

How can conflicts between tenants, landlords and letting agents be reduced?



About this report

This report has been created thanks to the support of the TDS Charitable Foundation. The Foundation “*works to advance education about housing rights and obligations in general*”.

In particular, the charity focuses on:

- Best practice in the management of private rented housing;
- Legal rights and obligations of those involved in the provision or management of private rented housing;
- Using alternative dispute resolution for more efficient and effective resolution of disputes between landlords and tenants.

The charity has provided a grant to Kate Faulkner who runs Designs on Property Ltd (designsonproperty.co.uk), to produce a series of reports and surveys on the private rented sector which are designed to increase knowledge on the private rented sector in England and to promote best practice.



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About the authors

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Having enjoyed working in her spare time in residential property, she went on to set up one of the UK's first property portals prior to the advent of Rightmove, then used her experience to help create on- and off-line tools designed to take the stress out of corporate relocations for employees.

From here she moved to set up the Self-Build and Renovation Centre in Swindon, and subsequently helped build and professionalise a part exchange business. Kate was also a Future Homes Commissioner for RIBA.

After gaining so much experience across the property market, Kate embarked on a mission to improve the way people carry out property projects, especially within the private rented sector. So whether it is banishing cowboy builders and rogue landlords, or helping the public approach a property project as simple as hanging a door or as complex as letting or building their own home, Kate is always on hand, either via her consumer website at propertychecklists.co.uk or at the property clinics she runs around the UK, to help landlords, tenants, first-time buyer, self-builders, renovators and investors carry out their property projects in the right way, using qualified people and industry experts.

Kate's consultancy, Designs on Property Ltd, provides help and support to companies and organisations that want to communicate better to the public, or to introduce new products and services which help people carry out their property projects successfully, first time around.

She is fanatical that property facts and figures such as prices and rents should be reported correctly in the media, by the industry, and by organisations and policy-makers involved in the property market.

Kate regularly appears in the national and local media, and comments on TV, radio and in regional and national newspapers on property news items of the day. In this way she continues to pursue her chief objective, which is to help ensure the public get an independent, honest view of what's happening in the residential property market.

This report is part of a series of reports and surveys that Kate will be producing thanks to the support of the TDS Charitable Foundation.

The aim of the research provided is to improve the understanding of the private rented sector and to make recommendations on changes which will impact positively on the experience of landlords and tenants.

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She has ghostwritten several property investment books, edited a number of others on property, business and branding, and continues to work with entrepreneurs to produce literature that supports their business enterprises.



How can conflicts between tenants, landlords and letting agents be reduced?

Introduction

Most issues and instances of conflict in the rented sector tend to be caused by a lack of communication, coupled with poor education on the rights and responsibilities of tenants, landlords and agents.

This report is aimed at better understanding the key areas for conflict and looking at how and who can help to reduce the level of conflict.

The key areas between all three parties appear to be:

- Communication
- Fees and charges
- Maintenance and cleaning issues
- Protecting and returning deposits
- Rent payment issues.

From a solutions perspective, there are five initiatives which would help reduce conflict between tenants, landlords and agents:

- Better education of tenants and landlords on their rights and responsibilities
- Introduction of maintenance schedules for rental properties at letting and letting stage
- Requirement for professional inventories
- More creative and *easy to understand* ways of showing tenants and landlords the difference between wear and tear and damage and level of cleanliness required at the start and end of the tenancy
- Establishing a government-prescribed regulation of letting agents to eliminate poor agents who do not have the skills or knowledge to reduce conflict and can cause more, especially when charging high fees.

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Why conflicts occur

Conflicts arise when there is a difference of opinion between parties and they occur every day, in all walks of life. Sometimes there has simply been a misunderstanding that can easily be resolved but, often, each party believes that they are right and the other is wrong. In this situation, there may be bad feeling, tempers can flare and, in the most serious cases, there may be verbal or physical threats and even violence. And when neither party is willing to concede their position, two routes to resolution remain: mediation and a court of law.

In lettings, there are three sets of relationships where conflicts occur:

- **Between tenants and agents**

Most of these conflicts arise from communication issues and the tenant's lack of understanding about their responsibilities.

- **Between agents and landlords**

At the root of most issues are fees and charges, but another big source of conflict is the expectation over what the other party is responsible for and what they will action.

- **Between landlords and tenants**

Again, expectations are often not met by one party or the other, usually concerning the condition of the property. Money is also at the root of many of the issues – either because the tenant is not adhering to their financial obligations or the landlord is not investing enough into maintenance or repairs.

Top 10 conflicts in lettings

Looking at the industry as a whole, the top 10 conflicts that arise in lettings are around:

- | | |
|---|---------------------------------|
| 1. Maintenance & repairs | 6. Paperwork |
| 2. Communication | 7. Mould & condensation |
| 3. End of tenancy / deposit disputes | 8. Noise / antisocial behaviour |
| 4. Misunderstanding of responsibilities | 9. Agents' fees and charges |
| 5. Referencing | 10. Rent collection |

(Sources: PropertyLetByUs survey, 2014 <http://www.propertyreporter.co.uk/landlords/what-are-the-top-ten-tenant-complaints.html>, TPOS Annual Report 2015: <https://www.tpos.co.uk/news-media-and-press-releases/press-releases/item/the-property-ombudsman-tpo-publishes-its-annual-report-revealing-a-32-increase-in-complaints>, propertychecklists.co.uk survey of letting agents and landlords, January 2017)



Conflicts between tenants and agents

Most of the issues that lead to conflicts between tenants and agents can be attributed to both parties, ie they are each sometimes guilty of the same thing – which tend to be communication issues.

However, because many agents adhere to a code of conduct, the majority of conflicts caused by agents can be solved through their own complaints procedures or referred to the independent redress schemes, if the tenant complains, especially as redress is a legal compliance issue, not a best practice.

Tenants' complaints

From a tenant perspective, there are two main issues with letting that causes conflicts with agents:

Charging holding and excessive fees

There have been many reports which suggest agents are charging tenants large amounts of fees which is a source of conflict but, because in many places there is a shortage of rental stock to choose from, tenants are less likely to complain or challenge for fear of losing the property they want.

In addition, according to Sean Hooker from the Property Redress Scheme, *“A good proportion of our complainants stem from the prospective tenant and involve holding fees.”*

In Scotland, although these are banned, it is estimated that 10% of agents are still charging fees to tenants. (Source: <http://www.bbc.co.uk/news/business-38065249>)

Research carried out by NALS, ARLA and RICS showed that the average tenant fee for those renting in London would be around £300 per person and £200 outside London.

