

Motivating landlords and tenants on their rights and responsibilities



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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.

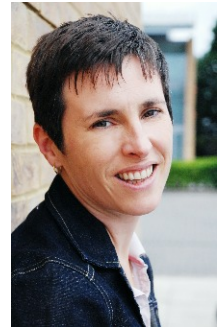
Opinions expressed in this report are those of Kate Faulkner and do not necessarily reflect the views of Tenancy Deposit Scheme (TDS) or The TDS Foundation.



TDS Charitable Foundation Registration number: 1154321

About the author

Kate Faulkner Bsc (Econ) MBA CIM DipM was originally a consumer in the residential property market, buying, selling, renovating and renting property for many years. At that time she was a sales and marketing professional working with major brands such as PG Tips.



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.

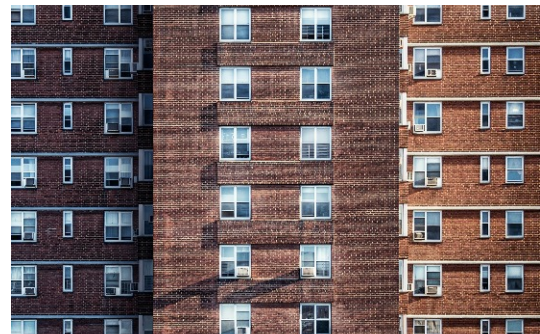
Kate regularly appears in the national and local media, and comments on TV, radio and in regional and national newspapers on property news items of the day. In this way she continues to pursue her chief objective, which is to help ensure the public get an independent, honest view of what's happening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

Executive summary

The rules and regulations surrounding letting property are many and seemingly ever-changing. It can therefore be a struggle for landlords to keep up, particularly if they manage their own properties without the help of a self-regulated letting agent or belonging to a landlord association or accreditation scheme.

While the majority of landlords are well-intentioned, industry research shows that gaps in landlord knowledge are still putting some tenants at risk.

Our own research revealed that landlords are keen for easy access to information on rules and regulations but find it confusing. Many would welcome greater regulation.

In its report, Reform of the private rented sector: the consumer view, Which? revealed that 43% of landlords surveyed would like more information, training and advice.

Tenants are getting better at understanding their rights but some are unwilling to request changes to their rental properties or to report problems because they fear retaliation and, possibly, eviction.

Only 44% of tenants who felt like making a complaint about their accommodation went on to make one. When asked why they didn't make a complaint, 58% of respondents said it was because they didn't want to cause problems for themselves or were keen to avoid repercussions with their landlord.

- Reform of the private rented sector: the consumer view

This report will examine:

- the rights and responsibilities of landlords and tenants
- how well known these responsibilities are
- the reasons landlords and tenants may remain unaware of their rights and responsibilities – or choose to disregard them
- how to educate both parties by providing information in an easy-to-digest way
- how to motivate them to act on this information to make informed choices.

This report also intends to provide thoughts and ideas on steps the government and industry could take to help landlords comply and tenants choose safe and legal properties.

This report is mainly based on renting in England, although reference is made to Scotland, Northern Ireland and Wales.



Image: © Thodonal/Dreamstime.com



Images: © Propertychecklists.co.uk

Introduction

The rights and responsibilities of both tenants and landlords are now extensive enough that it is a huge challenge for any individual to stay abreast of them. Yet the regulations defining these rights and responsibilities are only helpful to tenants and landlords in the case of full compliance; and before either party can comply, they need to have the knowledge to do so.

One of the challenges facing the private rented sector (PRS), therefore, is to motivate both landlords and tenants to arm themselves with the knowledge required to:

- fulfil their obligations
- challenge their situation if they feel their rights are being compromised.

The growth of the PRS over the past 10 years has seen an influx of “accidental” landlords. As stated in Report 2, The impact of accidental landlords on the PRS, 42% of landlords had not planned to let out a property. They may have inherited property, been unable to sell their own home (especially during the recession), acquired an additional property when they formed a new relationship, or chosen to trade up and retain their original home to let, hoping it would make some money.

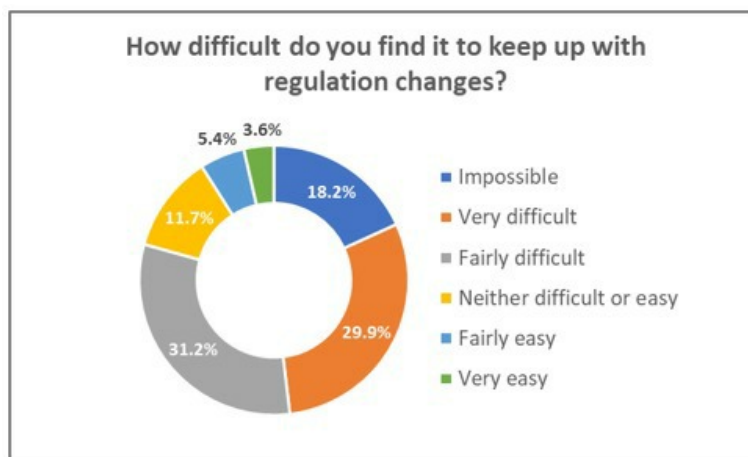
These landlords may not be the stereotypical “rogue landlords” who are the subject of media reports but often their lack of experience can lead to a failure to live up to their responsibilities, and these gaps in knowledge can put tenants at risk.

Research carried out by TheHouseShop.com in April 2018¹ showed that almost one in five landlords (18.2%) said they find it “impossible” to keep up with constant regulation changes, with 29.9% finding it “very difficult” and a further 31.2% finding it “quite difficult”.

¹ <https://www.thehouseshop.com/property-blog/thehouseshop-landlord-survey-2018-results-overview/17998/>

The research highlighted a worrying lack of awareness among tenants of the new EPC rules. TheHouseShop.com learned:

- 76.1% of tenants said they did not know the EPC rating of the property they were renting
- 86.7% of tenants did not know that in April 2018 it would become illegal to rent out a property with an EPC rating lower than E
- 94.4% of tenants said their landlord had not mentioned the changes to them.



*Source: TheHouseShop Landlord Survey – April 2018

This issue is ongoing. In 2013 insurance company AXA reported that one in three ‘accidental’ landlords were breaking the law¹ by failing to carry out essential safety checks on gas boilers, electricity and smoke alarms.

In 2016, Shelter found one in eight tenants was renting from a landlord who was breaking the law, with the most common complaint being that the landlord had entered the property without giving the proper notice (7.5% of those surveyed)².

It does not help that there is a seemingly constant stream of changes to lettings regulations, plus with a raft of regional variations, not just from country to country but down to individual local authorities, too.

Being a landlord can be overwhelming at times and the regulatory landscape is ever-changing. RLA research has found that there are over 140 Acts of Parliament and more than 400 regulations affecting the private rented sector, so it is unsurprising some landlords feel over-faced by the sheer number of rules and regulations.

