

Tenancy guide for Landlords

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General Information

Who is my contact at Hamptons International?

If you have not already received them, details of your dedicated Property Manager will be provided shortly. When he or she is unavailable a colleague will gladly assist. In the meantime your local branch will gladly answer any questions you might have.

- Your Property Manager will usually be available from 9am to 6pm Monday to Friday.

What happens when you are closed?

When we are closed, your tenant is able to call on the services of our appointed out of hours emergency contractor.

An emergency is deemed to be where a problem places either the tenant or the property in imminent danger of suffering harm, injury or damage. The contractor will assess, so far as he is able, the seriousness of the situation and attend only where necessary. If attending the property is not deemed appropriate the tenant is asked to report the problem when our office reopens.

If your tenant exaggerates the seriousness of the situation we will endeavour to recover the cost of out of hours attendance from them, on your behalf. If this is unsuccessful, you can include a claim when considering apportionment of the deposit at the end of the tenancy.

- In an emergency, help is on hand for your tenant 24/7

Landlords Online

Our online portal gives you access to key information about your tenancy including the following:

- Download statements and other important documents
- Online account payments
- Review marketing progress
- Authorise maintenance works

Go online at <https://myaccount.hamptons.co.uk>. If you have not received your online invitation speak to your Property Manager.

How involved will I need to be?

Your property manager will deal with day to day enquiries from your tenant, with the aim of keeping inconvenience to you, to a minimum. Clients often require differing levels of involvement ranging from hardly wanting to hear from us, to wanting to know when even a small amount of money is being spent.

Whilst unable to insulate even the busiest of clients from those decisions required when owning a substantial asset, or to contact a client prior to spending modest sums of money, we are able to accommodate all reasonable requests to tailor our service to meet your requirements.

Please remember to keep us informed when you are unavailable for longer than normal, for instance when travelling overseas.

- Feel free to let your property manager know how involved you would like to be.
- If you are going away for any length of time – do let us know.

Why do you hold funds on account against future expenditure?

With the majority of maintenance work being reactive, we need to be in a position to instruct a contractor promptly, to ensure your statutory and contractual obligations as landlord are met.

As we are prevented from using other clients' money to guarantee invoices, or to delay payment until rent is received, we cannot instruct a contractor on your behalf unless we are in funds.

In order to avoid troubling you for payment unless absolutely necessary, the money we hold on account is topped up automatically as rent is received. Where a tenant pays rent in advance, alternative arrangements for replenishing funds are discussed with you.

When insufficient funds are available your property manager will contact you to take payment prior to

instructing works. Payment can be made online or by phone using debit or credit card, with no charge levied when using a debit card drawn on a UK bank account.* Payment by cheque or bank transfer is not possible unless relating to works scheduled to take place a week or more in the future.

- We are rightly prevented from using other client's money to guarantee payments.
- Holding a float helps ensure your statutory and contractual obligations can be met.
- You can top up your float using a debit or credit card on the phone or online
- A 2% charge is levied by the card issuer for credit cards and debit cards drawn on non UK bank accounts. This charge is deducted automatically and reflected in the balance of funds we hold on your behalf. We do not accept corporate cards, American Express or Diners Card.

At the Start of the Tenancy

What about the transfer of utilities?

Under normal circumstances, with all long let tenancies the payment of utility charges and council tax will be the responsibility of your tenant. We work with a number of utility transfer companies who assist with the transfer process, as well as offering the opportunity for your tenant to choose a provider and offer a tailored tariff that best suits them. Tenants have complete freedom of choice.

It is important that you ensure your obligations for the transfer and payment of utility charges and council tax are met, as neither we nor any of the transfer companies we use accept liability for unpaid accounts.

- If you occupied the property immediately prior to it being rented, it is important to ensure you have closed your accounts.
- Your tenant is free to choose their own providers and tariffs.

Repairs and Maintenance

What happens when you are closed?

When we are closed your tenant is able to call on the services of our appointed out of hours emergency contractor.

An emergency is deemed to be where a problem places either the tenant or the property in imminent danger of suffering harm, injury or damage. The contractor will assess, so far as he is able, the seriousness of the situation and attend only where necessary. If attending the property is not deemed appropriate the tenant is asked to report the problem when our office reopens.

As out of hours costs can be expensive, any work that is carried out will be limited to essential repairs only. Your Property Manager will discuss with you and follow up works required.

If your tenant exaggerates the seriousness of the situation we endeavour to recover the cost of attending out of hours from them on your behalf. If this is unsuccessful, you can include a claim when considering apportionment of the deposit at the end of the tenancy.

- In an emergency, help is on hand for your tenant 24/7
- Tenants can report minor faults online
- Out of hours emergency maintenance is limited to essential work only with follow up often required

When something breaks down what happens?

Your tenant is asked to check for obvious problems such as operator error or a blown fuse/ tripped Residual Circuit Breaker (RCB).