The more this is understood and known by tenants, the more they are likely to know if they are being overcharged in the first place. Secondly, property portals have made it very easy for people to search a 'property first' rather than choose which are the good agents to work with, who charge fair fees and let properties legally and safely.

All letting agents, by law, must now belong to a redress scheme which offers a free, independent complaints system. This means tenants can complain to an agent if they feel agents are charging unfair, disproportional and/or excessive fees and, if not satisfied with the response, tenants can refer the complaint to an independent third party.

In the future, agents are expected to be banned from charging fees in England so, in theory, this should reduce this area of conflict.

Bad communication

Both agents and tenants are regularly accused of not communicating properly. Communication is one of the most important elements in resolving issues and if something has gone wrong, the sooner it is raised and both parties are able to discuss a way forward, the less likely it is to escalate.

For tenants, some of the top complaints about communication from their agent are that they fail to:

- Inform them when inspections are due and access is required
- Respond to reported issues
- Update them on the progress of repairs and maintenance.

Agents' complaints

On the other hand, agents frequently complain that tenants:

- Fail to report repairs and maintenance issues at their earliest stage, when the problem is likely to be easier and cheaper to fix
- Don't return calls
- Fail to communicate about late rent payments.

Much of this is a matter of courtesy and good practice, but reporting issues and communicating if and when rent payments are delayed are clearly the tenant's responsibility. In both cases, when one party feels they are constantly having to chase the other about the same issue, it can lead to bad feelings and a small problem can quickly escalate.

From the agent's perspective, the easier they make it for tenants to report problems and have a transparent tracking system which ensure they get back to the tenant in a timely manner, the more likely a good line of communication with the tenant.

Top five issues between tenants and agents

In a small questionnaire and qualitative research we carried in January 2017, a number of key agents ranked the top five issues between tenants and agents over and above communication and excessive fees:

1. Tenants turning up late for appointments or viewings
2. Tenants thinking the agent (or landlord) is responsible for too much and not taking care of the smaller jobs themselves, e.g. changing lightbulbs and keeping the garden tidy
3. Tenants not providing the information/paperwork required for the agent to carry out referencing
4. Difficulties organising repairs, safety checks and periodical inspections on the tenant's home
5. The property not being kept clean by tenants.

Areas of conflict

Failing to keep appointments

For agents, when a tenant does not turn up for a viewing or a meeting as agreed, this will often cause unnecessary costs for the agent and the landlord. If the tenant has said that they will be at home to let a maintenance contractor into the property and then they go out, that may result in a callout charge and having to reschedule the appointment. Missing viewing appointments could indicate to the agent that the tenant is unreliable, which could affect the decision to let or re-let to them.

The simple solution is to ensure that both the tenant and agent have more than one way of contacting each other and agents should be sending regular reminders and making it easy for the tenant to say they can't make the appointment.

Although not all agents and tenants have a smart phone, there should be some way they can make and receive calls and also send and receive text messages and emails (although data protection issues have to be considered).

As such, the agent might suggest at the start of the tenancy that all arrangements should be communicated both verbally and in writing, to minimise the chance of any confusion and appointments being missed.



Maintenance and repairs

The condition of a rented property is a key area around which issues can arise. Some tenants have a tendency to feel that because they are paying a fair amount of rent, it is the responsibility of the managing agent and landlord to fix and service absolutely everything in the property, expecting more of a 'serviced apartment' delivery.

While it is certainly the agent's responsibility to respond to requests from tenants for maintenance and repairs to the fabric of the property and its fittings, especially if they have been agreed to be carried out before the tenant moves in, smaller jobs that relate to the general running of a household are usually down to the tenant. That includes things such as:

- Changing light bulbs
- Cleaning washing machine and drier filters
- Mowing the lawn
- Keeping plug holes clear.



The more time tenants take requesting minor that are not the agent/landlords responsibility, that takes time away from agents helping tenants who have real maintenance issues.

If tenants refuse to accept that these smaller jobs are their responsibility, the property can quickly start to look unkempt and bigger issues can result, for example, washing machines and driers breaking down because of clogged filters and drains becoming blocked. That, in turn, can cause additional conflict during or at the end of the tenancy, when agents have to apportion the cost of repairs to the tenant and their landlord.

In the same vein, general cleanliness is a common problem. There does often appear to be a difference in opinion of what is a clean house and if a property isn't kept warm and clean, this may contribute to damp and mould which in itself becomes a source of conflict with regards to whose responsibility it is to fix (see our report on Damp, Mould and Condensation).

As with most of the issues and conflicts discussed in this report, it should be possible to greatly reduce the number of those concerning cleanliness, maintenance and repairs with diligent clarification by the agent at the start of the tenancy and if tenants are better educated about their responsibilities when renting a property.

Noise and antisocial behaviour

This is something that causes problems for both tenants and agents: the tenant may be complaining about noise from their neighbours, or the agent might be receiving complaints about their tenant.

In the case of the tenant or their visitors displaying antisocial behaviour, they are highly likely to be breaking their tenancy agreement, in which case, the agent would well within their rights to warn them and issue a Section 8 if necessary. It is important to be absolutely sure that the tenant is indeed at fault, not a friend who has come to stay or visits regularly, as issuing any kind of eviction notice is likely to be inflammatory, albeit legal, under these circumstances.

If the problem is being caused by another party, it is important for the tenant to see that they are being supported by the agent. They should be advised that they are entitled to call the Environmental Health department of the local council and even the police if they feel the matter is serious enough.

Returning the deposit at the end of the tenancy

This is a conflict that should no longer be an issue, unless rooms are being rented. For all properties rented under an Assured Shorthold Tenancy agreement, the deposit, by law, has to be protected in a government licensed deposit scheme such as the Tenancy Deposit Scheme.



This gives the tenant control of what happens to their deposit, albeit driven by the processes of the deposit scheme. For example, the tenant can request their deposit is returned at the end of the tenancy if the landlord or the agent hasn't progressed its return.

If the tenant does not agree with any deposit monies being deducted, they can dispute this and have the case assessed, at no expense to themselves, by the schemes' independent adjudicators. They will then decide if the deductions are fair and if not, award in favour of the tenant.

Over the three tenancy deposit schemes, tenants can expect to have their deposit returned if there is no dispute within 10 calendar days although this may take two to three months if there is a dispute (Source: [TDS](#)). Some tenants though believe, incorrectly, that if the landlord doesn't make a claim within 10 days, the agent/scheme has to release the deposit which is not necessarily the case.

