THE IMPACT OF COVID-19 ON LANDLORDS OF STUDENTS OCCUPYING HMOS

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Measures brought in to tackle the pandemic meant that universities, much like everyone else, had to implement policies of working or learning remotely. These are likely to continue at varying extents across England for the 2020-2021 academic year. If students, in particular those residing otherwise abroad, do not need to attend lectures in person, and face difficulties in returning to England due to travel restrictions, then this is likely to raise an issue for landlords of HMOs targeted at that sector of the market. This is because students renting a room in shared accommodation or those who had agreed to do so for the next academic year are likely to try to surrender their lease. Where does this leave the landlords?

WHAT IS AN HMO?

The definition of a house in multiple occupation ("HMO") is complex, and one with which most HMO landlords should already be familiar. For the purposes of this article, it is unnecessary to embark on a detailed appraisal of it. The most common type is where three or more unrelated persons reside in rented living accommodation or a house or a flat and share an amenity, such as a bathroom or the cooking facilities.

Some converted blocks of self-contained flats may also be HMOs, and buildings in mixed use can qualify if the local housing authority serves an HMO declaration to that effect.

It is relevant to highlight that a building occupied by persons for the purpose of undertaking a full-time course of further or higher education at a specified educational establishment etc., where the person managing or having control of it is the educational establishment in question or a person of a specified description, will not be an HMO.

Landlords will be aware of the legal requirements to license some HMO properties and of the obligations imposed by HMO Management Regulations. While these are important matters to be considered, they are beyond the scope of this article.

ARE ASSURED SHORTHOLD TENANCIES BINDING BEFORE THE TENANT MOVES IN?

An agreement in respect of an assured shorthold tenancy is binding on the parties. So long as an offer to let a property is accepted, and all the principal terms are agreed upon, then the obligations under that letting agreement will be binding whether or not the tenant moves in. This includes the obligation to pay rent.

If the tenant subsequently decides not to move in, then they may seek to end the agreement. Unless the agreement is periodic or contains a break clause, the landlord is not obliged to agree. If the landlord refuses, then the tenant will continue to have to pay rent until the agreement ends, on the expiry either of the term or of a properly served notice to quit or break notice. The situation may be complicated if no written agreement was drawn up between the parties.

The position concerning fees for agreeing to a termination is considered below.

CAN THE TENANT SURRENDER THE TENANCY?

Surrender of a lease requires the unequivocal consent of both the landlord and the tenant. Legislation demands this to be done by a deed of surrender. This will need to set out clearly the conditions of the surrender. While it is possible for a surrender to occur without a deed (by operation of law), this requires an unequivocal act by the tenant showing that they no longer intend to be bound by the tenancy and an unequivocal act of acceptance by the landlord. There have been many cases in which acts that a landlord regarded as unequivocal were not interpreted in that way by the court when the tenant later changed their mind. For the avoidance of complications, such as a tenant arguing illegal eviction, it is advisable that a deed is used.

Difficulties with this, during lockdown, included finding witnesses to the signing of the deed. A more general problem is the cost.

CAN THE LANDLORD CHARGE FEES?

It is still possible to charge the tenant fees for early termination (provided that these are not unfair and are set out in the agreement). Landlords must be alert to the Tenant Fees Act 2019 which prohibits charges exceeding the loss suffered by the landlord as a result of the termination, and makes it possible for the tenant to recover prohibited payments in the First-tier Tribunal.

The landlords' reasonable costs of drawing up the paperwork required upon termination should be recoverable as should actual or predicted losses (e.g. continuing management fees and loss of rent), but calculating these accurately in advance can be complicated (see 2019 Act, Schedule 1, paragraph 7).

WHAT HAPPENS IF THE TENANT REFUSES TO PAY RENT?

Claims for unpaid rent are relatively straightforward. If the tenant is at least two months' (or eight weeks') rent in arrears at the time when a notice of eviction is served, and if at the time of the hearing the arrears have not been reduced to below that threshold, then the Court has the obligation to make a possession order against the tenant to which a money judgment is usually added. Otherwise, the Court will have discretion as to whether a possession order should be made, and in order to decide this question it may take into account all relevant circumstances.

Such claims may, however, become complicated if the tenant brings a counterclaim for disrepair or for failure to protect a deposit etc. to reduce the amount of the arrears.

It is important to bear in mind that the stay of possession claims was recently extended until 23 August. Furthermore, the notice period for section 8 notices of eviction required to be served has been extended from 14 days, in rent arrears cases, to 3 months. This provision will be in place until 30 September 2020.

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