Once we are as satisfied as we can be that a genuine problem exists, an approved contractor is despatched to establish what the problem is, hopefully repairing it there and then. Where this is not possible and a more extensive repair or replacement is required, we will usually contact you for your instructions.

Specialist installations and appliances might take longer to repair.

- When the cost of a repair is likely to exceed £500 we will, save in the case of an emergency, endeavour to seek your instructions before works go ahead.
- Remember to tell us if you have specialist non-standard installations at your property.

What is an approved contractor?

Hamptons International approved contractors are required to meet strict criteria in terms of professional qualifications (Gas Safe Register, & NAPIT & NICEIC), insurance and standards of service.

Our contractors are also required to offer value for money, in some cases agreeing to fixed price charging at rates below those available to members of the general public. These rates are available to us because of the strength of our network.

Value for money cannot be judged solely in terms of cost. Whilst a local odd job man might be able to complete a job for less money, many are not qualified and do not have the necessary insurances for when problems arise.

- Our approved contractors are suitably qualified and insured.
- Our strong network can help save you money.
- Using the right supplier is essential.

What if I have my own contractor?

We are able to work with your preferred contractor, providing details are confirmed in writing or by email to your property manager. To avoid any misunderstanding we ask you to sign a letter which clearly confirms our involvement and any limitation in our liability.

Once this is in place we can liaise with your contractor and pay accounts rendered by him. The only exception to this is landlord maintenance/ emergency maintenance policies, including British Gas HomeCare, where your Tenant is required to deal with the insurer/ contractor direct; this is primarily because they are required to be at home when the engineer visits. For this reason, and because of concerns around the time taken to carry out lasting repairs, we advise clients against taking out policies like this.

- We are more than happy to work with your own preferred contractors – please let us know in good time prior to the start of the tenancy.
- We advise against landlord maintenance policies such as British Gas HomeCare.

What if I have guarantees?

We can usually liaise with the manufacturer on your behalf and arrange for a repair to be carried out. Whilst parts and labour might be covered under the guarantee, it is not unusual for the manufacturer to charge in advance for the actual callout. Additional charges can arise if the tenant is not at home and we are required to be in attendance.

Please confirm details of guarantees in writing or by email to your property manager as we are not responsible where one of our approved contractors is inadvertently instructed.

- The majority of manufacturers are happy to deal with us as your representative.
- Please remember to let us know if you have guarantees in place.

What if I need a new washing machine for example?

We are able to make arrangements for the supply and installation of white goods such as washing machines, dishwashers and fridges. Under normal circumstances, where a replacement is recommended following a service call there is no charge for the call providing the same contractor supplies the replacement appliance.

Clients sometimes comment quite rightly that appliances are available cheaper on line. Whilst this is often true, it is important to take into consideration that an online supplier will not usually install the machine, collect keys for delivery, take away the old appliance and dispose of any packaging.

- We can usually arrange for the supply and installation of most makes and models.
- Prices quoted for online appliances rarely include installation and disposal of the existing appliance.

What if my tenant is unable to operate an appliance or the heating and hot water?

Instruction manuals should be available within the property for all appliances and installations from the heating system to the oven and hob. This is also a requirement of the Electrical Equipment (safety) Regulations 1994. If either you or a previous tenant has mislaid a manual, copies are often available on line.

If a service call results from a tenant not operating an appliance correctly he is ultimately responsible for bearing the cost. Should a tenant refuse to pay in a timely fashion, then whilst the cost will be met by you in the first instance it can form part of a claim against the deposit at the end of the tenancy.

With home automation growing in popularity, and even modest heating systems often requiring careful study of the instruction manual, providing an expert to assist your tenant is worth considering for high specification properties.

- Your tenant should be provided with copies of instructions manuals for every appliance serving the property.
- Tenants cannot necessarily be expected to operate complicated home automation systems without orientation.

Who is responsible for changing light bulbs?

Providing the bulb was working when the tenant moved in, replacement bulbs on a standard system required during the tenancy are usually his responsibility. You are responsible for repairing hardware such as light fittings and transformers.

Properties with specialist lighting and control systems should ideally be discussed with us prior to commencement of the tenancy, with any tenant liability clearly included within the tenancy agreement.

If the property has lighting units beyond reasonable reach, we suggest giving thought to installing long lasting LED bulbs prior to the tenancy starting.

- Tenants are usually responsible for replacing light bulbs during the tenancy.
- Discuss specialist lighting systems with us as soon as possible.

Leaks

Leaks from one property to another are not uncommon, especially in apartment buildings. These can result from something as simple as a failed seal in a bath or shower to more serious problems with pipes and installations. In situations such as this your tenant is asked to contact his/her neighbour, porter or concierge as soon as possible prior to reporting the problem to your property manager.

Always ensure pipes and tanks are adequately lagged and that your heating system includes a frost stat wherever possible.