Summary

Overall, as long as tenants let from a self-regulating agent who is a member of NALS, RICS, ARLA or UKALA under a shorthold tenancy agreement, they are likely to be well looked after and, if tenants feel this doesn't happen, they have free access to complaints systems which will be managed fairly. If they are still not satisfied, there will be an independent redress scheme which assesses the tenant's complaint for free.

Some agents report conflict occurring with a few tenants because tenants demand more from the agent than they are able to give. For example, the tenant may deny entry into the property during work hours for contractors and agents to carry out periodic checks, and request out-of-hours appointments.

However, it is clear in the lettings market that, due to a lack of regulation and poor enforcement (see our Enforcement report), if tenants rent via agents who don't meet high standards, conflict is more likely to occur and tenants are less likely to be well looked after and treated fairly, by both the agent and landlord.

Currently tenants tend to shop for a property first. If they could switch to choosing a good agent (or landlord) to work with before looking at the properties they are letting, then conflict and poor treatment could be dramatically reduced.



Conflicts between agents and landlords

When there are conflicts between agents and landlords, the root cause is usually one of a lack of understanding of what an agent can and can't deliver as a cost-effective service to the landlord and poor communication between the parties.



Agents' top five causes of conflict with landlords

Agents who responded to a 2017 questionnaire ranked the top five causes of conflict with landlords in the following order, many of which, in turn, cause further conflict with the tenant:

1. Landlords not presenting the property in sufficiently good order, eg freshly painted.
2. Lack of response from landlords to repairs or maintenance queries/ requests.
3. Landlords not obtaining and providing the paperwork/information required to enable the agent to check that the property is safe and legal to let, eg Gas Safety record and written confirmation from the mortgage company that the property can be let.
4. Disagreements over the fees charged for the agent's services.
5. Landlords not implementing required health and safety measures for the property.

The standard of the property

Issues around property presentation tend to arise for two key reasons: either the landlord does not appreciate the standard required to secure a quick let to good tenants, or they simply do not prioritise requests from their agent.

When a landlord lives some distance from their rented property there may be long periods of time between their visits. In these cases, where an agent has been retained under a full management service agreement, they are likely to have been given the authority to arrange smaller maintenance jobs (often under £100) using their own contractors.

They will also take responsibility for cleaning the property between lets, checking tenants in and out and deciding whether any of the deposit needs to be retained to cover damage.

Cleaning can be an issue, even when it is in the contract that both the tenant and landlord will do one professional clean, landlords sometimes refuse to do so, leaving the agent in an awkward position.

However, the contract usually states that the landlord is required to sign off bigger works.

Where a landlord does not agree that updating or refreshing of the property is required, or they persistently fail to respond to requests from the agent to authorise works, it tends to lead to a variety of conflicts, for example:

- The landlord may feel they are being 'harassed' by the agent for works that they see as unnecessary
- The landlord may blame the agent because the property is not letting to their expectations, in terms of speed or rent amount
- The agent may become frustrated at a lack of response and/or action from the landlord
- Current tenants may complain to the agent because they are unhappy with the condition and feel it should be better for the level of rent they are paying.

The cost and necessity of repairs and upgrades

Professional, qualified agents – typically those belonging to a trade member organisation – work with health and safety regulations and tenants every day and receive regular training to update them on the latest rules and regulations. They are the ideal experts for tenants and landlords to work with and seek advice from when it comes to the improvements required to ensure a property meets the required standards to remain legal and attractive to the best tenants, at the best price.

Assuming a landlord (and tenant) has engaged an agent who is a member of ARLA, NALS, RICS or another recognised body or association, landlords should be reassured that the agent is abiding by a code of conduct and operating to the highest industry standards, in the best interests of their landlords and tenants.

As such, any recommendations for improvements are probably not being made lightly and, if asked, the agent should be able to provide evidence of the applicable law which means the work needs to be done.

The problems come for landlords and tenants when the agent doesn't have this knowledge and there is no real understanding of who is responsible for the problem or what is required to fix it.

Of particular importance is compliance with the Housing Health and Safety Rating System (HHSRS), which lists 29 hazards that the landlord must take every step to prevent. If a landlord is not working with their agent to properly maintain the property so that it remains legally let, they can expose both themselves and potentially their agent to fines and prosecution.

Landlords also need to be aware that they now must respond to tenant maintenance queries, in writing, within 14 days of receiving the report. The more landlords are educated on this regulation, hopefully the more likely they will be to get back to the agent quickly. If landlords don't and the tenant reports the problem to the local authority, it could mean they can't evict the tenant until the problem is solved, whether they are paying rent or not.



Unreasonable or unrealistic expectations

Landlords themselves may complain about the condition of their property if they feel the agent has not looked after it properly on their behalf. If a landlord thinks the condition has deteriorated, maintenance works have not been carried out to the standard they expect, or that tenants have, in fact, been responsible for damage that has not subsequently been charged to them, there is likely to be some conflict.

This usually stems from the landlord not appreciating that agents cannot control how a tenant lives, day to day, and that not all tenants will look after a rented property as well as they would their own home. It is, therefore, in the agent's interests to manage landlords' expectations from the start, being very clear about what is required of them and about what they themselves are able to do during the course of a let.

One of the key tasks a good agent will carry out to avoid this kind of conflict is periodic checks of the property, some producing a report which includes photographs so the landlord can clearly see the property's condition – or the problem they are being asked to repair.

These visits also help to generate good communication between the tenant and agent so helps to make sure potential conflict is reduced overall.

Paperwork

There are certain pieces of documentation that an agent requires in order to ensure the property they are letting is legally compliant:

- A Gas Safety Certificate, issued by a Gas Safe registered contractor, confirming that all gas systems and appliances within the property are in good working order
- An Energy Performance Certificate (EPC), issued within the past 10 years
- Proof of electrical safety, showing that all electrical systems and fittings are in good working order
- They may also require some form of written confirmation from any mortgage lender, confirming that the property is able to be let.

In addition, knowing the landlord has specific insurance is helpful if a claim is ever made.

When a landlord does not provide these documents, it can delay the marketing and letting process. And where they do not fully understand the legal implications of the agent letting a property without the documents, it can cause irritation and conflict on both sides.

Lack of legal clarity can cause conflict

In the case of electrical safety, there are currently moves to tighten up the law to ensure there is no room for confusion. At present, for a single let, there is no requirement to have a regular inspection nor for any specific certification to be obtained, although for a House in Multiple Occupation (HMO), a periodic inspection must be carried out every five years.

