

Consumer protection

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Property litigation

Amendments made to the Consumer Protection from Unfair Trading Regulations 2008 mean that as from 1 October 2014, consumers who are victims of misleading or aggressive practices can use these regulations for redress.

Amongst other provisions assured shorthold tenants can now bring civil proceedings to unwind their tenancies, get a full refund, a discount of their rent and claim damages for additional losses or any harm that they have suffered. The new rights also cover holiday accommodation leases and contracts for agency services.

The redress rights only apply to a contract or payment made after 1 October 2014 for the sale or supply of a product, and the definition includes a tenancy or service contract, as between a trader and a consumer and there must have been a "prohibited practice". The definition of "trader" is a broad one and covers someone acting for the purposes relating to their business, trade or profession so can cover buy-to-let landlords. They do not apply to sales or purchases of real estate, social housing or lettings that do not fall within Part 1 of the Housing Act 1988.

So what is a "prohibited practice"?

This is defined as an act, omission, course of conduct or representations that is either "misleading" and can cover

situations where the information is factually correct but the overall presentation would mislead the average consumer or "aggressive". This prohibited practice has to be a significant factor in the consumer's decision to enter into the contract and this will differ on the individual circumstances of each case.

Businesses already operating in the private rented sector should already be aware of their consumer protection duties, having appropriate compliance procedures in place to verify the accuracy of statements made in marketing material, keeping accurate records and training staff appropriately.

All charges and fees need to be transparent and made aware to the tenants at the outset, including information about deposit requirements, guarantors, terms of the agreement and what happens at the end of the tenancy and how it can be brought to an end.

We recommend noting down any questions asked, the responses given and getting the tenants to sign the same confirming the accuracy of the information provided, and their understanding of it.

The rights of redress could increase void periods if tenants seek to determine the agreements under these powers and potential negligence claims against agents therefore ensuring not only the tenancy agreement itself is properly explained and

information given but also that the agents landlords instruct to market and tenant the property for them are acting in the same way.

What action, as a tenant, can be taken in such circumstances will depend on the timing of when they seek to take action. If a tenant acts in the first month of the AST they can indicate to the landlord that they want to terminate the AST and recover the full rent and deposit back, either by agreement or court proceedings and no deduction will be made for the time they have been in occupation. Alternatively, the tenant can seek a rent discount and damages in either case if they can show actual loss.

If the tenant seeks to take action after the first month, but before 90 days from the start of the AST, the tenant can still seek to terminate the AST. He will not get a full refund of rent or deposit and, after 90 days has expired, the tenant loses the right to unwind the AST but may still claim discounted rent and/or damages.

These powerful new rules potentially can have quite a negative impact for landlords and give tenants an upper hand so getting it right beforehand will become all the more important.

For more information call
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