Leaks can be costly and time consuming to trace and repair, and will often involve a claim on your insurance. Whilst Financial Services Authority Regulations often prevent us from making a claim on your behalf, we will gladly assist in preparing quotations and putting repairs in hand (See section on insurance).

- Tenants must provide a reasonable level of background heat to help avoid frost damage.
- We are usually prevented from making insurance claims on your behalf.
- Please refer to the section on insurance for more information.

What if there is a septic tank or sewerage system?

If your property has a septic tank or sewerage system requiring specialist attention, arrangements should be discussed with us prior to commencement of the tenancy, with any tenant liability clearly included within the agreement.

- Landlord and tenant responsibilities should be clearly laid out.

Who is responsible if a drain becomes blocked?

Unless the problem results from a failure in the sewerage or drainage system your tenant is responsible for clearing blockages caused by his/her doing.

If the tenant fails to pay in a timely fashion, then whilst the cost will be met by you in the first instance, it can form part of a claim against the deposit at the end of the tenancy.

- Your tenant is responsible where the drains are misused.

Who looks after the garden?

Responsibility for maintaining the garden in seasonal order and for clearing patios, balconies, drains and gutters of fallen leaves will usually be your tenant's responsibility.

Most agreements will prohibit them from lopping or destroying trees, plants and shrubs; however, reasonable pruning is expected.

Whilst we advise tenants to water planters and pots, holding them responsible for any losses is notoriously difficult. To help avoid problems with large or expensive installations, especially those on roof terraces, we advise installing an automatic irrigation system and confirming within the Agreement that your tenant should use it as instructed.

Where a gardener is included in the rent, the Agreement should clearly confirm the scope of his involvement. We recommend allocating responsibility on a task by task basis as this is the easiest way to ensure both Landlord and Tenant meet their responsibilities.

- Your tenant is usually responsible for general garden maintenance.
- Consider installing an automated irrigation system on roof terraces with extensive planting.

Who looks after the swimming pool and hot tub?

Normally your tenant is responsible for keeping the water in optimum condition, including obtaining, paying for and adding chemicals. You are responsible for maintaining the filter, pump and associated equipment/ machinery. With outside pools the cost of commissioning the pool at the start of the season and decommissioning it at the end is usually your responsibility as landlord.

The Agreement should clearly confirm who is responsible for what so as to avoid any misunderstanding.

- Ensure yours and your tenants obligations are clear from the outset.

What about infestations?

Most Agreements will make your tenant responsible for infestations such as mice, bed bugs and other vermin, this based on the premise that an act or omission on their part caused or contributed to the problem arising.

In many cases, especially when close to the start of the tenancy, uncertainty may arise as to where responsibility rests. In such cases a degree of compromise is recommended to maintain a healthy relationship with your tenant.

With squirrels, glis glis and pests entering the property as a result of a problem with the fabric of the building, responsibility rests solely with you as landlord unless a failure on the tenants part to report a problem results in an increased loss.

We work with a number of qualified pest control companies.

- Most infestations are viewed as being a tenant responsibility unless discovered at the start of the tenancy.

Property Visits

What about property visits?

We will visit the property once during a twelve month tenancy, to carry out a superficial check for obvious signs of deterioration. This will usually be scheduled approximately four to five months after a new tenant moves in.

- Following the visit you will be sent a brief report on its condition noting any areas of concern.
- Visits are of a superficial nature to look for obvious problems.

Does my tenant have to allow access?

Yes, subject to twenty-four hours written notice, your tenant is under a statutory and contractual obligation

to allow access to you and your representatives. Having said this, where a tenant expressly denies access you should not enter as this is viewed as a serious breach of his quiet enjoyment. In the unlikely event of a problem arising, your property manager will advise you further.

- You are allowed reasonable access subject to twenty four hours written notice.
- If a tenant denies access you should not gain entry without advice.

Safety Regulations

What about Safety Regulations?

You have an important statutory obligation in this regard, especially in relation to gas and electricity within the property.

Your property manager will automatically arrange for the Landlord Gas Safety Record (CP12) and Portable Appliance Test (PAT) to be renewed annually. Whilst having an annual PAT is not a statutory requirement, maintaining your tenant's safety is. Without an annual PAT you would not be viewed as having taken reasonable steps to secure the safety of your tenant should an accident occur, the consequences of which are very serious and could result in a fine or imprisonment.

We advise having a periodic fixed wiring test every five years. This is particularly important in older properties and those where electrical work may have been undertaken by someone other than a trained electrician. We can make arrangements for a test subject to receiving your written instructions and payment in advance.

We advise against using Landlord Gas Safety Records produced by British Gas as they routinely only test appliances covered under their service care programme and omit items such as hobs and decorative fires. Every appliance must be tested for you to meet your statutory obligations.

You must ensure adequate smoke alarms are fitted throughout the property. In most cases this will mean one unit on each floor of the property however you should seek advice for properties with an unusual layout.

All solid fuel burning appliances and open fireplaces must be safe guarded with a carbon monoxide alarm positioned close to the appliance. We strongly recommend these should be added near to any gas or oil fire appliance as well to ensure the safety of all occupants.

