



## Assured Tenancies

## BRIEFING

### Overview

On 1 October 2010 the Assured Tenancies (Amendment) (England) Order 2010 will come into force. It will affect both landlords of privately rented stock and Registered Social Landlords (RSLs).

### Need to know in brief

The main features are as follows:

- The annual rental threshold for assured tenancies will rise from £25,000 to £100,000.
- The Tenancy Deposit Scheme regime will therefore apply to a much wider pool of tenants.
- No transitional provisions are provided.

### Assured tenancies

The Housing Act 1988 introduced the concept of an Assured Tenancy. Two types of assured tenancies were created; (a) the assured tenancy and (b) the assured shorthold tenancy (AST).

An AST is a special type of assured tenancy and is used most frequently in the private sector for short term lets due to the relative ease with which a landlord can terminate the tenancy and the lack of rent control.

Until 28 February 1997, landlords had to ensure they had followed specific procedural requirements or they created assured tenancies. However, since that date, when the rule was reversed and except in limited circumstances, all new tenancies which would have been assured tenancies are now AST's.

### Contractual tenancies

Schedule 1 of the Housing Act lists factors which exempt tenancies from being an assured tenancy or an AST. Currently if the tenant is paying a rental per annum in excess of £25,000, they cannot hold an AST or assured tenancy. Instead, the tenant will hold a contractual tenancy.

This has two immediate consequences:

- To terminate a contractual tenancy, the landlord will serve a Notice to Quit.
- The landlord is not obliged to hold the deposit in a Tenancy Deposit Scheme.

### Increasing the threshold

The increase of the threshold from £25,000 to £100,000 will have the following impact:

- All new tenancies created after that date with a rental below £100,000 per annum will be an assured tenancy or an AST (assuming they meet all the other requirements of the Act).



- To terminate an assured tenancy, the landlord must comply with section 8 of the Housing Act 1988. Your Notice of Seeking Possession (commonly referred to as a NOSP) must specify one of the grounds provided under the Act. As not all of the grounds provided are mandatory grounds for possession, there are clear limitations upon the landlord's ability to obtain possession.
- To terminate an AST tenancy, the landlord must serve a Notice in strict compliance with Section 21 of the Housing Act 1988. The minimum notice period provided in a section 21 notice is two months: this is longer than the minimum period of 4 weeks provided by the common law for a Notice to Quit.
- Further, in respect of AST's, landlords must ensure that the deposit they receive from the tenant is held in accordance with the rules relating to the Tenancy Deposit Scheme.
- of the Act and receive confirmation that the landlord has complied with the scheme rules.
- If a landlord fails to do this, the tenant can apply to a County Court. If the Judge is satisfied of the breach, they can either order the landlord to pay the deposit into the designated account, or they have the power to order the landlord to repay that sum to the tenant.
- However there is a real sting in the tail. The Court must also order that the landlord pays compensation to the tenant equal to three times the deposit.
- Further, the service of a section 21 notice seeking to terminate the AST is prohibited during any time period when the deposit is not being held in accordance with the scheme, or if the initial requirements have not been complied with.

### The Tenancy Deposit Scheme

Sections 213 of the Housing Act 2004 sets out the following rules in relation to the holding of deposits for AST's:

- The deposit must be paid into an authorised scheme.
- The initial requirement of the authorised scheme must be complied within 14 days.
- The tenant must be given information of what scheme is being used, details of the provisions

### What difficulties may arise?

- There are no transitional provisions. This means that existing tenancies falling within the threshold of £100,000 will become either assured tenancies or ASTs from 1 October 2010.
- What is currently unclear is how the provisions relating to the Tenancy Deposit Scheme will apply. The Tenancy Deposit Scheme currently applies to AST's not to contractual deposits. However if existing contractual agreements convert to AST's and are covered by the



Tenancy Deposit Scheme, this will lead to some practical headaches for landlords.

- Will the Courts interpret the provision in the Act to say that landlords must pay the deposits they already hold into designated schemes? If so, will they have to do that within 14 days from 1 October?
- It is hoped further guidance will be issued nearer the time.

### **What action should landlords be taking?**

In preparation for October 2010, landlords should:

- Make sure they are familiar with the rules relating to Tenancy Deposit Schemes.
- Make sure they have the necessary form of agreement to grant AST's or Assured Tenancies for all new tenancies granted after 1 October 2010.

Landlords should also undertake a review of their existing tenancy agreements to establish the following:

- Which existing tenancies will fall within the new threshold.
- Review the arrangements under which you currently hold deposits as in due course you may be required to pay the deposit into one of the recognised schemes to avoid any sanctions for non compliance.

We wait with interest to see if any further guidance is issued on the above point.

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