“If your property is not an HMO, you are not legally obliged to do [a periodic inspection every 5 years]. However, we recommend that a periodic inspection and test is carried out by a registered electrician on your rental properties at least every five years.” (<http://www.electricalsafetyfirst.org.uk/guides-and-advice/for-landlords/>)

– Electrical Safety First

The current lack of clarity on the law can lead to confusion on the part of landlords as to what they are required to provide and make it hard to agents to insist on having sight of some kind of certification.

Good agents will tend to encourage landlords to have an electrical safety certificate as they do from for gas safety even though it isn't necessarily a legal requirement. This is because it gives additional protection to the landlord if something does go wrong or to tenant in the hope that the checks will highlight any issues which can be fixed in advance of the property being let.

The reality is though from a landlord's perspective, if it is something that isn't legally required, so they may not want to pay for it and take their business to an agent that doesn't maintain such high standards. This lack of clarity does not help drive standards up in the sector and can contribute to conflict.

Agents' fees and charges

Since May 2015, it has been a legal requirement for all agents to publicise and prominently display the fees and commissions they charge to tenants and landlords, in their offices and on their website. They must be clearly and specifically broken down and include VAT.

Issues between agents and landlords tend to arise when the landlord has not fully understood this information or the agent hasn't explained or advised of the costs in advance of charging them.

Often, it is repeat fees and the more variable amounts that cause disagreement, for example, when commission is being charged on maintenance work – something that is common among agents – especially if there is no cap on the amount that can be charged, as illustrated in the case study below.

Another issue can arise if an agent continues to charge commission on the percentage of rent agreed, as opposed to rent collected if the tenant is not paying.

A good agent will advise the landlord in writing:

- What the charges for the works will be
- Offer a free service to organise works up to a certain limit, for example £500
- If they are charging any commission on top.

While landlords may instigate the majority of complaints in this area, agents can also become frustrated, for example when landlords try to renegotiate fees when renewing their contract with the agent. Survey feedback from agents revealed that some landlords expect a service beyond what has been agreed (and paid for), such as expecting the agent to handle things that are actually a solicitor's or eviction specialist job if a tenant needs to be asked to leave.

Again, the onus is on agents to explain not only what their charges are, but also the circumstances in which they will apply, ensuring landlords and tenants understand exactly what they are liable to pay and the service they can expect to receive in return.

Case study

Agent accused of charging excessive commission on maintenance work

In 2013, a landlord who employed Foxtons to let and manage his London flat received a £616 bill from them for a repair to a light fitting.

When the landlord, Dr Townley, complained about the standard of the work, he was informed it had been carried out by a subcontractor, whom he contacted directly and discovered that their final bill for the job had been just £412.50. This suggests Foxtons had added on £137.50 in commission (33%) then, because the invoice was over £500, a further 10% plus VAT 'ad hoc management charge' of £66 had also been included – a estimated total of £203.50 in extra charges.

As Dr Townley pointed out, the only reason the invoice had been over £500 was because of Foxtons' commission. He said:

“When I first heard there was a commission I was not happy, but thought it may be 2% or 3%. When I found out the real amount I thought it was shocking.”

Solicitors acting for Dr Townley have written to Foxtons demanding compensation, claiming that the hidden charges were not covered in the landlord's contract. A spokesman for Foxtons said:

“We are satisfied that our fees are clearly laid out within our terms and conditions and that approvals are obtained from our landlords before works commence on their property.”

Despite that, Dr Townley's solicitors claim that if their case is successful, thousands of other landlords could also be entitled to payouts, which could end up costing Foxtons more than £40 million.

An alternative route a landlord could have taken in this case would have been to report Foxtons to the relevant redress scheme.

(Sources: The Telegraph, June 2016 <http://www.telegraph.co.uk/finance/property/11658257/Foxtons-facing-huge-legal-bill-after-landlord-is-charged-616-to-change-light-fitting.html> and <http://www.thisismoney.co.uk/money/buytolet/article-3465525/Foxtons-faces-2-2m-legal-case-55-landlords-charging-204-mark-changed-lightbulb.html>)



Referencing

Of the other causes of conflict that exist between landlords and agents, referencing is particularly worth mentioning.

In the vast majority of lets, landlords instruct their agent to carry out the reference checks on prospective tenants. The issues arise when something goes wrong with the let and the landlord is keen to blame the agent for failing to secure a 'good' tenant.

If the agent is a member of an industry association, such as ARLA, NALS or RICS, they will have specific standards for carrying out referencing – either themselves or via a referencing service provider – and therefore it is highly unlikely that they will have issued a tenancy where the tenant has not satisfied those standards.

Making the results of the referencing available to the landlord and ensuring they understand exactly what information has been obtained to 'qualify' the tenant for the let, before the tenancy is granted, should greatly minimise the amount of conflict in this area.

However it is equally the responsibility of a landlord to check and understand how agents are referencing tenants and what reassurance they can give that the tenant will be able to pay the rent on time and in full. The level of referencing checks can range from spending a few pounds on on-line referencing through to extensive checks that the information provided is accurate.

A key question landlords should ask any agent before they sign their terms and conditions is how many tenants they have that are in arrears of a week or more.

Conflicts between landlords and tenants

Top five conflicts between landlords and tenants

The top five sources of conflict between landlords and tenants, as indicated by landlords and tenants in a recent questionnaire we carried out, are:

1. Cleanliness
2. Repairs and maintenance
3. Rent arrears
4. Damp, mould or condensation
5. Damage to the property.



Cleaning

The result above, where landlords cite cleanliness as the biggest issue with tenants, is in line with our own analysis of deposit disputes, which shows cleaning as the leading cause of requesting monies are withheld.

While inadequate cleaning by the tenant when they vacate the property is certainly a problem, the most common complaint by landlords (and agents) is of tenants not keeping the property clean and tidy on an ongoing basis. As one landlord reported when asked about his tenant's habits:

“Dirty dishes in the rooms and food dried into plates, mouldy and filthy crockery and cutlery in the kitchen, floors never ever cleaned.”

Case study

Landlord accusing agent of negligence in referencing

A landlord whose tenants fell into arrears, alleged that her agent had carried out 'unacceptable and inadequate' referencing and the case was subsequently referred to The Property Ombudsman.