- You must have a valid Gas Safety Record for every gas appliance at the property.
- Having an annual Portable Appliance Test is important.
- Smoke alarms must be fitted and should ideally be mains wired.
- Carbon monoxide alarms must be fitted wherever there is a solid fuel burning appliance or fire.

I have a new gas boiler. Do I need a Landlord Gas Safety Record?

Technically no as any newly installed gas appliance will be compliant for twelve months after installation. However this will only apply to the new appliance and not the rest of the gas installation.

Our recommendation however is that you have a certificate prepared as this is your best defence should a problem occur. In our experience this is particularly important if the property is brand new as problems here are not uncommon in spite of installation paperwork being in place.

- We recommend that even newly installed appliances are covered by a Landlord Gas

What about portable gas appliances like barbecues and patio heaters?

Guidance has changed in this regard in that portable gas appliances including barbecues and patio heaters must be tested and should appear on a Gas Safety Record. Our recommendation is that for a number of reasons appliances of this nature are removed from the property. Where they remain, a suitably qualified * Gas Safe Register registered engineer should undertake a safety test and provide a Gas Safety Record.

Hamptons International can arrange for testing subject to receiving your written instructions and payment in advance. Please note that the appliances should be readily accessible and connected to a gas supply sufficient for testing purposes.

- Engineers need to be qualified to test “LPG Leisure” appliances, a qualification which many domestic engineers will not have.

Service Charges

Will you pay my Ground Rent & Service Charge?

We generally advise that clients make arrangements direct with the Freeholder or their Managing Agent regarding payment of ground rents and services charges. This is because of the sums involved and problems encountered with Freeholders dealing with third parties. Paying ground rents and service charges on your behalf also necessitates us holding a significantly higher reserve float level than usual.

We are happy to settle accounts rendered for ground rents and services charges when in funds; however, we accept no liability for punitive charges levied for none or late payment.

- We recommend that you make these payments yourself wherever possible.

At the End of the Tenancy

How soon can I re-market the property?

If you are planning to re-let the property, our local office will contact you to discuss remarketing. Under normal circumstances the Agreement will allow for re-marketing during the last two months of the tenancy; however, due to the immediate nature of some lettings markets, serious interest is not always forthcoming until closer to the end of the tenancy.

- You can usually re-market the property two months before the end of the tenancy.

What happens on the last day of the tenancy?

We arrange for an inventory clerk to assess the condition of the property on your behalf.

Using the check-in from the start of the tenancy, a check-out is prepared clearly noting any differences. It is not necessary for you as landlord or us as your agent to attend the check-out. This document also notes what, in the opinion of the clerk, is the responsibility of your tenant and what rests with you as a result of general fair wear and tear.

Once the check-out is complete the clerk will usually return keys to our local office, after which the tenant has no right of re-entry.

- We arrange for the condition of the property to be recorded.

Should the property be cleaned by the tenant?

Fair wear and tear aside your tenant is required to return the property in the same condition as they found it. As most Agreements place an obligation on you as landlord to have had the property professionally cleaned at commencement of the tenancy, your tenant is required to do the same at the end. Your tenant is not required to return the property cleaner than when it was handed over.

Assuming the property was cleaned prior to his arrival, your tenant should have it cleaned when he vacates.

What about the garden?

Under the provisions of most agreements, your tenant will be responsible for ensuring that the garden, patio, terrace and balcony (where applicable) are cleaned, tidied and left in seasonal order.

What happens after the check-out has been prepared?

Upon receipt of the check-out, we prepare a schedule of damages noting what, in our opinion, can reasonably be recovered from your tenant. Typical claims include deficiencies in cleaning, missing items and deterioration in décor beyond fair wear and tear.

We pass the schedule of damages to you for your consideration. Once you are satisfied with it, we pass a copy to the tenant for his comments and approval. If your tenant is in agreement, funds can be released in line with your joint instructions.

Your prompt attention as landlord in dealing with release of the deposit is essential under the terms of Housing Act 2004 (Tenancy Deposit Protection).

If you are planning to be away from home after the tenancy ends, please ensure you provide your property manager with contact details as we are unable to proceed without your instructions.

- We will prepare a schedule of suggested charges against the deposit for your consideration.
- Your prompt attention in reverting to us is important.
- Please let us know if you will be away shortly after the tenancy ends.
- For further information please refer to the section on deposit releases.

What if I need to spend money to get the property ready for re-marketing or a new tenancy?

A well presented property is essential for marketing purposes. In a busy market a new tenancy might well be agreed before a claim against your former tenants deposit has been finalised.

As inventory documents should clearly record the condition of the property there is no need to delay readying your property for re-marketing; however, and notwithstanding any claim against your former tenant, the cost of these works will need to be met by you in the first instance and cannot be deducted from the deposit until agreement has been reached.