- John Stewart, RLA policy manager

¹ <https://www.axa.co.uk/newsroom/media-releases/2013/one-in-three-accidental-landlords-breaking-the-law/>

² https://england.shelter.org.uk/media/press_releases/articles/over_a_million_renters_victim_to_law-breaking_landlords

PART ONE

What are tenants' and landlords' rights and responsibilities?

Tenants (in England) have the right to:

- live in a property that is safe and in a good state of repair
- in some cases (Assured Shorthold Tenancies) have their deposit protected in a government-approved scheme
- have their deposit returned at the end of the tenancy
- challenge excessively high charges, especially by letting agents
- information about the tenancy and their landlord
- live in the property undisturbed (in “quiet enjoyment”)
- be given at least 24 hours' notice of an inspection or visit by the landlord or agent, and the visits take place at a reasonable time of day convenient to the tenant, unless it is an emergency
- see an EPC (Energy Performance Certificate) for the property, the gas safety record (where relevant) and receive an up-to-date copy (paper or digital) of the government's How to Rent guide before the start of the tenancy
- be protected from unfair eviction and (sometimes) unfair rent
- a tenancy created by deed, if it is for a fixed term of more than three years
- a fair and legal tenancy agreement, if they have one.

(Adapted from [the government's guide to private renting](#) and [Tenant Law](#))

Scotland variations^{1 2 3}

Tenants starting new tenancies after 1st December 2017 have the right to a Private Residential Tenancy, which offers the tenant additional rights, including:

- open-ended tenancies – they can no longer be asked to leave simply because the fixed term has ended
- predictable rents and protection from excessive rent increases – they can refer any increases they consider unfair to a rent officer
- tenants who have lived in a property for more than six months have the right to 84 days' notice to leave (unless they have broken the terms of their agreement).

¹ <https://beta.gov.scot/policies/private-renting/private-tenancy-reform/>

² <https://beta.gov.scot/publications/private-residential-tenancies-tenants-guide/>

³ <https://www.socialhousing.co.uk/comment/dealing-with-changes-to-tenancy-law-56851>

- For all tenancies in Scotland, if the property does not meet the ‘repairing standard’¹, tenants have the right to refer the matter to the Housing and Property Chamber First Tier Tribunal for Scotland.²

Wales

Tenants have the right to rent from a landlord who is registered with Rent Smart Wales.

Northern Ireland³

Additional rights for tenants in Northern Ireland include:

- a rent book⁴ within 28 days of the start of their tenancy (they cannot be charged for this)
- at least 28 days’ notice to leave (more if they have lived there for more than five years).

Tenants’ responsibilities (in England)

- to live in the property (ie not vacate or rent it to somebody else or leave empty long term)
- allow the landlord access to the property to inspect it or carry out repairs, if reasonable notice is given
- take good care of the property
- pay the agreed rent on time – needing repairs or being in dispute is not a reason to withhold rent
- pay other charges as agreed with the landlord, eg council tax or utility bills
- repair or pay for any damage caused by the tenant, their family or visitors
- only sublet with permission or if the tenancy agreement allows it and if Right to Rent checks are made
- be considerate to the neighbours, landlord or his/her employees
- tenants are also responsible for the behaviour of any permitted occupiers and visitors.

(Adapted from the government’s guide to private renting, the government’s How to Rent Guide and Shelter’s tenant responsibilities.)

Additional responsibilities for Northern Ireland

Tenants must give at least 28 days’ notice, in writing, of their intention to leave (more if they have lived there longer than five years).⁵

¹ <https://beta.gov.scot/publications/repairing-standard/>

² <https://www.housingandpropertychamber.scot/>

³ https://www.nihe.gov.uk/index/advice/renting_privately/advice_landlords/general_guidelines_landlords.htm

⁴ <https://www.housingadviceni.org/advice-private-tenants/your-basic-rights-tenant>

⁵ <https://www.housingadviceni.org/advice-private-tenants/your-basic-rights-tenant>

Landlords (in England) have the right to:

- receive the agreed rent on the date stated in the tenancy agreement
- refuse or grant permission to sub-let or take in a lodger
- refuse or grant permission to smoke in the property
- refuse or grant requests to keep pets
- access the property for inspections, as long as they give 24 hours' notice (except in an emergency)
- take legal action to evict tenants who don't meet their responsibilities.

(Adapted from the government's guide to private renting and Hunters' rights and responsibilities for landlords and tenants.)

Additional rights for landlords in Scotland

New tenancies which started on or after 1st December 2017 are called Private Residential Tenancies¹ and grant extra rights to both landlord and tenant. For the landlord, these include:

- quick referrals for repossession where the tenant is in arrears
- a simpler 'notice to leave' to gain repossession of a property.

Landlords' responsibilities (in England)

- check the tenant has the Right to Rent the property
- provide a copy of the tenancy agreement
- protect the deposit in one of the three government-approved schemes under an Assured Shorthold Tenancy; on the first day of the tenancy take meter readings, with the tenant present, and test smoke alarms. Where there are solid fuel appliances, carbon monoxide alarms must be fitted
- ensure prescribed information such as EPCs, gas safety record and the government's How to Rent guide are given to the tenant at the start of the tenancy
- maintain the property in good working order, responding to tenants' written requests for repairs within 14 days and carrying out most repairs
- provide a gas safety record, where applicable, before the start of the tenancy
- ensure electrical installation and appliances are safe and working

¹ <https://beta.gov.scot/publications/private-residential-tenancies-landlords-guide/>

- ensure all furniture and fixtures adhere to fire safety regulations and maintain any appliances or furniture that have been supplied, according to the tenancy agreement
- keep properties as safe as possible
- ensure the property can be heated adequately and economically, and that utilities (gas, electricity and water) are safe and working
- give at least 24 hours' notice of visits
- give appropriate notice to the tenant to leave the property or regain possession;
- return the deposit to the tenant in accordance with the relevant scheme
- secure the correct licence for the property if necessary
- follow fire safety regulations for flats
- undergo health and safety inspections by the council if they think your property might be hazardous, or at the tenant's request. The inspections look at 29 health and safety areas under the housing health and safety rating system (HHSRS)
- pay income tax on rental income, minus running expenses
- pay Class 2 National Insurance if the rental is classed as a business under government guidelines¹
- get permission from the mortgage lender, where the property is mortgaged, and abide by any restrictions imposed by them and their insurance company, eg they may not allow letting to a tenant on benefits.

(Adapted from [the government's How to Rent guide](#) and the [government's guide to renting out a property](#) in England and Wales.)

Wales

In addition to the above, landlords must:

- register with Rent Smart Wales
- use a licensed managing agent or, if they manage their own properties, have a licence from Rent Smart Wales².

¹ <https://www.gov.uk/renting-out-a-property/paying-tax>

² <https://residentiallandlord.com/welsh-buy-let-investors-reminded-comply-rent-smart-wales/>

Scotland

Variations on the England regulations include:

- landlords must be registered
- landlords must ensure the property meets the 'repairing standard'
- since 1st December 2017, landlords have had to use Private Residential Tenancies
- landlords must issue new tenants with either the Easy read notes for the Scottish Government model private residential tenancy agreement or the Private Residential Tenancy Statutory Terms Supporting Notes.

