



PainSmith Solicitors Legal Advisory

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Uninhabitable Premises

As most agents will be aware a landlord is under a general obligation to provide a property that in a reasonable condition for the tenant to inhabit. However, due to unforeseen circumstances a property that was in good condition may become uninhabitable in whole or in part during the tenancy. Agents should be looking to take actions along the following lines:

Habitation clauses- Ideally, a tenancy agreement should have a clause stating that the rent, or a fair proportion of it, is not payable if the property becomes uninhabitable in whole or in part unless the damage is caused by the actions of the tenant. There should also be a clause giving either party the right to terminate the tenancy at short notice if the property is to be uninhabitable for any significant length of time.

Insurance- An important follow-up to a habitation clause is adequate insurance for the landlord to be able to recover the rent payments he will lose while the property is not available to be occupied. However, insurance companies are increasingly unwilling to provide this type of cover, especially at the cheaper end of the market. The flooding of summer 2007 may make insurance companies even less willing to provide such cover in the case of certain properties that are deemed to be at flood risk. Some policies will pay to have the tenant rehoused. As the premiums are a tax deductible expense such policies are to be recommended even though they are provided at a higher cost.

Rehousing- There is some doubt as to whether a landlord is under a legal obligation to rehouse the tenant. On one side there is the presumption that the landlord will provide accommodation to a tenant for the term of the tenancy as long as they pay the rent. On the other side landlords cannot be liable for what is known as *force majeure*, or an 'Act of God'. This leaves landlords in something of a quandary. The best advice is to offer to arrange the rehousing of a tenant as long as they pay the rent or to offer a surrender of the tenancy. Each case will need to be considered in the light of the clauses available in the tenancy agreement, the insurance position, and the availability of alternative accommodation in the area at the time.

With regard to insurance claims agents must remember that FSA regulations prevent them from making a claim or from handling a claim if they do not have the appropriate registration. For most agents this will mean that they can liaise with the loss adjuster but cannot fill in a claim form. Be warned that this is a criminal offence.

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