- Once the inventory check-out has been completed you can commence work to ready the property for re-marketing.
- Repairs cannot be charged against the deposit until either agreement has been reached or an award made.

How often will my property need refurbishing?

As a general guide, rental properties require redecorating and re-carpeting every five or so years, although needless to say this can vary enormously depending on the property and type of tenancy.

A well presented property is essential when looking to maximise rent and minimise the time it is empty between tenancies. Improvements could be as simple as redecorating a room and adding some new furniture, or as extensive as remodelling the kitchen and bathrooms.

Hamptons Interior Solutions offers a bespoke service to landlords. Further information is available on 020 7305 5780 or www.hamptons.co.uk/interiorsolutions.

- Refurbishment is usually required every five or so years.
- Hamptons has a specialist department available to assist you.

What happens about utilities and Council Tax?

Once the tenancy has come to an end we advise utility companies and the Local Authority that accounts need to be in your name care of us. If you are planning to move back into the property or wish to make your own arrangements, please let us know by email at utilitytransfers@hamptons-int.com, so that we can arrange for accounts to be sent to your nominated address.

Given the amount of providers in the market place and their reluctance to deal with third parties, transferring utilities can sometimes be an onerous and unreliable process. We work with a number of utility transfer companies who assist with the transfer process as well as offering the opportunity for your new tenant to choose a provider and tariff that best suits them. Tenants have complete freedom of choice. If your property remains vacant for more than a month please check your accounts and liaise with your property manager, to ensure you are meeting your obligations whilst the property is empty.

- Your property manager will arrange for council tax and other utilities to be transferred back into your name as required.
- Whilst the property is empty, the gas and electricity suppliers will remain the same as during the tenancy.
- If the property is empty for any period of time you should liaise with your property manager to ensure your obligations are being met.

What happens to my property whilst it's empty?

Your local Hamptons International office will be working hard to find a replacement tenant as soon as possible. Depending on the time of year and prevailing market conditions, properties can, on occasion, remain empty and so arrangements need to be made to protect your property during this period.

To assist you with this, Hamptons provides a vacant management service for an additional fee which includes a monthly visual check of the property followed up with a brief written report. We are also able to assist with maintenance issues and the payment of utilities.

To take up this service please liaise with your property manager who will gladly make the necessary arrangements.

- We offer a vacant management service to look after the property between tenancies.

Should I advise my insurers when the property is vacant?

Yes – Especially as most insurers will make it a condition of cover that the property is not left empty without regular checks. If necessary we can, at your expense, arrange for additional visits and for the heating and hot water systems to be drained down during winter months.

- Always keep your insurers informed when the property is empty and comply with their requirements.

Deposit Monies

What happens after the check-out has been prepared?

Upon receipt of the check-out we prepare a schedule of damages noting what, in our opinion, can reasonably be recovered from your tenant. Typical claims include deficiencies in cleaning, missing items and deterioration in décor beyond fair wear and tear.

We pass the schedule of damages to you for your consideration. Once you are satisfied with it we pass a copy to the tenant for his comments and approval. If your tenant is in agreement, funds can be released in line with your joint instructions.

Your prompt attention as landlord in dealing with release of the deposit is essential under the terms of Housing Act 2004 (Tenancy Deposit Protection).

If you are planning to be away from home after the tenancy ends, please ensure you provide your property manager with contact details as we are unable to proceed without your instructions.

- We will prepare a schedule of suggested charges against the deposit for your consideration.
- Your prompt attention in reverting to us is important.
- Please let us know if you will be away shortly after the tenancy ends.

How do you decide what and how much the tenant should pay?

As landlord, you are entitled to compensation for any reasonable loss you suffer. You are not entitled to be better off after compensation has been paid than you would reasonably have been at the same point had the damage not occurred, as this is viewed as betterment.

An example of betterment would be where a five year old carpet has been damaged beyond repair/ use and you try to recover the full cost of re-carpeting the room from your tenant. As you have had five years use, a view would be taken on how much further use you could have reasonably expected, and this will form the basis of your claim for compensation. The same guidelines apply to decorations and furnishings.

Our advice to you is based on our experience in dealing with disputes and using guidelines provided by The Tenancy Deposit Scheme (TDS), the government approved scheme Hamptons International uses to ensure you are compliant with the Housing Act 2004. In the majority of cases your tenancy will include provision for the TDS to arbitrate if a dispute

arises. Apart from the registration fee paid by you at commencement of the tenancy, there is no additional cost unless the tenancy falls outside of the Housing Act.

Demonstrating your loss with evidence in the form of receipts, quotations and condition reports (the check-in and check-out), is essential. Unsubstantiated claims and arbitrary figures will be rejected out of hand by the TDS or court for all but the smallest amounts.

- Our advice is based on experience on how an adjudicator or the courts might view your claim.
- You are entitled to compensation for reasonable losses, but not to be betterment.

What if I don't agree with your advice?