NB: The Right to Rent rules do not apply to Scotland.

Northern Ireland

- all landlords have to be registered
- certain properties require a 'fitness certificate'¹.

NB: The Right to Rent rules do not apply to Northern Ireland.

(Adapted from Housing Advice for Northern Ireland and Northern Ireland Housing Executive.)



Image: © Wilyvend/Dreamstime.com

¹ <https://www.housingadviceni.org/advice-landlords/required-property-standards>

PART TWO

How well known are these rights and responsibilities?

Research has shown that while landlords are generally better informed than tenants, as is to be expected, their knowledge still leaves much to be desired.

For example, a survey by online DIY letting agency Let Britain¹ revealed the following:

Entering the property

12% of landlords and 28% of tenants did not know landlords legally have to provide at least 24 hours' notice before entering the property



Excessive charges

19% of landlords and 43% of tenants did not know tenants have the legal right to challenge excessive charges



Protecting the deposit

12% of landlords and 34% of tenants did not know the deposit must be protected in a government-approved scheme and returned within 10 days of the end of the tenancy



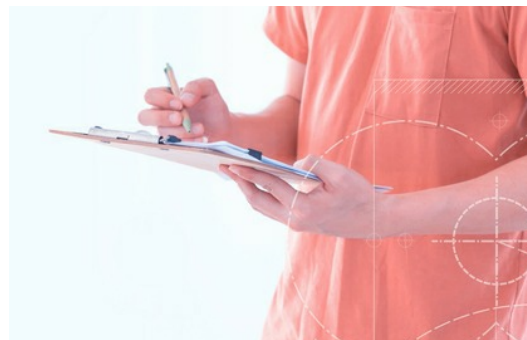
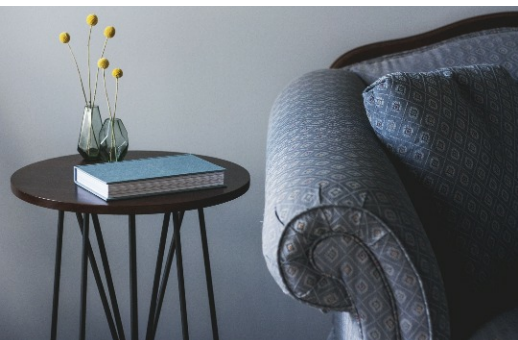
One of the more recent changes to the letting regulations is the introduction of new energy efficiency rules, which apply to most properties, meaning a landlord cannot begin or renew a tenancy on a property with an EPC of F or G. Despite it having received much publicity, research by E.ON² showed that 27% of landlords did not know the EPC rating of their property, while research carried out by insurance company Just Landlords³ showed even greater ignorance of the new law:

- 80% did not know that the EPC was an indicator of a property's environmental impact
- 78% did not **want** the property they own/rent to have its EPC rating improved.

¹ <https://letbritain.co.uk/blog/online-estate-agent-reveals-shocking-awareness-of-renting-laws/>

² <https://www.eonenergy.com/about-eon/media-centre/with-less-than-six-months-to-go-until-new-legislation-eon-offers-simple-ways-landlords-can-upgrade-their-properties/>

³ <https://www.justlandlords.co.uk/news/new-energy-efficiency-laws-shock-landlords/>



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How well do tenants know their rights?

Encouragingly, our own research, while limited to a small group, found that tenants are reasonably aware of their rights.

Our group of tenants knew that if the landlord takes a deposit it should be protected in a government-approved scheme and the majority understood that landlords should give 24 hours' notice of any visits, unless it is an emergency.

There was a little confusion around withholding some of the deposit, with some of our panel of tenants believing landlords can do this to cover standard wear and tear of furnishings. However, normal wear and tear is an expected consequence of people living in a property and landlords can claim tax relief on some items, under Replacement Domestic Item relief, introduced in 2016.

Some of our respondents were unaware that if they fail to report maintenance issues to the landlord, or refuse to allow somebody in to carry out repairs, they could be liable for the escalated costs of rectifying the damage.

I think most [tenants] know – the internet is quite powerful and the How to Rent Guide is very clear. One of the challenges is the market conditions. Tenants paying a low rent sadly tend to have their expectations reduced accordingly, particularly in a very competitive market. Sadly the reality is they may press for work to be done and ultimately the landlord could ask them to leave as there is likely to be a queue of tenants wanting a below market rent property.

We do not want more rules, or bureaucracy, but until there are defined standards and a safe way for tenants to complain, or an inspection regime, then this will continue. We perceive this to be much more of an issue where there is high demand and low supply, eg bigger cities. The risk is the large volume of properties in other areas will get the same treatment, thereby wasting resource.

Matthew Lester, Maxine Lester Lettings and Property Management

And, if tenants are largely aware of their rights, it may seem surprising that The Safe and Decent Homes report from Shelter (December 2014)¹ suggests that 61% of tenants had experienced – and put up with – one of the following problems in the previous 12 months:

- damp
- mould
- leaking roofs or windows
- electrical hazards
- animal infestations
- gas leaks.

While that report is now four years old, it appears the problems have not gone away, with Which? publishing similar findings in July 2018², following its own investigation. The organisation's research suggested:

- 60% of tenants have experienced plumbing or heating issues in their rental property;
- 41% have experienced damp
- 33% struggle with condensation
- 19% live in a draughty property
- 17% have experienced structural problems, such as a leaky roof.

The English Housing Survey³, however, quotes much lower figures, stating only 8% of rented properties have damp and 4% have condensation.

Whether they are as high as Which? and Shelter research or as low as the English Housing Survey reports, this does not necessarily mean landlords are deliberately setting out to create problems for their tenants, nor that problems are necessarily ignored by landlords. Landlords may have lived in the property previously themselves and not considered there to be an issue, or they may simply be unaware of the standards required.

In our experience most landlords do comply – obviously that is a skewed sample as we spend a great deal of time explaining things! I won't say they all comply willingly or happily, but the overwhelming majority are decent, law-abiding people who want to play fair.

Matthew Lester, Maxine Lester Lettings and Property Management

¹ http://england.shelter.org.uk/_data/assets/pdf_file/0003/1039530/FINAL_SAFE_AND_DECENT_HOMES_REPORT-_USE_FOR_LAUNCH.pdf

² <https://www.which.co.uk/news/2018/07/how-renters-get-a-raw-deal/>

³ <https://www.gov.uk/government/statistics/english-housing-survey-2016-to-2017-headline-report>

In some cases, it may be that tenants are failing to report issues, as Which? publicised in its report, Reform of the Private Rented Sector: The Consumer View¹: *“The current system of redress in the housing sector is confusing and complex. Our research found that only 44% of tenants who felt like making a complaint about an issue went on to make one, with 58% fearing repercussions with their landlord and 1 in 3 doubting that making a complaint would solve anything.”*

Shelter has reported² this reluctance to report problems may be due to fears of a ‘revenge eviction’, where the landlord serves a notice in retaliation for their complaint.