The landlord explained that, as a result of the tenants accruing rent arrears, it had become necessary for her to apply to the court for a possession order, which had caused her both financial loss and emotional trauma and distress. She was seeking a total of £20,000.

The agent stated they had complied with the TPO Code of Practice at all times, which required them to take references 'appropriate to the circumstances and in line with arrangements agreed with the complainant'. The references were to be obtained via a referencing service provider, direct application to third party referees, or by a combination of the two.

The agent had instructed a recognised third party referencing company, who provide a 'Tenant Comprehensive Report' in respect of both tenants, recommending that the tenants would be acceptable for the tenancy. There was nothing in the reports to suggest that any further investigation or supplementary referencing was warranted or required.

The Ombudsman found that the agent was entitled to take the referencing results in good faith and was satisfied that they had met the requirements of the TPO Code of Practice.

Referencing does not guarantee how tenants will perform in the future and it is no guarantee that they will pay rent – it simply seeks to minimise the risks in letting a property. As such, the Ombudsman explained to the landlord that while the agent was responsible for finding and referencing the tenants, they could not be held responsible for the tenants' actions or inactions.

(Source: TPOS <https://www.tpos.co.uk/news-media-and-press-releases/case-studies/item/ar-test-referencing-rent-arrears>)

The result of tenants living in this way is that when it comes to the end of their tenancy, the landlord is highly likely to want to make deductions from the deposit not only for cleaning, but also for any other dilapidations that they feel could be in any way attributed to the tenant's dirty standard of living.

That might include getting rid of mould, cleaning carpets and repainting walls. And while some of that might actually be down to reasonable wear and tear, if the property has been kept in a filthy state, it is hard for the tenant to prove that they shouldn't be held liable.

The other issue of cleanliness tends to come down to what can be 'seen' and what is considered 'acceptable' from both sides. One of the key complaints is that the oven hasn't been cleaned properly. Here the use of pictures can be effective in helping both tenants and landlords understand the level of cleanliness required.

In addition, agents advising tenants during periodic visits of what needs to be done cleaning wise to what standard, with the aid of pictures can help reduce conflict dramatically at the end of the tenancy.



Repairs and maintenance

The greatest number of complaints received from tenants are about boilers, followed by leaking roofs and broken showers. While it is the landlord or their managing agent's responsibility to keep these things in good repair, conflict often arises over the cause of the problem.

For example, when a tenant complains that a boiler is broken, many landlords will immediately question how it got broken and there may be some resistance to authorising payment for a repair. When it comes to things that are still working but the tenant feels should be upgraded, such as a shower unit, friction can occur not only between the tenant and landlord, but also the managing agent who is trying to mediate.

Landlords can be very resistant to spending money if they do not feel it is necessary, particularly if a number of issues are reported by one tenant, when they have never been mentioned by others before them, or indeed the landlord is letting a home they lived in happily for a long time.

Sometimes that's simply because a tenant has very high expectations, but sometimes it is because something has genuinely become dated. In this case, the landlord has to make a decision based on the advice of their agent, together with their own feeling towards the tenant. If they have a good tenant who is paying well, it may be worth replacing and upgrading fixtures to keep hold of that tenant – and help ensure the property will let again quickly should the tenant leave.

One of the key reasons for landlords not being 'prepared' for maintenance costs is the lack of education of what is required to keep a property well maintained for tenants over a 15-20 year period, so landlords can sometimes feel they are constantly putting their hand in their pocket to pay for jobs they didn't plan for.

Landlords would be better prepared for maintenance costs if both mortgage lenders and letting agents advised on the likely maintenance costs before they purchased a buy to let or let out their own home and when they work with the letting agent.

Agents have a great deal of knowledge of maintenance costs for homes to let, but this is not something many of them record and share with their landlords and this could help dramatically reduce conflict for all parties.

Example of a buy-to-let property maintenance schedule

Property maintenance & refurbishment costs			
To legally let a property	Costs		
Lender's approval to let	£50		
Gas Safe certificate & service	£80		
Electrical safety certificate	£150		
Energy Performance Certificate	£40		
Health & Safety (safety glass; worn stair carpet; poor heating; mould and damp)	£2,000		
Total	£2,320		
Annual maintenance	Costs		
Safety certificates, emergency call-outs	£200		
Cleaning	£150		
Guttering and drains	£100		
Total	£450		
Example of refurbishment over 20 years	Years 1-5	Years 6-10	Years 11-20
Decoration	£1,000	£1,000	£2,000
New/upgraded kitchen		£4,000	£5,000
New/upgraded bathroom		£2,000	£3,000
New/repairs to carpets/flooring	£150	£2,000	£2,500
New boiler		£2,000	£3,000
Electrics upgraded		£2,500	£3,000
Exterior painting		£2,000	£2,500
Guttering/soffits			£3,000
New windows			£10,000
New roof			£15,000
Totals	£1,150	£15,500	£49,000

Rent issues

No tenant wants to have their rent increased but landlords are legally entitled to do so once a year, provided they give a month's written notice and the increase is '*fair and realistic, ie in line with average local rents*'. (Source: <https://www.gov.uk/private-renting/rent-increases>)

"Since 2006, the cost of private rented accommodation has broadly followed changes in earnings across England with the exception of London (where rents rose faster than incomes) during this period. In London, rents on average increased by 32% while median earnings increased by 16%." (Source: <https://www.nao.org.uk/wp-content/uploads/2017/01/Housing-in-England-overview.pdf>)

– the National Audit Office

To reduce the chance of conflict, it is advisable for the landlord to manage the tenant's expectations by informing them of this possibility before they accept the tenancy.

However, tenants may argue against rent increases, especially if they feel the property isn't being well maintained. As one survey respondent reported:

"Suddenly tenants remember all the maintenance that has 'never been done' (when, in fact, they have never reported any issues) and try to use that."

Although the landlord may not feel this is a robust argument, it is worth them considering the value of a good tenant before risking conflict by proposing an increase.

If an agreement is longer than 12 months, though, a rent increase has to be written into the agreement or the landlord wouldn't be able to increase the rent during the term. If the tenancy becomes periodic, then the landlord can serve a Section 21 Notice to increase the rent once a year. Other than that, a new rent would have to be agreed for a further fixed term.

If a tenant has been in the property long term, always looked after it well and paid their rent in full and on time every month, it may be wiser to keep the rent at its present level. Communicating such a decision to them and explaining the reason for not putting the rent up may be worth a great deal in terms of good relations.

Late/non-payment of rent

In many cases, a landlord will instruct their agent to collect the rent but, for those landlords who prefer to handle it themselves, the late payment of rent can be a source of real conflict between them and their tenant.