Our advice is based on extensive experience and is designed to enable you to make an informed decision on how best to proceed with your claim. Ultimately the decision on how to proceed is yours. As your Agent we will continue to uphold your position and offer advice with the aim of brokering agreement between you and your tenant.

- We always maintain your position regardless of our view on whether it will be upheld.

What if I can't reach agreement with my tenant?

In the majority of cases we will be holding your tenants deposit as stakeholder, and therefore cannot release it until we have either your joint agreement or a judgement in default from the courts or the Tenancy Deposit Scheme (TDS).

We will use our reasonable endeavours to broker an agreement between you; when this is not possible the Agreement will confirm how you are to proceed. In many cases this will involve referring the matter to the TDS, something we can do on your behalf for £200 (including VAT). Referring a dispute to the TDS should be viewed as a last resort as any lack of effort on the part of the landlord or tenant to reach agreement could be prejudicial. TDS charges £500 or 10% of the deposit (not the amount in dispute), whichever is the greater to adjudicate where the tenancy falls outside of the Housing Act.

The Agreement sets out clear principals which serve to advise the tenant when a claim can be made against their deposit. Confusion sometimes occurs in that landlords, not unreasonably, interpret these clauses as allowing us to release funds without reference to the tenant. Unfortunately this is not the case as they serve only to set a principal under which a court or arbitrator can award; they do not relieve us of our obligations as stakeholder.

In order to protect your position it is important for you to be seen as proactive in dealing with the claim, both in terms of responding to enquiries and meeting deadlines confirmed within the Agreement.

The TDS will not adjudicate on disputes raised more than three months after the end of the tenancy. In cases where this deadline passes, and agreement cannot be reached, you will need to mount a claim through the courts.

- The deposit cannot be released until agreement has been reached or we are in receipt of a judgement.
- In the majority of cases a dispute can be referred to the Tenancy Deposit Scheme (TDS).
- There is a three month deadline from the end of the tenancy for a dispute to be referred to TDS.
- Where TDS cannot adjudicate the courts can decide where liability rests.

What if the deposit is not protected by the TDS?

Unless the tenancy falls outside of the Housing Act you will have made your own arrangements to ensure you are compliant by protecting the deposit with an alternative scheme. In this situation we are unable to liaise with the scheme on your behalf.

Where the tenancy falls outside of the Housing Act, unless you have made arrangements with another scheme, any unresolved dispute will usually need to be referred to the courts unless the agreement made provision for an alternative form of arbitration.

As Hamptons International is not a party to the Agreement we are unable to mount a claim on your behalf; however, we will assist you in preparing your claim through the provision of copy correspondence.

- You personally will need to liaise with the scheme you chose to protect the deposit.
- As we are not a party to the agreement we are prevented from mounting a claim through the courts on your behalf.
- In both cases we can assist you by providing copy documentation.

More Information

Further information for each of the Tenancy Protection Schemes can be found online:

- General Advice: www.gov.uk/tenancy-deposit-protection

- Tenancy Dispute Service (TDS): www.thedisputeservice.co.uk
- My Deposits: www.mydeposits.co.uk
- Deposit Protection Service (DPS): www.depositprotection.com

What if you are not holding a deposit?

With a corporate tenancy you might have agreed to accept a letter of guarantee, rather than a cash deposit. In many cases a corporate tenant will employ the services of a third party, often referred to as a relocation agent, to handle the claim and protect their interests in heading off speculative or inflated claims.

If agreement cannot be reached on the level of compensation it would fall to you to mount a claim through the courts or a form of arbitration other than TDS.

- Where a letter of guarantee has been provided, the tenant promises to pay compensation which is agreed as being owed.
- If agreement cannot be reached making a claim through the courts is usually the most practical option.

Are disputes common?

The number of disputes referred to the TDS and the courts is low in comparison to those agreed amicably. Most disputes arise either because of unrealistic expectations around the tenant's obligations, or automatically when a tenant fails to respond to our efforts to make contact.

- Disputes are rare.
- From a landlords perspective it is always better to reach agreement rather than defer to arbitration.

Rent Arrears

What does Hamptons do when my tenant fails to make a rental payment?

Where rent is outstanding for more than five days after it becomes due, we endeavour to notify you at the earliest opportunity. Over the next twenty-eight days we try to contact your tenant by various means in order to elicit payment.

If these steps prove unsuccessful, further action should be taken to recover the arrears. This may include starting legal proceedings to gain possession. Records of our efforts, including copy correspondence, are kept and made available to your solicitors.

- Tenants who cannot pay their rent often ignore our attempts to contact them.
- Our keeping of records to elicit payment is important should you need to go to court.

How soon can I start legal proceedings?

Generally speaking, tenancies to individuals* where the annual rent does not exceed £100,000 will fall under the Housing Act. The Act provides for legal proceedings to commence once the tenant is two months in arrears. As rent is usually payable in advance, proceedings can start once the tenant misses two monthly payments.

