr G do?

- a) Call a locksmith, get the locks changed and remove Terry Bull-Tennant's possessions from the property.
- b) Get the locks changed and then provide Terry Bull-Tennant with keys for the new locks.
- c) Call the police to report the change in locks – changing the locks is tantamount to stealing his property.

None of the above!

- Right to quiet enjoyment.





Issue Three

Abandonment

- Mr G unlawfully gains access to the property.
- It looks like Terry Bull-Tenant has left as most of his possessions have gone and there is a pile of unopened post.

What should Mr G do?

- a) Mr G can consider the property abandoned, remove any items of Terry Bull-Tenant which are still there, and re-market for rental.
- b) The property should be watched for 7 days to confirm no one lives there. After this the property can be considered as returned to the landlord and re-rented.
- c) Explicit confirmation should be sought from Terry Bull-Tenant that he has given up possession of the property.



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 - b) The property should be watched for 7 days to confirm no one lives there. After this the property can be considered as returned to the landlord and re-rented.
 - c) **Explicit confirmation should be sought from Terry Bull-Tennant that he has given up possession of the property.**
- **Unlawful eviction.**
 - **Always follow the legal channels.**





Issue Four

Documentation

- Mr G decided to serve a section 8 notice on Terry Bull-Tennant due to his lack of engagement and significant rent arrears.
- The notice expired and Mr G is preparing the court papers to issue a claim for possession.
- The AST has Mr G and Mrs G as landlords, but they have since divorced. Mr G took sole ownership of 1 Madeup Street as part of the settlement. Terry Bull-Tennant is (understandably) not aware of this personal situation.

Is this a problem?

- a) No, as nullifying a marriage is a legal process so the divorce in effect trumps the co-signed AST.
- b) Yes, because Terry Bull-Tennant was not informed of the change in ownership and, therefore, landlord.
- c) Yes, whilst Mr G's ex-wife no longer part owns 1 Madeup Street, Mr G must still seek her permission first as she is landlord on the AST.





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Documentation

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- a) No, as nullifying a marriage is a legal process so the divorce in effect trumps the co-signed AST.
 - b) Yes, because Terry Bull-Tennant was not informed of the change in ownership and, therefore, landlord.
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-
- Section 3 Landlord and Tenant Act 1985 - **£2,500 fine.**
 - Section 48 Landlord and Tenant Act 1987 – **no rent!**



The Good Tenant...

- Ms Wanda Full-Tennant
- 2 False Road, Faketown





Issue One

Low Rent

- Wanda Full-Tenant has been an excellent tenant – looking after the property and paying rent on time.
- However, Mr G is receiving significantly below average rental income and wants to increase it to market rate.
- The tenancy is now a contractual monthly periodic tenancy.

Can Mr G increase the rent? If so, how?

- a) No, as the fixed term of the AST (which allowed a rent increase) has now expired. He needs to get Wanda Full-Tenant to sign a new AST with increased rent.
- b) Yes, he can tell Wanda Full-Tenant the new rent and, after two months, the new rent will apply.
- c) Yes, he must serve formal written notice.





Issue One

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- b) Yes, he can tell Wanda Full-Tenant the new rent and, after two months, the new rent will apply.
- c) Yes, he must serve formal written notice.
 - Section 13(2) Housing Act 1988 – **prescribed form.**
 - New AST – **re-comply.**



Issue Two

Possession Required

- Mr G's personal circumstances have changed, and he now needs possession of 2 False Road.
- The AST commenced on 31/05/2019 at a monthly rental of £350.
- Mr G took a deposit of £500.
- Wanda Full-Tenant has done nothing wrong and is fully up to date with her rent account.

Mr G needs the property back, what should he do:

- a) Ask Wanda Full-Tenant to leave.
- b) Serve a section 8 notice.
- c) Serve a section 21 notice.



Issue Two

Possession Required

Mr G needs the property back, what should he do:

- a) Ask Wanda Full-Tenant to leave.
- b) Serve a section 8 notice.
- c) Serve a section 21 notice.

This depends!

- a) No harm, but **no guarantees!**
- b) Section 8 – **ground 1?**
- c) Section 21 – **prohibited fees** must be rectified first!





Issue Three

Compliance

- Mr G has now returned the prohibited payment and served a section 21 notice, which he believes is quicker and easier.
- When preparing the accelerated claim for possession, he notes that he cannot recall whether an EPC was served on Wanda Full-Tenant prior to the tenancy starting.

Will this affect his chances of gaining possession?

- a) No, an EPC is not critical to a claim like a gas safety certificate is.
- b) Yes, a section 21 claim cannot be made if an EPC has not been provided.
- c) Maybe, but he can just provide a copy to Wanda Full-Tenant before he issues the claim.





Issue Three

Compliance

Will this affect his chances of gaining possession?

- a) No, an EPC is not critical to a claim like a gas safety certificate is.
- b) Yes, a section 21 claim cannot be made if an EPC has not been provided.
- c) Maybe, but he can just provide a copy to Wanda Full-Tenant before he issues the claim.

- No section 21 “until” EPC served.
- Gas safety – more tricky! Trearrell House v Rouncefield...
- Compliance is key...

Ark





Issue Four

Prescribed Forms

- Mr G served the section 21 notice on 17/11/2020, giving Wanda Full-Tenant six months' notice.
- Mr G reused a section 21 notice he had been given by his former letting agent in March 2020...
-being careful to check the temporary changes to the notice periods which had been introduced because of the pandemic.

Does the reuse of a previous section 21 notice matter?

- a) No, this was a prescribed form taken from the government website in March 2020 when the temporary pandemic measures were in force.
- b) Yes, the use of an incorrect form may invalidate the claim.



Issue Four

Prescribed Forms

Does the reuse of a previous section 21 notice matter?

- a) No, this was a prescribed form taken from the government website in March 2020 when the temporary pandemic measures were in force.
 - b) Yes, the use of an incorrect form may invalidate the claim.
- Prescribed 6As have changed **twice** since March 2020!
 - The government guidance states, “Failure to serve the correct form **may invalidate the action** that is being proposed.”



Questions?



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