



Christopher Hamer, The Property Ombudsman notes the changing market is bringing a shift in the source of property related disputes from sales to lettings

In my Annual Report for 2008 I noted that the number of lettings disputes I was being asked to resolve was increasing significantly. Since 1 January 2009 that increase in lettings cases has continued. By contrast sales disputes are slowing with some 38 per cent fewer cases in the first quarter of 2009 than in the final quarter of 2008; these follow the changing trends in the residential property market.

Now that I am seeing greater numbers of lettings disputes I am starting to see some common causes of dispute between landlords or tenants and letting agents. It is my view that misunderstanding and miscommunication are primary causes for the dissatisfaction arising and subsequently lead to the parties being in dispute. They fall into three areas.

REFERENCING

The first of these concerns referencing. Under The Property Ombudsman Code of Practice an agent is required to carry out prudent referencing of the tenant in order to protect the landlord's position. Prudent referencing of course will not necessarily identify a tenant who is going to default on the rent, trash a house or set up a cannabis farm. Nonetheless I have seen cases where the referencing, whilst conducted prudently, has highlighted something which should have indicated to the agent that all might not be as it seemed. An example of this might be an unusually prepared bank statement or a reference from a previous landlord who happens to be a close relative. The letting agent should then have alerted the landlord to the precise picture that had been portrayed of the prospective tenant to allow that landlord to make an informed decision as to whether he wants to proceed.



'As sales disputes slow, I am seeing a greater number of lettings disputes and some common causes of dispute.'

INSPECTIONS

The second issue concerns inspection visits. Landlords will bring disputes to me because they consider that the agent has carried out insufficiently frequent or diligent inspection visits of their property. The usual complaint is that at the end of the tenancy the property is found to be in need of much repair, poorly cleaned and so on. It appears to me that there is quite often a misunderstanding amongst landlords that routine inspection visits will be as comprehensive as a check-in or check-out and will take place more frequently than is actual practice. If an agent has committed to carrying out visits at a certain level of frequency but does not, then I will likely find against them if there is a subsequent dispute; but it is usually the case that the landlord has one view of what will happen whilst the agent has another. The message has to be clear about the nature and frequency of visits.

DEPOSITS

The third issue arises in tenant versus agent disputes and relates to the retention of holding deposits where the tenancy does not proceed. If the terms of the deposit, when it will be forfeit or repaid are made clear in a deposit receipt I will not rewrite the arrangement but I caution that the terms must be made absolutely clear and unambiguous and by way of best practice, the agent should verbally reiterate those terms to the prospective tenant.

NEW LOGO, BROADER SCOPE

On 1 May the Ombudsman for Estate Agents scheme changed to The Property Ombudsman Service (TPOS). There is a new logo (pictured) for window displays, in blue with the OFT Approved Codes symbol alongside for sales offices and green without the OFT logo for lettings. Commercial property sales members will have a black logo.

"Membership has increased dramatically in the past few years and at the same time OEA has also expanded to take in lettings as well as its original remit to cover agents selling residential property," explains Bill McClintock, chief operating officer for TPOS. "In the near future, we will also be embracing some commercial property activities as well as the UK end of foreign residential property transactions.

"As the principal means of redress for consumers in the property sector, reflected by 95 per cent of UK estate agency offices being covered and our widening fields of activity extending to HIPs and property search providers, we consider the old name no longer reflected all that we do." ☰



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