At this point, a solicitor will usually recommend issuing a Section 8 Notice confirming to the tenant that you are seeking possession for late payment of rent and arrears. This Notice is valid for twelve months, and so remains useful should the tenant initially clear his arrears and then miss them again at a later date. Serving a Section 21 Notice instead of a Section 8 should only be considered on the advice of your solicitor.

For tenancies falling outside of the Housing Act, technically you can start proceedings for breach of contract as soon as a rental payment is missed. In practical terms, however, it is often advisable to wait until the tenant misses two monthly payments.

- Not tenancies to companies.
- Proceedings can commence once the tenant is two months in arrears with Housing Act tenancies.

In practical terms the same time frame is usually employed with non Housing Act tenancies.

What happens if matters proceed to court?

A date will be set for your claim to be heard in the County Court before a Judge. Your solicitors will advise you in more detail, but in simple terms if the Judge is happy with the documentation supplied and agrees with your claim, you will secure a Possession Order and a Money Judgment. These documents enable you to take possession and enforcement action to recover monies owed to you.

- Court hearings are usually relatively simple unless the tenant sites reasons for not paying rent.

What happens if the tenant refuses to move out and pay the money he owes?

The tenant will be given a set date, usually a few weeks after the hearing, to vacate the property. If he fails to comply you can apply to the Court for a Bailiff to take possession.

If your tenant fails to settle the Money Judgment, which given the circumstances around possession proceedings is quite likely, we will approach your tenancy deposit scheme regarding release of the deposit towards the judgment debt.

- If the tenant fails to give possession you can ask the court to appoint a Bailiff to take possession.
- You have up to six years to enforce a judgement for money owed to you.

How long can it take to get possession and how much does it cost?

Typically it can take in the region of six months and cost approximately £1,700 + VAT to gain possession.

Can you start legal proceeding on my behalf?

Whilst not being a party to the Agreement prevents us from commencing legal proceedings on your behalf, we will assist your solicitors wherever reasonably possibly. Please refer to our Terms of Business for further information.

When choosing a solicitor it can be faster and cheaper to use a firm employing specialists in Landlord & Tenant Law rather than a general practice family solicitor.

Hamptons International works with the following firms, who would be pleased to take your instructions:

Quality Solicitors Burroughs Day

14 Charlotte Street

Bristol, BS1 5PT

0117 929 0333

www.qualitysolicitors.com/burroughsday

Pain Smith

1 Mansfield Business Park, Lyminster Bottom

Four Marks, GU5PZ

01420 565 310

www.painsmith.co.uk

If I have a Break Clause is this an effective way to gain possession when there are arrears?

Invoking a Break Clause to end a tenancy should not, in itself, be relied upon as an effective way to gain possession in an arrears situation. If the tenant fails to give vacant possession once the Notice expires, you will have lost two valuable months when more formal proceedings could have commenced.

Under certain circumstances your solicitors might recommend invoking a Break Clause alongside more formal possession proceedings.

What if I have Rent & Legal Protection?

Your Client Account Manager and local Hamptons International office will advise you on how a claim is processed.

Can I change the locks and evict my tenant?

Absolutely not; evicting a tenant without a Possession Order is a criminal offence under the Protection from Eviction Act, punishable by fine or imprisonment.

Can I delay carrying out repairs until the arrears have been cleared?

This is not advisable as failure to carry out repairs can put you in breach of your statutory and contractual obligations. A tenant might cite such a failure during possession proceedings as a reason for not clearing their

arrears. A sympathetic Judge could then delay or reject your claim for possession until repairs have been carried out.

Repairs should be undertaken as normal in spite of any arrears.

Insurance & Insurance Claims

Who is responsible for insuring what?

You are responsible for insuring your property, and your tenant his. Where an act of negligence on the part of the tenant contributes to your loss, the Agreement offers you a degree of protection in so far as compensation can be sought in the form of damages, or where an insurance claim is possible, recovery of the excess/increased premium. You are under a duty to mitigate your own loss, and so any failure on your part to have adequate insurance is your responsibility and not your tenants.

We advise checking the scope of cover provided, especially in relation to leak and flood damage in blocks of apartments. It is not unusual for damage to your property (including walls, ceilings, flooring and kitchen units) from leaks and floods not to be covered by buildings insurance but by your own contents insurance.

Your Property Manager and local Hamptons International branch can help you arrange cover.

- You are not responsible for insuring your tenant's possessions.
- Ensure your policy includes public liability cover.
- Leaks from one apartment to another are rarely covered by buildings insurance.

Are insurance claims on rented properties common?

Leaks from one property to another are a common cause of insurance claims, especially in developments comprising a number of apartments. Leaks can result from something as simple as failed seals in baths and showers to more serious problems with appliances and other installations.

Leaks can be time consuming and costly to trace and repair and will often involve a claim on your insurance.

On rare occasions, as with any property, claims on rented properties can arise from fire, storm damage and other insured risks.

- Claims for leaks from one property to another are most common.

