

Rent to rent, HMO, council tax and poor service

Resolution requested:

- Pay rent, plus interest
- Provide the gas safety certificate
- Provide the inventory report

Award:

- £16,326 outstanding rent and all future payments
- Provide both the gas safety certificate and inventory
- £350 compensation for general poor service including transferring rent late

Resolved by: Final decision

What happened?

Owner (the landlord) said:

- The agent has been collecting the rent but, for the last nine months, has not passed that or the management fees on to her, the landlord owner. The current outstanding amount is over £16,000

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

- She did not break the terms of the management agreement and it was never terminated
- She did not believe her property was an HMO and it is the tenant who should be paying the council tax
- The agent has not provided the gas safety certificate, or the inventory report as requested

The agent responded, saying that:

- The landlord breached the management agreement on several occasions, so they legally terminated the contract seven months ago which means there was no on-going responsibility to continue making management payments. The landlord was provided with a breakdown of the outstanding rent and payments made at the time
- As the landlord has no contractual agreement with the tenants, she is not entitled to the rent
- The landlord is responsible for paying council tax as the property is an HMO. As this was not paid, they have been financially affected
- They provided the best possible service and even offered the landlord a new contract as well as a financial remedy but received no reply to any emails

What key evidence was provided?

Assured management agreement, email correspondence, timeline of events, rent tables, bank statements

What was decided and why?

Outstanding rent and management fees

1. The property was let to the tenant on a 'guaranteed rent' and 'sole management' basis which was confirmed in the agent's management agreement with the landlord owner
2. By asking the tenants to pay her the rent directly or asking to inspect the property, the landlord was simply attempting to minimise the on-going non-payment of rent and management fees which the agent was not passing on, causing financial loss
3. The landlord did not break their contract and neither of the above events actually happened
4. There was no evidence or any legal basis to support the agent's claim that the landlord had breached the contract, and the management agreement is still in place. In fact, the evidence showed that the agent was willing to continue their agreement
5. The agent was directed to pay all outstanding amounts, which included an amount of £500 penalty fee deducted by the agent for the landlord's alleged breach of contract, together with all future payments in a timely manner, until the agreement is legally ended

Missing documents

6. The evidence showed that the agent had both the gas safety certificate and inventory report which the agent was directed to provide to the landlord owner

Council tax

7. The landlord was advised that while the property is an HMO, by definition, it is not a large HMO or in an area which requires a licence

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8. The management agreement included a clause which made the agent responsible for passing on the tenant's details to the council, for council tax purposes, and the landlord was entitled to believe this was done.
 9. At no time did the agent make the landlord or tenant aware that this was not being paid
 10. With no evidence that the council tax has been paid or that the agent has suffered any financial loss, the landlord was not found to have breached their management agreement in relation to this issue
 11. In terms of paying council tax, this remains outside the authority of the PRS to establish future liability and the landlord was directed to contact the council for clarity

Poor service

12. The agent did not reply to emails from the landlord in a timely manner
13. The agent's attempt to transfer the tenancy into the landlord owner's name, in effect, broke their own agreement and was bad practice
14. Compensation was an appropriate remedy for these actions by the agent

How can you avoid this happening in future?

- ✓ There are numerous key points to setting up a 'guaranteed rent' agreement where an owner landlord effectively rents out the property to an individual or company who then acts as an agent landlord by renting it out to a sub-tenant. While this provides a hands-off way of renting your property, all landlords, agents and tenants thinking about this business model should make sure they are fully informed of all the legal implications before doing so, as tenants found by the agent can only be managed by the agent and the landlord cannot take over the rent collection or the management of the property.
- ✓ The definition of an HMO is a property consisting of at least three people from at least two different households; a large HMO is defined by the government here <https://www.gov.uk/private-renting/houses-in-multiple-occupation>. Depending on the type of HMO, you may require a licence. There are severe penalties for not having a licence including unlimited fines and this will ultimately be the owner landlord's responsibility.
- ✓ Any owner landlord considering letting out their property on a 'guaranteed rent' or 'rent to rent' basis should be aware of the HMO rules and licensing requirements in their area.
- ✓ All aspects of the agreement, including the service provided to the owner landlord and the payment of rent and fees, should be made in a timely manner.

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