However there is some protection in place. The landlord loses the right to serve any notices for six months after an improvement notice is served by the council³. All three of these conditions must be met:

- The tenant must request repairs in writing before a notice is served
- If the request is ignored, the tenant must complain to the council
- The local authority must serve an improvement notice to the landlord.

Therefore, it would appear a combination of factors result in landlords not being held accountable for letting out properties which do not meeting the require standards.

Shelter’s report, Happier and Healthier: Improving Conditions in the PRS⁴ – September 2017, states: *“One of the key reasons that poor conditions continue to prevail is because of the low numbers of renters who report problems.”*

Tenants want a quiet life. If they like their home, some may sadly be reluctant to ‘make a fuss’ for fear of being evicted. While retaliatory eviction rules should stop this, few tenants want to live in a home knowing they are in conflict with their landlord. Therefore many probably tolerate more than they should.

Matthew Lester, Maxine Lester Lettings and Property Management

We reported similar feedback in our earlier report, What are the real legal requirements and costs of letting a property, and how can we communicate them better to landlords and tenants?:

“...tenants have fed back that they don’t want to complain because they want to renew their tenancy, it would cost too much to move or indeed they don’t want to get a ‘reputation’ as a troublesome tenant, especially in small, rural communities.”

In summary, it appears even when tenants know their rights, they don’t necessarily have the confidence or know-how to challenge the landlord.

¹<https://www.which.co.uk/policy/housing/2921/reform-of-the-private-rental-sector-the-consumer-view>

²http://england.shelter.org.uk/_data/assets/pdf_file/0003/1039530/FINAL_SAFE_AND_DECENT_HOMES_REPORT-_USE_FOR_LAUNCH.pdf

³<https://www.rla.org.uk/landlord/guides/section-21-notice-frequently-asked-questions.shtml>

⁴http://england.shelter.org.uk/professional_resources/policy_and_research/policy_library/policy_library_folder/briefing_happier_and_healthier_improving_conditions_in_the_prs

Why are some tenants unaware or dismissive of their rights?

As we have seen, tenants can be reluctant to make demands on their landlords for fear of eviction, or damaging their relationship. However, there are other factors at play, as outlined below.

Lack of research

Finding a rental property is relatively simple; all a potential tenant has to do is type their chosen postcode into a property portal such as Rightmove, Zoopla or a resource such as Gumtree or Open Rent. The onus is on the tenant to learn if the agent advertising the property is a member of any trade organisations, what it will cost to let the property through them and if the property being let meets the required legal standards.

However, once they fall in love with a property, tenants often fail to undertake appropriate checks. Which? found that only 26% of tenants who had recently moved had checked if their agent was a member of a professional body or redress scheme.¹

Instead, tenants get swept along by the process so they can move in as quickly as possible; the same applies if letting directly from a landlord.

With letting agent regulation and landlord redress on the horizon, tenants may decide they could find a better home to rent by choosing a letting agent or landlord prior to choosing a property. This would represent a major change in behaviour, as the Which? report found 61% of tenants find a property they like before approaching the agent. Searching for a new home by location and price certainly seems to be the norm.

Fear of missing out

According to ARLA Propertymark's Private Rented Sector Report, August 2018², demand from tenants fell by 19% in August, with year-on-year demand down by 11%. Supply of rental properties, meanwhile, was at its highest since December 2017, with year-on-year supply up by 4%.

However, in its Q3 2018 rental index, Belvoir³ reports that supply for tenants is continuing to reduce. More of Belvoir's offices have experienced an increase in landlords selling their properties, with tax changes, constant regulation and legislation changes being cited as reasons. Where an imbalance of supply and demand exists, it can cause potential tenants to feel pressurised into making a decision quickly.

¹ <https://www.which.co.uk/policy/housing/2921/reform-of-the-private-rental-sector-the-consumer-view>

² <http://www.arla.co.uk/lobbying/private-rented-sector-reports/august-2018/>

³ <https://www.belvoir.co.uk/pages/rental-index>

A survey by Ocean Finance¹ revealed that half of UK tenants regretted renting their property and quarter said they had rushed into signing their tenancy agreement, with 1.5million having signed within a day of their first viewing.

If, as these results suggest, tenants are making snap decisions about something as major as their home, it seems unlikely they are devoting sufficient time to checking if the letting agent and/or landlord has fulfilled their obligations.

Heart ruling head

As the Ocean Finance survey revealed, a quarter of tenants admit to rushing into signing their tenancy agreement.

Despite being such a big decision to make, people have a tendency to allow their heart to rule their heads when choosing a home. This is certainly the case for homebuyers, who make their decision in just 27 minutes on average, according to a 2017 Zoopla survey².

"I once fell in love with a beautiful chocolate box stone cottage in a gorgeous setting in mid-Wales and couldn't wait to sign the tenancy agreement. It wasn't until several months after I moved in, when the weather began to cool, that I realised just how cold it could be in a house with no central heating. The storage heaters just weren't enough, but this wasn't something I'd considered when I viewed the property in the summer."

Victoria G, tenant



Image: © Andrew Roland / Dreamstime.com

¹ <https://www.oceanfinance.co.uk/blog/rental-market-causing-regrets-for-rushed-tenants-0-5099-0.htm>

² <https://www.express.co.uk/life-style/property/794603/property-people-make-decision-to-buy-in-27-minutes>

How well do landlords know their responsibilities?

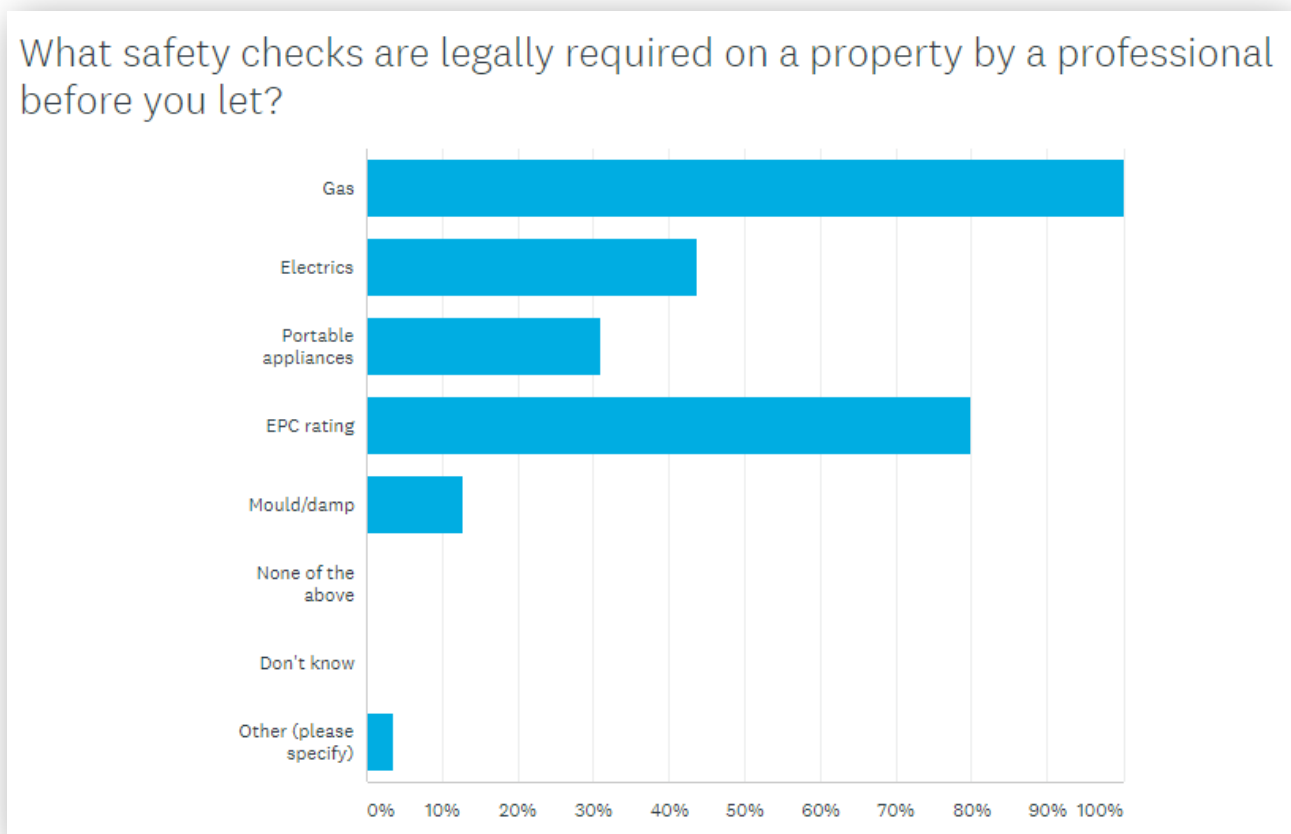
For the purposes of this report, we carried out some research among landlords to find out what they knew about their responsibilities.

