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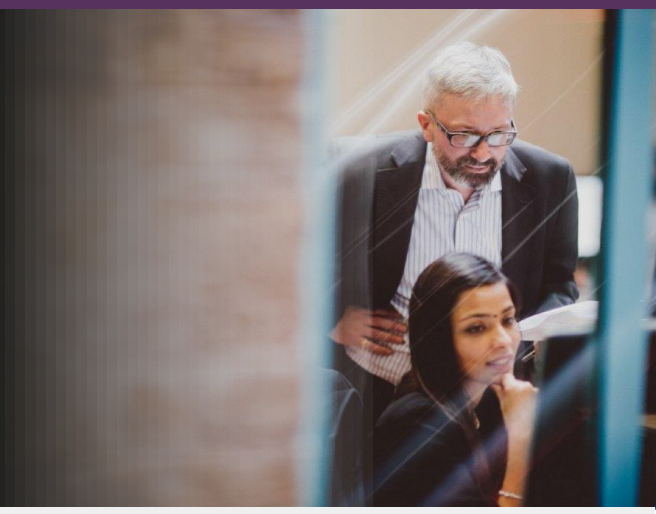
The Tenant Fees Act 2019



October 2019

In June 2019, a new Act came into force that has a profound effect on the rental market. It's relevant not just for landlords and tenants, but for agencies that, to date, have made a very nice little living out of charging tenancy fees and administration costs for rentals. These fees have affected both tenants and landlords, who have had to fork out hundreds if not thousands of pounds in fees and agency costs.

Now, under the Act, all tenant payments are banned by default unless the Act specifically makes allowances for them. So, tenants and landlords won't have to pay fees, for example for gathering references or taking inventories. The Act also limits the amount asked for as a deposit to a maximum of five week's rental value, and limits holding deposits to one week's rent.

The Act does not affect existing tenancies entered into prior to 1 June 2019 where fees can still be charged to 31 May 2020.

What's listed in the new Act?

The new Act basically puts a cap on tenants being charged anything other than the rent, the tenancy deposit, and where applicable, a holding deposit. However, there are certain fees that are still included, and they kick in if the tenancy agreement is broken.

Two out of the three applicable fees are classed as 'default' fees (the third is applicable for contract amendments). Landlords will need to include notification of these fees into tenancy agreements. They are:

- **Lost keys**: a minor infringement, but one that is still included in the Act. You're probably looking at a fiver at most, for a new key.
- **Changes to a tenancy**: landlords can now charge up to £50 for changes in the terms of tenancies, such as allowing pets or adding a new tenant to the agreement. It doesn't apply to tenancy renewals or any changes to the length of an agreement.
- **Late rent fees:** this is the major change covered by the Act. Landlords now have the right to charge a fee for rent payments that are two weeks or more overdue (this in on top of interest charges). These fees can be up to 3% of the rental amount, plus the Bank of England base interest rate, charged on a pro-rata basis. This brings tenancy agreements into line with other contracts, such as invoices for goods, where the ability to charge interest on overdue payments has been a long-established legal right.

Landlords do not have the right to charge for letters or phone calls involved in chasing or collecting outstanding rent, and because the amounts are relatively small, they probably won't act as any kind of a deterrent or incentive to a tenant that is already in arrears. Landlords are still entitled to include a clause within the agreement to recover their legal fees for a tenant in default.

This new legislation doesn't really have much of an impact on tenants who default on their rent, it merely tots up the amount they already owe to the landlord by a few extra pounds a week. Realistically, if the tenant has already defaulted on the rent then it's highly unlikely they'll be able to pay the fees as well. In that situation, the landlord can fall back on the standard Section 8 eviction notice.

Eviction notices

It's absolutely vital that the letter of the law is followed exactly when evicting tenants, otherwise they may have a

case to challenge the eviction on a technicality and you could end up with a situation where a tenant remains entrenched in a property for months without paying any rent at all, while the eviction notice goes back and forth in the courts. This can pile on the legal fees, making the whole process incredibly costly.

Section 8 eviction notices

Section 8 eviction notices require a certain notice period. A wide range of grounds can justify a Section 8 notice being served; including rent arrears. If a tenant is up to two months in arrears, then a Section 8 notice can be served. It's also possible to serve a Section 8 notice if a tenant is consistently late or in arrears, even if the rent has been paid up to date at the point of the notice being served.

Section 21 eviction notices

A Section 21 notice can only be served if the tenant has had all the legally required documentation including EPCs, gas safety certificates, and any HMO licences. Be aware that if you serve a Section 21 notice shortly after a tenant has put in a request for repairs to be carried out, then it could be regarded as a 'retaliatory' eviction and easily challenged by the tenant in court. You cannot serve a Section 21 notice within the first four months of a tenancy, and you must give your tenant two months' notice to quit the property.

The current legislation makes it fairer and more affordable for tenants to take up a rental property, while the continuation of the existing legislation around Section 21 and Section 8 notices also gives landlords a degree of certainty when it comes to getting their property back from tenants who are in arrears. However, in Spring 2019, the government announced plans to consult on new legislation to abolish Section 21 evictions (so called 'no-fault' evictions). With that consultation due to close on 12 October 2019, the wording of a tenancy agreement is even more important.

Landlords would be wise to review the wording of any proposed agreement with a solicitor to ensure it covers all eventualities, so that if you need to recover possession of a property you can do so without delay and act quickly when a tenant defaults.

Our experienced property litigation team can advise you on the new Act, so why not call property litigation lawyer Laura St-Gallay today.

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