

Tenant referencing, terminating agreements and complaint handling

Resolution requested: Compensation for loss of rent and poor service

Award: £525

Resolved by: Proposed decision

What happened?

The landlord said:

- He instructed the agent to let his property, which included finding a suitable tenant
- He completed all sections of the 'Landlord's Instruction Form' designed by the agent to help find a tenant for the property, which matched the landlord's criteria
- On the form they made it clear that they were reluctant to rent to a family, and the agent then proposed a tenant with a child
- He called the agent to discuss the issue, and found the agent uncooperative
- However, he eventually agreed to proceed with the tenant, on the condition that the agent ran additional checks, and kept marketing the property in case a more suitable applicant could be found
- He emailed the agent to confirm their position, receiving no response
- Despite continued efforts to contact the agent, he heard nothing more until receiving a letter from the agent, saying they would no longer act for the landlord, following what they perceived to be unreasonable behaviour

Note: We recognise that cases vary and the outcome will depend on the interpretation of the evidence provided.

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- Unhappy with this, he made a formal complaint which the agent only responded to 10 days later, which meant the property has not been let and this led to a loss of rental income

The agent responded, saying that:

- The 'Landlord's Instruction Form' did not contain any comment from the landlord about the type of tenant he was or wasn't looking for, and they had fulfilled all their contractual responsibilities
- Their terms and conditions did state that once a property was "reserved" for a prospective tenant, it is withdrawn from the market until the tenant is accepted, or rejected when it could then be re-advertised
- The landlord's request for additional referencing was not part of their terms and conditions
- This was all explained to the landlord on the phone but he became uncooperative and aggressive

What evidence was provided?

Signed agency agreement, letters, emails and terms and conditions.

What was decided and why?

Landlord instructions

1. Whether or not the landlord had made his request clear in the Instruction Form initially, it was clear from the evidence that the landlord had subsequently spoken to the agent and then emailed them, making their position clear. (The Instruction Form was not provided by either party in their evidence)

2. This was reasonably quickly after the Instruction Form had been returned and before any tenants were sourced

Terms and conditions

3. The terms and conditions provided in evidence by the agent actually related to prospective tenants, not to their landlord clients
4. In the absence of any terms and conditions relating to an agreement between the landlord and the agent, there was no evidence that the landlord was made aware of the agent's conditions relating to the marketing of the property or their rules on referencing, which were absolutely correct, in line with the Tenant Fees Act
5. Rather than explaining this to the landlord and communicating to reach an acceptable resolution the agent had, by their actions, terminated the contract with no explanation and with no professional respect for their client

Complaint handling

6. In the absence of a complaints procedure, the landlord was delayed in finding a new agent to source an appropriate tenant and re-let his property
7. The evidence showed that it took 24 days, from the time the agent contract ended until another tenant was found, through a new agent, and when rent had been lost
8. The agent's lack of response to the landlord, firstly to not source another tenant and then just not respond to the landlord's complaint amounted to poor service

Outcome

9. The agent was instructed to financially compensate the landlord for their rental losses as a result of the agents actions

10. The agent was also advised to review and update their 'Landlord Instruction Form' to include their terms and conditions and to put in place a robust complaint process
11. The agent was instructed to pay a nominal compensation fee for their poor service and encouraged to see such situations as an opportunity for both parties to be clear about their positions and negotiate a solution

How can you avoid this happening in future?

- Terms and conditions should be clear in their detail and made available to the client in full before any agreement is signed
- When terminating an agreement, you must communicate this to your client in writing, with a full explanation, justifying your reasons
- You should have a robust internal complaints process that meets industry standards
- Make sure you always respond to a complaint, in writing; not just ignore it

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