



Christopher Hamer, The Property Ombudsman, says that insufficient attention to references can prove costly for agents.

A major aspect of a lettings agent's responsibilities is referencing tenants. From my experience, that is when problems can arise – not necessarily in obtaining references but in not taking the correct action when the references are received.

In my annual report for 2009, I draw attention to two cases where I determined that agents should compensate landlords over shortcomings in the referencing process. Such errors probably turned out to be far more costly than the financial loss an agent would incur through waiting to find another tenant and the consequent delay in receiving commission or management fees.

THE WRONG TENANT

The first case involved a complaint by a landlord against an agent who had arranged a letting to a tenant who clearly, from the referencing checks, would find it very hard to manage the rent.

Subsequently, the tenants left with arrears of £2,400 backed by an unenforceable guarantee and the property was left in a poor condition, with damage that the landlord thought should have been spotted by the agent in routine inspections.

I decided that the agent had not properly explained to the landlord that the tenant would find it very hard to pay the rent and this situation was further aggravated by the agent's acceptance of a guarantee letter from the tenant's employer that could not be legally enforced. It was worded in such a way that any letting agent ought to have had misgivings about its effectiveness and should have recommended their client to get it checked by a solicitor. Moreover, the agent had imprudently concluded the tenancy before

'Subsequently, the tenants left with arrears of £2,400 backed by an unenforceable guarantee'

setting out to exercise this "guarantee".

I noted that the agents had recognised some shortcomings for which they had refunded their letting fee (£500) and had only charged commission on the rent received as opposed to the rent due. Taking this advantage to the landlord complainant into account, I concluded that the agents should further compensate the complainant and awarded £750. This award was intended to reflect the distress, aggravation and inconvenience caused by the agent's failures to meet standards which could reasonably be expected. I made no award for financial loss attributable to non-payment of rent or damage to the property. There was no liability on the agent for unpaid rent, that being a matter covered by the tenancy agreement and therefore solely between landlord and tenant, as was recompense for the damage.

NO REFERENCES, NO EVIDENCE

In another case, I did not believe that the agent involved had complied with their obligations under Paragraphs 1d or 7 of the TPO Code of Practice. They produced a tenant with little or no relevant references and did not explain the consequences or


the potential risk to the landlord.

Given the limited references that had been obtained, I would have expected to have seen evidence that the agent had informed the landlord of the lack of detail about the applicant's status and obtained her consent, in writing, to proceed with this tenancy. There was no evidence that the landlord had been informed of any of these issues and hence I upheld the complaint.

However, in stating this I did point out to the complainant that even if the agent had undertaken a more comprehensive referencing service there would have been no guarantees that the house would not have been used for criminal purposes – the 12 month tenancy ended after four months (during which the rent had been paid) when police raided the premises and found illegal activities!

In light of this, I upheld the complaint and made an award of compensation to the complainant of £900 for the aggravation, distress and inconvenience that she had suffered as a result to the agent's failures. However, I made no award for actual financial losses for loss of rent or damage to the Property. An agent cannot be held accountable for the actions of the tenant; such issues are a risk in any tenancy agreement.

COMMUNICATING PROBLEMS

It is essential when taking up references that the results, if negative, are fully explained to the landlord. If that means advising that the letting should not go ahead then this has to be done – giving a cautionary warning is not enough. 

 Do you have any views or experiences to share?
www.propertydrum.com/articles/ombudsmanapr