Very few were able to list all of the paperwork and prescribed information that must be given to a tenant at the start of a tenancy.

This was an open-ended question where landlords were asked to reply in their own words, which revealed some confusion, with a significant minority replying “Right to Rent Guide” when it can be assumed they were referring to the government’s “How to Rent Guide”.

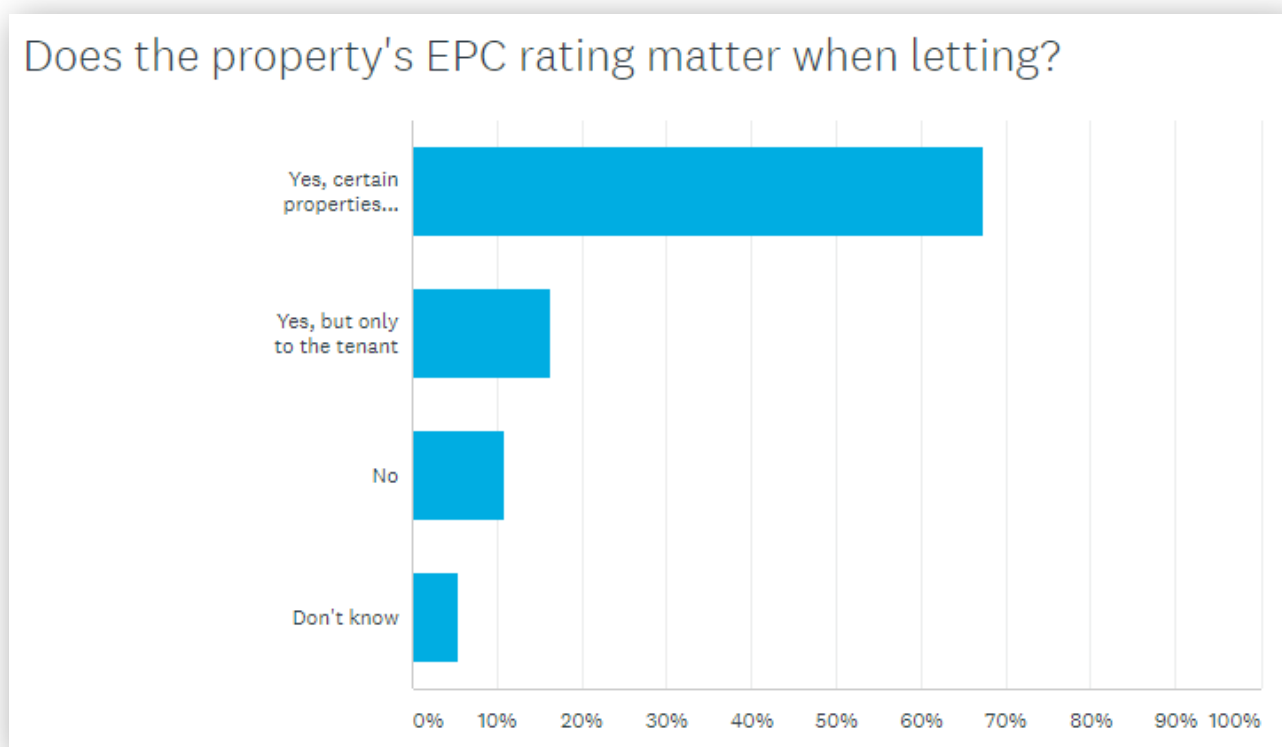
The most obvious document which must be issued to tenants is the gas safety record, with awareness at 75%.

More encouragingly, when presented with a question about checks and given multiple choice answers, all of our landlords correctly selected the gas safety check as a legal requirement before letting a property.



In our open-ended question about which paperwork should be given to tenants at the start of the tenancy, the Energy Performance Certificate scored reasonably highly at 67%. However, this is far short of the ideal, and may be considered low bearing in mind that the research was carried out at a time when EPCs were in the news due to a change in the law which took effect in April 2018.

However, 67% were correctly able to answer the question: “Does the property's EPC rating matter when letting?”



When specifically asked, most landlords were correct in stating that a property must have a rating of E or higher before it can be re-let. However, some landlords believed the minimum to be D and some thought it was properties with a G-rating or lower. Other participants provided vague answers such as “below a certain level”.

When Which? carried out similar research among landlords¹, it discovered an element of misplaced confidence among self-managing landlords: “Overall landlords are highly confident in their ability to fulfil their legal requirements. Indeed, 94% of landlords who self-manage their properties state they are confident they are fulfilling their legal obligations. However, our survey tested the knowledge of landlords across a range of obligations and only 21% correctly identified all of the requirements, suggesting that for many, their confidence is overstated.”

It is clear landlord education is needed to raise awareness of specific rights and responsibilities which are causing problems in the PRS.

¹ <https://www.which.co.uk/policy/housing/2921/reform-of-the-private-rental-sector-the-consumer-view>

Why are some landlords unaware of or unwilling to fulfil their responsibilities?

The landlords who hit the headlines have usually committed such extreme breaches that they could be considered to be deliberately flouting the law. However, more landlords are failing to meet their obligations to a lesser degree, either because they choose to ignore them or because they are ill-informed. These are some of the reasons why this could be the case.