Tenants who fall into arrears may also not be good at communicating why they have a problem. Sometimes this is because they are deliberately trying to avoid paying rent; sometimes it is because they are embarrassed at the situation or they are late due to a problem in their life such as illness which is causing them additional stress.

Either way, in terms of reducing conflict, successful communication at a time like this between both parties is essential. Landlords should always check why there is a problem first and if it is a short or long term issue. Equally, tenants should be open and honest as to why the rent has not been paid and when they can expect payment.

Tenants should be reminded at the start of their tenancy that by signing an AST, they are making a legal agreement to pay their rent on a certain day or date. It should also be made clear that if they fail to make two months' payments on the day rent should be paid, they can be served with a Section 8 notice. At the same time, it is important to leave room for negotiation and ensure they understand that if they anticipate any problems with paying on time and in full, they should contact the landlord as soon as possible.



Mould and condensation

Mould and condensation in a property is one of the main complaints made by tenants. The difficulty for the agent is that it has often been caused by the tenant's own living habits, such as drying washing in an unventilated room and not using the extractor fan or opening the window when showering or taking a hot bath. Condensation can also form if a property is overheated.



The tenant may counteract by arguing that the property is not well-enough insulated, that there are no adequate provisions for drying washing or that they were not informed of how to minimise the chances of condensation and mould forming.



Because mould presents a health risk to the tenant, the agent must act to resolve the problem, but apportioning the cost of doing so between the landlord and tenant can be tricky, with each blaming the other for causing it.

Pictures: Envirovent (www.envirovent.com)

The chance of such a conflict arising could be minimised by the agent thoroughly assessing the property at the start of the tenancy and making sure that if there are any signs it has suffered from condensation and mould in the past, preventative measures are taken and the tenant is informed, in writing, of how they can best avoid it in the future.

For more information on this issue, please read our report on damp, mould and condensation.

Summary of conflict between agents and landlords

Early education and easy to access and understand information which is up to date with recent rules and regulations for landlords is clearly required to reduce levels of conflict between them and agents. The earlier would be landlords can be educated, for example during the finance and legal stage of buying a property to let, the less likely they are to exist long term.

There are lots of organisations and support services for landlords that can help educate them, most of which cost under £100 or are completely free of charge, including:

- The Residential Landlords Association
- Local authority accreditation schemes, such as the Landlord Rental Standard
- Expert help from specialists such as Richard Tacagni who runs Londonpropertylicensing.co.uk
- Landlord forum sites eg Property Tribes; Landlordzone
- The Facebook HMO – Houses Of Multiple Occupancy Network (Official)

Unfortunately many landlords don't, in my experience, spend enough time choosing the right agent that is going to take care of them, their property and their tenants. Rather they will shop around on price and which agent asks to make the least changes to the property to make it legally and safely let or believe they can carry on with a full-time job and manage a let property at the same time.

Finally, as the report explains in the section on conflict resolution below, only just over half of landlords we questioned said they knew where to turn to for help if they had a problem with an agent. Yet for some years now, letting agents have to make it clear they belong to a redress scheme and have their code of conduct and complaints procedure clearly promoted on their website and marketing material.

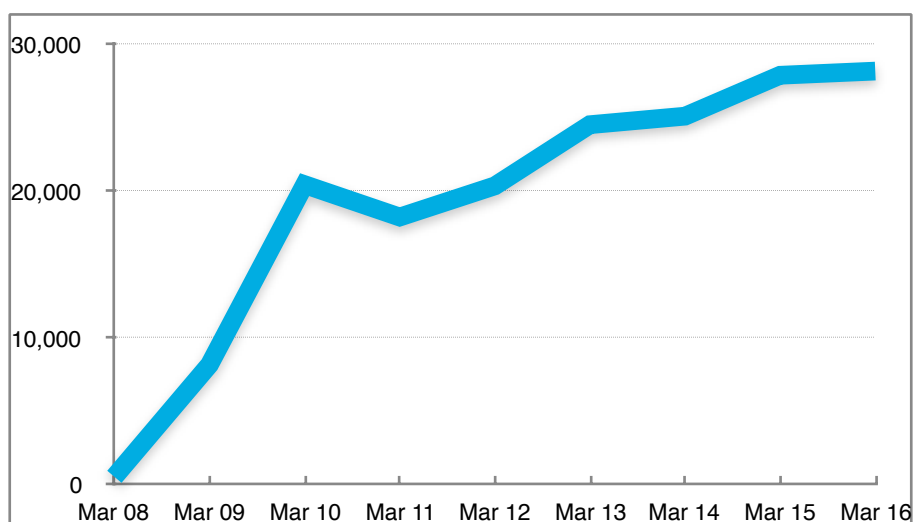
Disputes over tenants' deposits

One of the most common causes of conflict between landlords or agents and their tenants is a disagreement over the retention of a portion of the tenant's deposit at the end of the tenancy. This tends to occur because the tenants do not agree with the dilapidation calculations at check out, sometimes because they do not accept certain items as damage; often because they disagree with the condition in which they should hand the property back.

Since deposit protection legislation was introduced in April 2007, the number of disputes submitted for adjudication by deposit scheme providers has continued to increase, although the percentage of deposits disputed has been fairly stable for the last four years; below 1%.

The following figures are taken from the TDS statistical briefing report, using DCLG data, up to March 2016 and to some extent this growth is due to the increase in the number of properties in the PRS. (Source: TDS Statistical Briefing, published September 2016: <https://www.tenancydepositscheme.com/resources/files/Statistical%20Briefing%20%20September%202016.pdf>)