If I own a leasehold flat, will the Freeholder claim on the buildings insurance?

This is unlikely unless the problem resulted from a failing in the structure of the building or associated plant/installations under the Freeholder's control. Possible claims might include water damage due to a leaking roof or sewerage stack.

- Your Freeholder or their Managing Agent will advise on a case by case basis.

Who is responsible if one property leaks into another?

Typically, each party should make a claim under their own insurance policy for any damage to their own property or belongings. Therefore, it is best to speak to your insurer in the first instance to discuss the matter in detail.

If my tenants possessions are damaged as a result of a problem, am I liable as their landlord?

As a general rule no, unless there is a claim of negligence or breach of contract. Your tenant is responsible for insuring his own possessions. Most tenancy agreements will make it clear that both landlord and tenant are responsible for insuring their own property and possessions. This provision does not relieve the tenant from his obligations to take reasonable care of your property and possessions.

- Generally speaking you are not responsible for your tenant's possessions.

What if my tenant is negligent?

Contact your insurer in the first instance if any damage is caused to your property. Most tenancy agreements also allow you to seek redress where through act or omission a tenant causes you to suffer loss by way of a

rejected claim, excess or increased premium. Whilst such cases can be notoriously difficult to prove, your insurance policy may also provide legal assistance in this regard.

- In the first instance speak with your insurer if you feel your tenant has been negligent.

Does my tenant have a duty to reduce the chances of a loss occurring?

Yes, most tenancy agreements will place an obligation on the tenant to promptly report problems in order to mitigate further loss. Tenants should also take reasonable steps to avoid frost damage by maintaining a low level of heat whilst the property is empty.

A tenant should also inform you if he plans to be away from the property for any length of time so that your insurers can be advised. You will need to check your insurance policy to establish what period of absence requires notification and to establish any additional terms that must be complied with whilst the property is “unoccupied”.

- Tenants are not responsible for insulating pipes and water tanks.
- Always check your policy.

In the event of a serious problem, do I have to re-house my tenant?

Most tenancy agreements allow for rent to be suspended either in full or in part (depending on the severity of the damage/ loss of amenity) should all or part of a property become “uninhabitable”.

Landlords and tenants may agree that the tenancy can end immediately a property becomes uninhabitable if it is clear that the property is unlikely to be fully repaired within a reasonable time frame (in the case of a serious fire or flood, for example).

Needless to say, it is not always easy to judge whether or not a property is uninhabitable and, if so, how long it will take for repairs to be undertaken. In addition, your insurer should be consulted on whether your policy contains Loss of Rent cover and to ensure they are in agreement with any proposals you and your tenants may have.

Tenancy agreements will not usually require you to provide alternative accommodation. It is not advisable to enter into what may become an open ended liability for accommodation and associated costs. Where you believe cover may be available for alternative accommodation under your insurance policy, we advise checking the scope of this with your insurer prior to discussing this with your tenant.

For health and safety reasons, considerable caution should be exercised when considering allowing a tenant to remain whilst a property has been part-damaged and/or whilst repairs are carried out.

In all cases, expert advice should be sought, with any agreement between you and the tenant confirmed in writing.

- Always check your policy and insurer before reaching agreement with your tenant.
- Landlords are rarely responsible for re-housing a tenant.

Can I claim for lost rent?

Insurance policies containing specific Loss of Rent cover are common and you should check what cover is available under your policy. Separately, loss of rent could form part of a claim for damages in cases of negligence against your tenant or a third party.

What if my tenant or a third party makes a claim for personal injury?

Even in these litigious times, claims of this nature are rare. Most policies will offer you Public Liability cover, and so your insurer should be advised immediately a claim or notice of an intended claim is received. You should also seek independent legal advice.

- Having Public Liability cover is important.
- Always advise your insurer immediately a claim looks likely.

Can Hamptons progress a claim on my behalf?

Processing insurance claims is viewed as a Regulated Activity by the Financial Services Authority (FSA). Whilst this prevents us from lodging and dealing with claims for UK based landlords, we can co-operate with

your insurers, arranging for quotations and estimates using our bank of approved contractors.

For non resident landlords we are able under FSA regulations to liaise more fully with your insurers.

- Regulation prevents us from processing claims on behalf of UK based landlords.

What if I have a major claim?

Your insurance company will instruct a loss adjuster to represent their interests when a claim is made. They will investigate the circumstances around the loss and report back to the insurance company. An adjuster will not formulate a claim, but adjust any claims that are presented to them.

With small to medium sized claims it is usually relatively easy for most landlords to agree settlement direct with their insurer.

For larger claims over £20,000, you may wish to consider appointing a firm of independent loss assessors to represent you. Their staff of technical experts will handle all communication and correspondence with your insurer and their representatives, interpret the policy with your best interests in mind, formulate all aspects of your claim, and effectively manage all aspects of the claim through to final settlement. Their fee is usually based on a percentage dependant on the level of settlement.