Accidental landlords

Our research for the report, Who are the Individual Landlords Providing Private Rented Accommodation?, shows that almost one in five landlords did no research at all before letting their property, putting their tenants, their property and themselves at risk. A further 26% relied on advice from a friend or relative.

In addition, 38.1% of landlords surveyed for the report said they had been responsible for finding the tenant and managing the property themselves, thus failing to draw on the experience and knowledge of letting agents.

We have concerns where landlords do not use agents, as there is no one to be their nagging conscience. Where we take on landlords who have self-managed, we perceive big gaps in compliance. Where we lose landlords who want to self-manage we know these to be the landlords who have been most concerned about compliance costs – we expect they will do what they can to not comply.

Matthew Lester, Maxine Lester Lettings and Property Management

Confusion

One of the main issues is confusion. The list of landlords' rights and responsibilities included in this report was compiled from various sources as it proved difficult to find a comprehensive list from one clear source. This means landlords actively have to seek out information about their obligations; a problem highlighted by those who took part in our own research, and detailed in Part 3. The government's new How to Let guide is helping to improve this situation but the media, industry, government, tenant and consumer organisations need to work together to ensure:

- landlords and tenants are fully aware these guides exist and
- they are sufficiently helpful and easy to read.

In the meantime it appears there is also some confusion about which obligations are laws and which are merely recommendations, as illustrated in our own small survey.

For example, two thirds of landlords who completed our survey thought that ensuring the property is free from mould and damp is merely “best practice” when in fact, it is a legal requirement.

A known area of confusion is the law on carbon monoxide detectors, which is deemed to be sufficiently complex as to warrant a government booklet of its own.¹

In summary, it is the law which dictates that a landlord must provide a carbon monoxide alarm in a property where there is a solid fuel appliance, but only a recommendation to provide one where there are only gas appliances: *“However, as gas appliances can emit carbon monoxide, we would expect and encourage reputable landlords to ensure that working carbon monoxide alarms are installed in rooms with these.”*

In an ideal world, all landlords would follow the recommendations irrespective of whether they were law but, of course, this is not the case.

Making sure laws are clear, concise and don't allow for confusion – such as with the gas safety regulations – will help over time to ensure these laws are complied with. A similar measure to ensure compliance would be to make the laws binding for all properties, whether rented or not.

Financial pressures

In our seventh report, [What are the real legal requirements and costs of letting a property, and how can we communicate them better to landlords and tenants?](#), we calculated the cost of preparing a property to let has more than trebled since 2003, due to the Housing Act 2004 and subsequent legislation.

Add to this the recently increased taxation changes and there is no doubt there are increased financial pressures for landlords.

And despite accusations of ‘sky rocketing’ rents, many landlords rarely increase their rents to existing tenants, with the Office of National Statistics showing rents, on average, rising at a lower rate than the inflation (the general cost of living). In the 12 months to October 2018, rental prices for Great Britain (excluding London) rose by 0.9%, according to the ONS Index of Private Housing Rental Prices². The inflation rate over the same period was 2.2%³. Consequently, landlords may not be securing the returns they expected.

In addition, few mortgage lenders require landlords to prove they understand the cost of maintenance required, nor do insurance companies request safety certificates or other documentation to ensure the landlord is letting the property legally and safely.

¹ <https://www.gov.uk/government/publications/smoke-and-carbon-monoxide-alarms-explanatory-booklet-for-landlords>

² <https://www.ons.gov.uk/economy/inflationandpriceindices/bulletins/indexofprivatehousingrentalprices/previousReleases>

³ <https://www.ons.gov.uk/economy/inflationandpriceindices>

Overall, it seems likely that where landlords are not meeting the required standards to let a property, this is due mostly to a lack of research coupled with confusion. Although it is quite possible some landlords are not maintaining a property to the required standard due to financial pressure.

Some landlords – maybe ones with just one or two properties – might not even think of themselves as landlords, or may have handed over the majority of their management responsibilities to an agent.

Others may juggle their landlord responsibilities with a full-time job and family, meaning they struggle to keep on top of all the changes going on in the sector.

For others, it's complacency – they assume they know what they're doing but, in fact, don't. And of course there are also the minority of criminal landlords out there, who are simply not interested in complying with the law and providing safe and secure homes for their tenants. The lack of enforcement by local authorities too often means there's little incentive to comply.

John Stewart, RLA policy manager

I always split landlords into three groups. Firstly those who are unwilling to comply: it does not matter if they know the right thing to do or not, they don't do it. This is the criminal element. Then you have those who will comply and know what to do; they are not a problem to the market. Then you have the largest group – those willing to comply but simply not knowing their responsibilities.

David d'Orton-Gibson, Training for Professionals



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PART THREE

How can we motivate landlords and tenants to be aware of their rights and responsibilities?

The government in England is taking steps to help landlords, specifically with the publication of its new How to Let guide which explains the steps which need to be taken, and the rules and regulations.

In Wales, the government has gone a step further by ensuring anyone who manages a rental property has to be trained beforehand.¹

The problem is with around 150 laws and 400 rules and regulations, it's very difficult to explain the rights and responsibilities fully to landlords and tenants in a simple way, especially covering every situation that may arise.

For example The Lettings Industry Council, funded by Let Alliance, produced a comprehensive tenant guide which runs into 66 pages and, due to the constant changes in legislation, requires regular updates.²

Regulating agents could make a big difference, by raising the standard of letting agents and ensuring they know the law. Similarly, an increased supply of build to rent properties, run by professional landlords, could raise the standard of rental stock.

In addition, the research suggests that 'black and white' legislation is more likely to be understood and adhered to than 'grey' rules which are not clear-cut.

For example, the rules on gas safety are clear: an annual check by a Gas Safe-registered engineer is required. Electricity checks, on the other hand, are currently only recommended for standard rental properties (they are mandatory in HMOs) – although the government has announced it will make five-yearly checks mandatory.³

¹ <https://www.rentsmart.gov.wales/en/landlord/>

² <https://thelettingscouncilcouk.wordpress.com/tenants/>

³ <https://news.rla.org.uk/breaking-five-year-electrical-checks-to-be-compulsory-for-prs-landlords/>

How can landlords be motivated to fulfil their obligations?

Landlord and letting agent feedback

The landlords who completed our survey appear to want to be fully informed of their rights and responsibilities – which could be inferred by the very fact they took the time to complete the survey – but say they need help. Interestingly, amid all the confusion, landlords seem clear about their needs and how they can be met.

We asked: **“What is the one thing you believe would improve landlords' understanding of their rights and responsibilities?”**

Although wording varied, the answers could largely be split into two groups:

1. Clarity

Just over half of our respondents made suggestions which could be broadly termed as ‘clarity’, calling for a single source of information, in the form of a simple booklet or website, which is updated regularly. Several stipulated that this should be in simple language and free of jargon.

2. Greater regulation

The majority of the remainder suggested some form of regulation, including:

- landlord licensing
- mandatory membership of a landlord association
- compulsory training.

These wishes were echoed by the smaller group of letting agents who completed our survey. They were asked: *“What is the one thing you believe would improve letting agents' understanding of landlord and tenant rights and responsibilities?”* Their answers included “clearer legislation”, “mandatory training”, “communication” and “licensing of agents”.