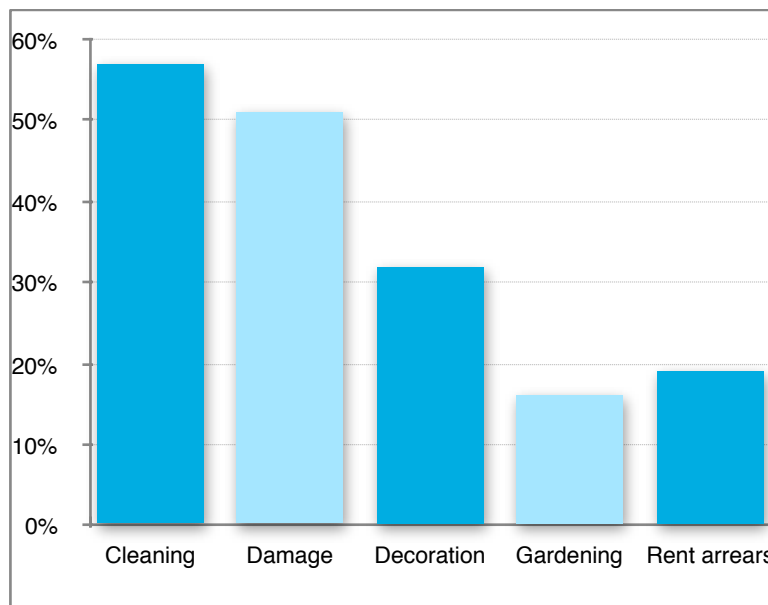
	Number of adjudications completed by year	Disputes as a percentage of all deposits protected
March 2008	458	0.05%
March 2009	8,098	0.52%
March 2010	20,363	1.08%
March 2011	18,156	0.82%
March 2012	20,279	0.85%
March 2013	24,448	0.96%
March 2014	25,029	0.94%
March 2015	27,816	0.95%
March 2016	28,100	0.82%



The three biggest reasons for disputes over allocation of the deposit are cleaning, damage and decoration, as illustrated below.

	2013-2014	2014-2015	2015-2016
Cleaning	53%	58%	57%
Damage	46%	51%	51%
Decoration	29%	31%	32%
Gardening	14%	17%	16%
Rent arrears	16%	19%	19%

For 2015-16:



Once a dispute has been raised and adjudicated, the data shows that in the vast majority of cases from 2007 to 2016, an equal split of the deposit was awarded:

	100% to tenant	100% to landlord	Split awards
Tenancy Deposit Scheme	17.35%	21.27%	61.38%
MyDeposits	34.00%	9.00%	57.00%
DPS	31.00%	17.00%	52.00%
DPS Insured	28.00%	12.00%	60.00%

A key reason why the number of 100% awards to tenants is so much lower for the TDS than for any other scheme, is the vast majority of TDS members are professional agents, who understand the importance of taking an inventory to prove the condition of the property at the beginning and end of a tenancy.

Conflict between the agent and landlord

In addition to issue of the tenant not agreeing with proposed deductions, there are also instances where landlords do not agree with their agent's assessment. This is usually because of unrealistic expectations over wear and tear, which can generally be resolved via the inventory report and explanation by the agent of what is 'normal' for a let.

What can be done to minimise the number of deposit disputes?

In most instances, bar rent arrears, securing and properly administering a thorough inventory should be sufficient to greatly reduce the number of disputes. There are three key steps to this:

1. An independent inventory clerk, who is a member of either the Association of Independent Inventory Clerks (AIIC) or the Association of Professional Inventory Providers (APIP), should be engaged to carry out a full inventory at both the start and then end of the tenancy. The report should include a written description of the fabric, décor and contents of the property, inside and out, along with photographs of each room, particularly noting any slight wear and tear present at the start of the tenancy.
2. The agent, landlord or check-in clerk should explain clearly to the tenant that the inventory is to protect them as much as the landlord, go through it with them at check in and then leave the report with them for a few days so they can look at it properly and raise any queries. It should also be made clear to them what is considered fair wear and tear and what is considered damage.
3. The check out should again be conducted by an independent inventory clerk – ideally the same person who prepared the initial inventory – preferably with the tenant present. As an independent party, they cannot be accused of bias and can inform the tenant of any issues with the condition of the property and its contents that might cause the landlord/ agent to withhold some or all of their deposit. If the tenant is not in agreement, the matter can be discussed there and then.

Additionally, given that cleaning has always been by far the greatest cause of deposit disputes, perhaps a consideration for the future should be that the tenancy agreements state that a professional clean is negotiated as an individual clause at the start and end of every tenancy. It also needs to be made abundantly clear to tenants that if the property had been professionally cleaned before they moved in, it is highly unlikely that doing it themselves before they leave will meet the required standard.

Conflict resolution bodies and resources

When we asked key agents whether they thought it was clear to landlords and tenants who they could turn to if they had an issue with an agent, two thirds said they did, while in a survey of landlords, only 55% said yes. This suggests there is still a considerable amount of work to be done by agents, the media and conflict resolution services themselves to promote this resource.

The following are the key conflict resolution resources available to landlords and tenants:

An agent's trade body

The key benefit of using an agent who is a member of a trade body is that they are much more likely to be aware of the minutiae of the legals and also tend to have access to legal support help lines that allow them to check the legal position if the query is an unusual one.

This means that if tenants and landlords use an agent who is a member of one of the following trade bodies, the chance of conflict during the let is far less likely as they can operate on a much more transparent and knowledgeable perspective from the start.

Before choosing a letting agent, landlords and agents should prioritise agents who belong to one or more of the following trade bodies:

- ARLA (the Association of Renting and Letting Agents)
- NALS (the National Approved Letting Scheme)
- UKALA (the UK Association of Letting Agents)
- RICS (the Royal Institution of Chartered Surveyors).

These organisations have codes of practice that their member agents must follow, and there will usually be an arbitration service to help resolve complaints.



Independent redress schemes

By law all agents in England and Wales have to belong to an independent redress scheme which are:

- The Property Ombudsman
- Ombudsman Services (property)
- Property Redress Scheme

Provided a landlord has raised their complaint with the agent, in writing, and has not taken any court action against them, it can be escalated to whichever government-approved ombudsman service they subscribe to.

The redress schemes gives all landlords and tenants an independent, free service to solve conflicts with agents. The more they complain if they are not satisfied, the more likely agents will improve their services and reduce conflicts as soon as they occur to avoid higher complaint costs.

The Property Ombudsman

The Property Ombudsman is the largest of the ombudsman services, with a growing membership. According to the TPOS annual report 2015:

- 50% of complaints received were made by landlords, while 47% were made by tenants
- 83% of complaints were supported by the Ombudsman
- 1,965 formal complaints were resolved (33% more than the year before).

“The number of agents joining TPO has grown by 82% in the last 5 years. 35,374 offices are now signed up and following our approved Codes of Practice. Last year, 3,304 complex complaints required formal review and a high percentage of those complaints were supported (83%). Overall, this is good news for consumers and redress, but not so great for the reputation of agents, who collectively paid out over £800,000 in awards. My message for those agents is simple; pay more attention to TPO’s Codes of Practice and raise your standards.”