“Ironically if the rules on property standards became more stringent then this would mean more people being happy to rent as they would feel any property would be properly maintained. This obviously increases the market sustainability for some landlords.

“It has the opposite effect at the lower end of the market in that the cost of maintaining a small low rent home may mean the property is not cost-effective from a renting perspective. That can drive rents up (increasing the need for social housing), or can mean those properties get sold (can those tenants afford to buy?) or, as we suspect happens now, they get lower maintenance and lower property standards.”

Matthew Lester, Maxine Lester Lettings and Property Management

What are some of the ways landlords could be motivated to comply?

Even with clearer information, some landlords will need motivating to access it. These are some ways in which landlords could possibly be motivated to follow rules and regulations:

1. Licensing/registration

One clear mandatory licensing/registration scheme as opposed to the many different local authority schemes across England.

2. Letting agent regulation

This could prevent any properties from being let through agents unless they are let legally and safely, and require agents to report landlords they know are letting illegally.

3. Tax relief

An incentive of tax relief could be offered to landlords who use a self-regulated agent, are licensed themselves, or who join a landlord association or accreditation scheme.

4. Awareness campaigns

Co-ordinated government, industry and consumer group campaigns which explain key tenant problems which should not exist today. For example, no property should be rented without certain safety checks; no property should be rented with mould and damp.

5. Distribution of government 'How to' guides

Auction houses, property portals and estate agents should be promoting and handing out the How to Let and How to Rent guides when landlords are searching for properties to buy to let. When landlords apply for a mortgage or insurance for their properties, legal and insurance companies should be distributing these guides automatically.

6. More effective checks

More funding for better ways of checking properties are being let legally and safely 'on the ground' as opposed to relying purely on under-funded local authorities and trading standards organisations.

7. Industry-wide involvement

Lenders, insurance and legal companies need to ensure landlords are better informed of their rights and responsibilities, perhaps by offering product incentives to landlords who can produce the correct safety certificates, or even by refusing their products to anyone who cannot prove the relevant checks have been made (just as cars cannot be taxed without a valid MOT and insurance).

Lenders and insurance companies should also be advising landlords of their responsibilities to let a property legally and safely. We touched upon this in our earlier report, [What are the real legal requirements and costs of letting a property, and how can we communicate them better to landlords and tenants?](#)

In fact, we have been recommending a higher level of publicity and education since Report 3, [What impact is enforcement of rules and regulations having on the private rented sector?:](#)

“Co-ordinated awareness and educational campaigns to ensure a better understanding of tenant and landlord rights and responsibilities, especially when it comes to letting properties legally and safely.”

While there are many regulations affecting private renting, enforcement is very poor. More effective enforcement of existing regulations, and better publicity when landlords and agents are prosecuted, are necessary to both raise awareness of obligations and the consequences of failing to comply.

Easy and affordable ways to stay on top of legislative changes and access to training is invaluable to landlords.

John Stewart, RLA policy manager

Throughout rental the problem lies in not enforcing the rules and usually all licensing does is provide funds for the local authority to enforce existing standards. Licensing makes good landlords pay for enforcing against bad landlords whereas this is a bill that should fall to society as a whole (ie be funded through taxation).

David d’Orton Gibson, Training for Professionals

Sadly, introducing so many laws over such a short space of time has created the challenge of communicating them to a huge number of people, including landlords, tenants and agents, to ensure they have been understood, implemented and enforced. Problems still exist in the sector and will continue to do so until we understand better how to communicate and educate everyone involved.

How can tenants be motivated to understand their rights?

Thanks to the power of the internet, many tenants understand their rights better; the challenge here is to motivate them to demand their rights are upheld.

This is an issue which cannot be taken in isolation. One way tenants could improve their rental experience is by choosing a reputable letting agent or landlord first and the property second, although this is not always easy in markets where property stock is so short and may not be achievable.

There are other factors which come into play, too, which means the private rented sector may not be the most appropriate place for them to be homed, not least the difficult circumstances experienced by some vulnerable tenants. People may need accommodation urgently, for example due to a relationship breakdown, or because they have escaped a difficult or abusive situation. In these situations they may have little choice but to take what is on offer at a price they can afford, regardless of whether the landlord is following the rules and regulations.

This is really where social housing needs to be provided or local councils need to work with landlords who are incentivised and specifically trained to help people who are vulnerable. Organisations such as RLA and Shelter in Wales have worked together to produce help and training for landlords working with vulnerable tenants.¹

In many cases tenants may be vulnerable or struggling financially and feel they have limited options. Support must be given to these people.

Tenants also need to know what a safe and legal property looks like. The new government [How to Rent a Safe Home](#) guide may help.

The RLA also has free resources including its [safe and secure home webpage](#) for tenants to check their rented homes are meeting current safety standards.

John Stewart, RLA policy manager

¹ <https://sheltercymru.org.uk/wp-content/uploads/2015/02/A4-Landlords-Advice-Booklet-ENGLISH.pdf>

What should tenants be asking when renting a property?

Where tenants do have a choice, however, it is vital they are aware of what they should look for when viewing a property online or visiting or dealing with an agent/landlord.

For example, simply asking 10 simple questions can help the tenant know if they are renting from a good landlord and/or letting agent.

10 questions for tenants to ask

1. Is there an EPC certificate to view? Is the property rated E or above?
2. If there is a gas supply, is there an up-to-date gas safety record?
3. When were the electrics last tested?
4. If an Assured Shorthold Tenancy (AST), where will the deposit be protected?
5. How much will the tenant need to pay before moving in? Eg holding deposits, deposit and, for now, agent fees
6. Does the landlord want to let the property short or long term?
7. Is the landlord a member of an association and/or an accreditation scheme?
8. Is the letting agent self-regulated?
9. Which Client Money Protection scheme does the agent use? (This will be mandatory from April 2019)
10. How long will the tenant have to review the agreement?



How can tenants be encouraged to report non-compliance?

Tenants need to become more willing to report any breaches by their landlords and need to have the confidence that local authority will take the necessary action if problems occur.

Currently, media reports mainly show tenants are likely to be evicted if they report problems:

April 2018: The Mirror reported tenants putting up with “mould, mice and dodgy wires” rather than risk eviction by complaining.

June 2018: The Times reported Shelter’s findings that 200,000 tenants are evicted each year for complaining.

July 2018: Liverpool tenants were reported as “living in squalor” and failing to request repairs due to the fear of eviction, according to the Liverpool Echo.

August 2018: The Mirror reported that tenants who make a complaint against their landlord are 50% more likely to be evicted.

These reports tend to reinforce the view that reporting issues will lead to eviction, when this is not necessarily the case; in fact, most landlords want to know about and are keen to fix problems.

Those who have worked in the industry know that the vast majority of landlords never evict a tenant asking for a legitimate repair and the English Housing Survey clearly shows it happens but not that often. Why then do so many tenants fear to tell the landlord of the need for a repair?

If a tenant complained to a landlord and the landlord evicted the tenant, what is legally to stop the local authority putting that property on a “watch list” and inspecting every 6 months to make sure a tenant does not have any repairing problems? The property would either be in repair, or the landlord would choose to leave the market.

David d’Orton-Gibson, Training for Professionals

With the protections outlined in **Part 2: How well do tenants know their rights?**, tenants shouldn't fear reporting repairs as the law is on their side. However, this will only be effective if the local authority demands the landlord carries out repairs following a tenant's complaint that their request has been ignored. If councils are not consistent in this area, tenants will continue to hold back for fear of a 'revenge eviction'.

Tenants should feel confident to exercise their rights as there are rules and regulations in place to protect them. It is an issue of perception.

It has been said that tenants are reluctant to report problems for fear of being asked to leave their home, however it is illegal for landlords to evict a tenant simply because they have raised a complaint about standards in a property.

Tenants, too, are often reliant on local authorities taking action, but a lack of resources or a lack of will means that few can. Instead, we are seeing an increase in 'no win, no fee' style lawyers, especially when it comes to deposit protection failures.

Both tenants and landlords need to be aware of their rights and responsibilities to each other when it comes to renting a home and need to be educated on these.

John Stewart, RLA policy manager



Image: © Aspenphoto/Dreamstime.com

What steps can be taken to make it easier for tenants to rent safely?

For tenants who are in a position where they have a choice, the aim should be to motivate them to rent a safe and legal property in the first place, as prevention is always better than cure. These are some of the ways this could be done:

Ways to motivate tenants to rent a safe and legal property

1. More consistent easy-to-read checklist for use by agents, landlords and tenants at viewings.
2. Greater exposure of cases where tenants are reporting repairs to agents and landlords which are getting solved.
3. More stories and case studies of how long-term tenants and landlords work closely together to ensure the property is rented legally and safely.
4. Encourage tenants to rent through a self-regulated letting agent who has client money protection. As the government has pledged to regulate letting agents in the future, this should help tenants to find safe and legal properties to rent. The upcoming letting fees ban, expected to take effect in 2019, may also motivate more tenants to rent via an agent.
5. Landlord and letting agents could be given a quality mark by their local authority, a scheme which is already being tested in Newham.¹ This could be displayed on property listings to indicate that the property met certain standards. With sufficient publicity for this, potential tenants could make educated decisions before renting a property. This could also encourage tenants to choose the agent before the property. However, it does assume mandatory landlord registration would already be in place.

¹ <https://www.newham.gov.uk/Pages/Services/Letting-Agents-Rating-Scheme.aspx?l1=100007&l2=200077>

Finding a home – whether you are buying or renting – is a complex and often confusing process. But it is so important to get it right and for this there has to be responsibility on all sides to make sure the right information leads to the right decision. A checklist that simplifies all the myriad pages of text that can be followed by the tenant, agent and landlord is the simplest solution. It would not be a substitute for the many guides but rather a useful distillation of them for the benefit of all.

Glynis Frew, Hunters

Recommendations for motivating and educating tenants

We need to make sure at every stage in the process of buying and letting, that landlords and tenants are talked to and advised; there needs to be more cohesion between various sectors within the PRS to ensure consistent education.

For example, when tenants start searching on portals, the government's How to Rent guide could be delivered as a pop-up. Letting agents could check whether potential tenants have read the guide before or during property viewings. When people are moving for their jobs, if relocation support is not available, HR departments could send out the government guides to help them, or make the guides available on company intranets.

DWP, local authorities and unions who look after millions of people who rent could help to raise the profile of these essential documents. Universities – especially those with foreign students – need to feature and send out the guides to new students and to those about to graduate.

Migrant workers are three times as likely to rent as those born in the UK¹ and could be vulnerable to being taken advantage of. It may be possible to identify tenants who are in the UK from abroad by requesting the help of mobile phone companies – such as international provider Lycamobile – who could then raise awareness of how to rent in the UK safely.

¹ <http://migrationobservatory.ox.ac.uk/resources/briefings/migrants-and-housing-in-the-uk-experiences-and-impacts/>



Image: © Monkeybusinessimages/Dreamstime.com; Dangubic/Dreamstime.com; Orangeline/Dreamstime.com

Conclusion

Despite many research reports and media stories of unscrupulous landlords and letting agents – especially over the last five years – problems are still being reported. It's unlikely we can expect all tenants to carry out the required checks to make sure a property is let legally and safely by a good landlord or agent, especially in areas where demand is so short versus supply.

As such, we need to ensure tenants are unable to rent a property in poor condition in the first place, by denying landlords the opportunity to let them, through:

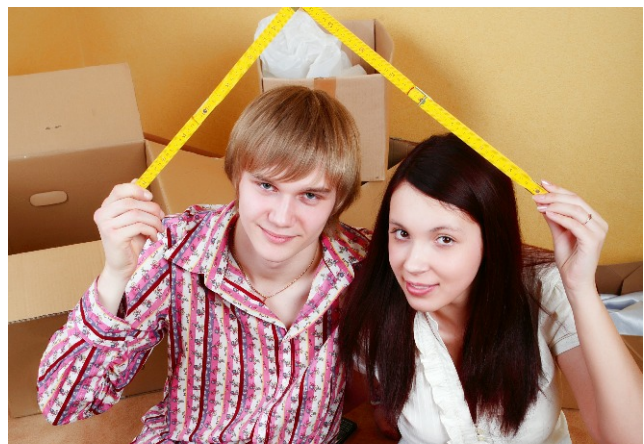
- better awareness campaigns and easy-to-access educational resources
- letting agent regulation
- landlord redress
- property MOT safety checks
- better enforcement of the law by local authorities.

If we doubled the number of rented properties then landlords would have to compete for tenants and therefore standards would rise and rents would be self-limiting.

Indeed the whole of the tenant fees issue only exists because agents are competing for landlords by trying to reduce their fee to the landlord and instead charging the tenant. If there were lots of properties compared to tenants, agents would have to compete for tenants.

Tenants don't want to rent rubbish properties but some simply cannot find anything else. Increase supply and you will solve a number of problems. Sadly government policy at the moment seems to leading us in the opposite direction.

David d'Orton-Gibson, Training for Professionals



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Images:© Propertychecklists.co.uk

The main change required is a greater element of co-operation and cohesion between different sectors of the property industry.

It would be helpful if the government, tenant and consumer organisations and the industry worked together to create co-ordinated awareness campaigns throughout the year to target both landlords and tenants to raise awareness of specific rights and responsibilities which are causing problems in the PRS.

In addition, a concerted effort by mortgage lenders, auction houses, estate agents, letting agents and insurance companies could ensure that landlords are reminded of their legal obligations at every step of the process, from their initial search for a rental property to buy, through to financing and insuring it. If they had to prove compliance at each point in the lettings process before proceeding to the next stage, this could help to ensure a property is ready to let legally and safely before it is even marketed. This is similar to the ways that motorists need an MOT and insurance before they are able to tax a car.

More regulation may on the one hand seem like the last thing landlords and agents want but our research has shown that there is an appetite for it – as long as the legislation is simplified, made clear to understand and properly communicated.