– Katrine Sporle, Property Ombudsman

(Source: TPOS <https://www.tpos.co.uk/news-media-and-press-releases/press-releases/item/the-property-ombudsman-tpo-publishes-its-annual-report-revealing-a-32-increase-in-complaints>)

Ombudsman Services (property)

According to the Ombudsman Services (property) annual report 2014/15:

- 1,001 complaints were handled, 8% more than the previous year, of which 934 were resolved
- Complaints about property management saw the biggest increase, from 16% in the previous year to 24%
- An additional 150 firms joined the scheme
- The most common financial reward was £100.

“Our turnover has grown from £6.4m to £23.5m (in a nine-month financial year) and we are forecasting a turnover of £32.1m in 2016. Staff numbers have grown from 142 to 601 and we now operate from two sites in the Warrington area. In 2010/11 we resolved 16,946 complaints compared to 62,806 in our last full year, with 119,576 resolutions projected for 2016. At the same time, Ombudsman Services has developed into a major force of influence in the ADR sector.”

– Professor Dame Janet Finch, chair of the board, Ombudsman Services

(Sources: Ombudsman Services https://www.ombudsman-services.org/downloads/OS_annualreport_property_2015.pdf, <https://www.ombudsman-services.org/downloads/Ombudsman-Services-annual-report-2015.pdf>)



Property Redress Scheme

According to the Property Redress Scheme's annual report 2015:

- 46% of complaints came from tenants; 38% were from landlords
- 274 formal complaint notifications were received, of which 78% were accepted
- 3,941 agents signed up to the scheme.

“The nature of the complaints has been varied but some common themes do stand out. On the lettings side, holding deposits are still contentious and whilst fees themselves are not directly the principal cause of many complaints, the retention of monies for aborted transactions are highlighted in these complaints. Letting Agent transparency of fees legislation, should help with this matter and we always point our members towards providing prospective tenants with a robust holding deposit agreement.

“On rental property management, we have received almost the same number of complaints from landlords as tenants. Landlords have tended to complain with regards to erratic or non-payment of rental income, repair and maintenance charges and also what actions the member did to prevent the tenant from mistreating the property. On this last point a reality check is often needed for both parties in regards to the expectations of both parties on what services have actually been agreed and paid for.”

– Sean Hooker, head of redress, Property Redress Scheme

(Source: <https://www.theprs.co.uk/Resource/AgentResource/8>)

Trading Standards

If an agent is not a member of a professional organisation, or if a landlord or tenant is still unhappy after reporting an agent to their trade body, complaining to trading standards may be an option.

If an agent has acted without due care and skill, taken an unreasonable amount of time to do something, or charged an unreasonable amount of money, they may have breached the Consumer Rights Act, which came into force on 1 October 2015. In that case, a complaint can be escalated to the local trading standards department.

Environmental Health

The Environmental Health department of each local council is responsible for ensuring a health and safe living environment. As such, both tenants and landlords can report anything that they feel violates their health and safety.

In particular, tenants should be aware that landlords (or their agent) are legally required to ensure a property is safe for them to live in. And both landlords and tenants should know that, since the Deregulation Act 2015 was passed, if a landlord fails to respond to a request for repairs within 14 days and/or fails to make those repairs, they may be unable to subsequently evict the tenant. However, landlords do have the right to refuse repairs as long as its seen as reasonable and can only not issue a Section 21 notice if the council serves a notice.

If a landlord or agent has failed to resolve a reported problem, the tenant should contact the Environmental Health department of their local council. An officer can attend the property, assess the health and safety risk to the tenant and take action, as necessary. They can either serve the landlord with an improvement notice, ordering them to carry out repairs or improvements, or carry out the repairs themselves and then charge the landlord.

The police

Finally, it is important that agents, landlords and tenants all bear in mind that if any conflict escalates to the point where they feel threatened, physically or verbally, they can call the police.

Conclusion

Many of the conflicts that arise within the lettings industry stem from the fact that tenants, landlords and some agents don't educate themselves enough on their rights and responsibilities prior to letting property.

Poor communication and a lack of education of tenants and landlords is one of the biggest reasons for conflict – from all parties. And, although some agents do their best to educate and inform consumers, the media tend to prefer 'horror' stories about 'rip off' agents rather than promote articles on 'how to choose a good agent'.

Added to this from a tenant's perspective is that they are often moving due to an already stressful situations such as splitting with a partner or having to move out of their family home. This, coupled with the fact that there is so little stock on the market for some tenants to choose from, they tend to focus on finding a property, rather than checking if the property is being let by a quality agent or landlord.

Property portals make life very easy to search for a property rather than focus on a quality agent or landlord that is letting property legally and safely. All you have to do if you want to rent is put in a postcode and your budget and then you can book a viewing online, with no information about how to let safely and the importance of choosing an agent who is a member of a trade body.

Nethouseprices.com is one of the few portals that allows its agents to promote their trade body membership on each property they advertise for sale or let. Zoopla does allow consumers to find an agent, which then lists which member bodies they belong to.

To reduce conflict, the government, the industry – especially mortgage brokers, insurance and legal companies as well as property portals and agents working with tenants and landlords before and during the lettings process need to provide more information to the media and to tenants and landlords on:

- Their rights and responsibilities
- What fees are involved, when they are payable and where VAT and commission will be applied
- The standard at which a property will let, knowing the property meets local and national safety guidelines
- The level and cost of maintenance likely to be required during the let ownership and tenancy
- The difference between 'wear and tear' and 'damage' and a guide as to what wear and tear is to be expected during the course of a let

- Rent rises and dealing with issues of non-payment
- The process for making a complaint.

For example, since the surprise announcement of the tenant fee ban in 2016, further conflict has been caused for agents by this government announcement as tenants believe the ban was implemented as soon as it was announced in the budget in November 2016. Since this time the government has done little to alert consumers and the media to explain when the ban will come into force, nor have they announced any enforcement budget to make sure when it does, agents adhere to the ban.

From a solutions perspective, there are five initiatives which would help reduce conflict between tenants, landlords and agents, especially if supported and promoted by property portals and the media:

- Better education of tenants and landlords on their rights and responsibilities
- Introduction of maintenance schedules for rental properties at lending and letting stage
- Requirement for professional inventories and clarity over laws such as electrical safety
- More creative and *easy to understand* ways of showing tenants and landlords the difference between wear and tear and damage and level of cleanliness required at the start and end of the tenancy
- Establishing a government-prescribed regulation of letting agents to eliminate poor agents who do not have the skills or knowledge to reduce conflict and can cause more, especially when charging high fees.